

BEFORE THE DIVISION OF WATER RESOURCES  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

cOo

In the matter of Application 9007 of Peter Miller  
to appropriate from an Unnamed Spring in Inyo  
County for Mining and Domestic Purposes.

cOo

DECISION A. 9007 D 453

Decided *February 29, 1940*

cOo

APPEARANCES AT HEARING HELD AT LOS ANGELES, FEBRUARY 10, 1939.

For Applicant

Peter Miller

No Appearance

For Protestants

L. & H. Properties Corporation)  
Clair H. and Chris W. Tyler )

W. S. Gause  
Frank J. Howe

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of  
Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Under Application 9007, Peter Miller proposes to appropriate 10 g.p.m.  
from an unnamed spring in Tuber Canyon tributary to Panamint Valley throughout  
the year for mining and domestic purposes within the unsurveyed SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section  
5, T 20 N, R 44 E, M.D.B.&M. The point of diversion is described as being  
within the approximate NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T 20 S, R 44 E, M.D.B.&M.

PROTESTS

Under Application 7520, Permit 4159 Clair H. Tyler may appropriate

from an unnamed spring in Tuber Canyon, an amount of water not to exceed 0.08 of a cubic foot per second throughout the year for mining and domestic purposes within Sections 9, 10 and 16, T 20 S, R 44 E, M.D.B.&M. The point of diversion is described as being at an elevation of about 3800 feet in Tuber Canyon and about 5000 feet east of the Tyler Camp and Mill Site, being within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 10, T 20 S, R 44 E, M.D.B.&M. The L. & H. Properties Corporation is lessee of the mining property of Clair H. and Chris W. Tyler.

The protestants allege in effect that the spring from which the applicant seeks to appropriate is the same spring which is described as the source of appropriation in Application 7520, Permit 4159; that the spring is located on their mining claim and in order to deliver the water to applicant's place of use it will be necessary to cross other mining claims owned by them and that right of way and right of access have not been secured. Furthermore, protestants allege in effect that there is scarcely enough water with which to meet their present requirements and that should Application 9007 be approved it would result in depriving them of water to which they are entitled under Application 7520, Permit 4159.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE  
WATER COMMISSION ACT

Application 9007 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on Friday, February 10, 1939, in Room 803 California State Building, 217 West First Street, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

### FIELD INVESTIGATION

On May 20, 1938, the site of the proposed appropriation was visited by an engineer of this office who reported that the spring from which Mr. Miller proposes to appropriate was about 370 feet up the canyon from the spring named as the source of appropriation in Application 7520, Permit 4159. The canyon in which the springs are located is rather steep and the floor is filled with sandy debris. Between the springs is a continuous willow growth indicating that the excavations at the springs merely tapped the underground flow of the canyon. There was no indication of any increment of flow between the two points. At the time of the investigation water was being used from the lower spring for household purposes only; the amount being used probably did not exceed 150 gallons per day.

### GENERAL DISCUSSION

Due to lack of finances no appearance was made at the hearing by the applicant. Very little information was obtained at the hearing and no transcript was prepared. Mr. Howe stated that a map would be submitted indicating that the spring from which Mr. Miller seeks to appropriate was located on the property of the protestant. This map was filed in the office on May 15, 1939, together with affidavits signed by Clair H. and Chris W. Tyler alleging in effect that the spring described in Application 9007 was located on the Water Witch (or Water Witch No. 1) Mining claim belonging to them and leased to the L. & H. Properties Corporation. Copies of the map and affidavits were served upon the applicant.

Mr. Miller has been requested to indicate his proposed point of diversion on the map provided that in his opinion the map was incorrect but no response to the request has been made.

Mr. E. K. Oberteuffer field superintendent for the American Potash and Chemical Company at Trena, under date of August 16, 1939, advised this office that he had been following the case very closely and had been assisting Mr. Miller in every way possible; that he had examined the map upon which had been shown the Water Witch claim and that apparently Mr. Miller claimed the water situated thereon.

Action in the matter has been delayed in order to afford Mr. Oberteuffer an opportunity to work out some method by which the water could be used but apparently without effect.

Under date of December 19, 1939, Mr. Oberteuffer advised this office that there had never been any argument as to the location of Mr. Miller's spring as it was situated on the Water Witch mining claim but requested further time within which to come to some agreement in the matter with the Tylers. The extension was granted with the understanding that should Mr. Miller not be able to obtain right of access to the spring, he would request Mr. Miller to authorize the cancellation of Application 9007.

Under date of January 5, 1940, Clair H. Tyler informed Mr. Oberteuffer that no right of access to the spring or easement down Tuber Canyon would be granted to Mr. Miller as he intended to use the water himself and consequently Mr. Oberteuffer advised this office under date of January 8, 1940, that so far as he could see nothing remained but to cancel Application 9007. Mr. Oberteuffer further stated that he had been unable to get in touch with Mr. Miller since about the middle of December and was unable for that reason to obtain the signed request for cancellation of the application.

In order to ascertain whether or not the Water Witch claim was open for location at the time Application 9007 was filed this office addressed a

letter of inquiry to the County Recorder of Inyo County who advised us under date of July 11, 1939, that Mr. Tyler filed his proof of labor on the Water Witch claim for 1935-36 and 1936-37 and that the ground would not have been open for location on June 16, 1937, the date Application 9007 was filed. Furthermore the county recorder advised this office under date of December 26, 1939, that proof of labor on the Water Witch mining claim was filed by Wilbur S. Gause for L. & H. Properties and recorded September 19, 1939.

#### SUMMARY AND CONCLUSIONS

The spring from which the applicant proposes to appropriate is located in Tuber Canyon about 370 feet above the spring described as the source of appropriation in Application 7520, Permit 4159 of Clair H. Tyler and any development made at the upper spring by Peter Miller would result in decreasing the flow at the lower spring.

The record also clearly indicates that the spring from which the applicant seeks to appropriate is located upon the Water Witch mining claim, owned or controlled by the protestants and that protestants have refused to grant Mr. Miller the necessary right of access to the spring.

It is the opinion of the Division that Application 9007 should be denied.

#### O R D E R

Application 9007 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 9007 be rejected and

cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of  
the State of California, this 29<sup>th</sup> day of February, 1940.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

(Seal)

WRS:MP