

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

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In the Matter of Application 11612 of Charles P. Hale, Jr.
to Appropriate Water from Three Unnamed Springs
on the Mojave Desert in San Bernardino County
for Domestic Purposes

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Decision A. 11612 D. 556

Decided August 26, 1947.

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APPEARANCES AT FIELD INVESTIGATION CONDUCTED ON MAY 3, 1947
UNDER THE PROVISIONS OF ARTICLE 15, SECTION 733 (b) OF THE
CALIFORNIA ADMINISTRATIVE CODE.

For Applicant

Charles P. Hale, Jr.

In propria persona

For Protestants

Walter E. and Rose S. Dilley

In propria persona

Residents of Wheaton Springs

Walter E. Dilley

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer, Division of Water Resources,
Department of Public Works, State of California for Edward Hyatt, State Engineer.

Also in attendance were applicant's brother and protestant Dilley's lessee.

O P I N I O N

Application 11612 was filed by Charles P. Hale, Jr. on November 7, 1946
for a permit to appropriate 1333 gallons per day from each of three springs located
on the Mojave Desert within SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 4, T.15 $\frac{1}{2}$ N. R.14E. S.B.B.&M. in the
County of San Bernardino. The total amount of water applied for, 3999 gallons
per day, is to be diverted throughout the year for domestic purposes at a proposed

resort consisting of 20 people, 8 cabins, a service station, restaurant and store within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33 T. 16 N. R. 14 E. S.B.B. & M. The land upon which the use is proposed has been filed on under a "5 acre veteran claim" and is adjacent to Wheaton Springs Resort owned by protestant Dilley. The springs are on the public domain and application has been made to the U. S. Bureau of Land Management for right of access.

Protests

Walter E. and Rose S. Dilley claim a right to the use of the water from the springs which right is based upon continuous use for stock watering and domestic purposes since 1906 at which time the right was initiated by S. E. and Bessie Yates. They state that for the past 22 years the water has been used for domestic and public purposes at a service station, cafe, garage, 16 cabins and a 6 room hotel. They allege in effect that the amount of water applied for is in excess of the yield of the springs and that the approval of the application will result in depriving them of water which has been used by them and their predecessors for 41 years.

The Residents of Wheaton Springs submitted a protest by 27 individuals, including Walter E. and Rose S. Dilley, stating in effect that they were in full accordance with the protest of Walter E. and Rose S. Dilley and that a great injustice would result to themselves and the general public should Application 11612 be approved. They claim that if they are deprived of this water it would force them to seek livelihood and residence elsewhere.

The applicant on the other hand alleges that the springs have not been in use until recently when Mr. Dilley installed a pipe line connecting with an old 3/4" pipe which had long been abandoned, thereby ignoring the State laws governing appropriation of water and the U. S. Government laws relative to rights of way on the public domain. He is of the opinion that Mr. Dilley's Resort is located on land held under the subterfuge of a mining claim.

Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733 (b) of the California Administrative Code having been entered into by both the applicant and the record protestants and the stipulations having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on May 3, 1947. Accompanying the engineer were the applicant and his brother, protestant Dilley and the party to whom Mr. Dilley is leasing Wheaton Springs Resort. Numerous residents of Wheaton Springs Resort and others were interviewed in connection with the history of the springs and past use of water therefrom.

Records Relied Upon in Arriving at a Decision

In arriving at a decision as to whether Application 11612 should be approved, reliance is placed upon the entire file in connection with this application. Particular assurance is placed upon the report of the engineer who conducted the field investigation on May 3, 1947.

General Discussion

The record indicates that the main supply of water at the Wheaton Springs Resort, owned by protestant Dilley and located on unpatented mining claims is Wheaton Spring on the easterly slope of Mineral Hill about one-half mile below the group of three springs named as the sources of proposed appropriation in Application 11612. Wheaton Spring is not included in Application 11612.

Although Mr. Dilley has gone to considerable expense to increase the yield of Wheaton Spring, the flow of this spring is insufficient for the needs the of/resort and Mr. Dilley has supplemented the supply by diverting water from the spring designated as Spring No. 1 in Application 11612. This spring lies at the head of a gulch, also on the easterly slope of Mineral Hill and has been developed by a narrow cut with a 3' x 3.5' cement dam at the end. The flow of the spring is discharged into the Resort regulatory tank through a pipe line some 4500 feet

in length. At the time of the investigation the rate of discharge into the tank from Spring No. 1 was 320 gallons per day. Indications were that the pipe line was quite old and had been repaired on several occasions.

Spring No. 2 is a short distance to the southeast of Spring No. 1 and ten feet higher in elevation. A timbered tunnel 3' x 4' in section has been driven into the hillside. While water stood on the bottom of the tunnel there was no outlet. An old pipe line was in evidence terminating at the remains of an old watering trough which had apparently not been used for many years.

Spring No. 3 lay in the same gulch as Spring No. 1 and downstream from it. There, a smooth rock ledge traversed the gulch with water seeping over its face and lodging in small pools at the base. Some seepage was also noted from the southerly bank near the rock barrier. There was no development at that point as cattle can drink from the small natural pools when sufficient water is available. It is the opinion of the engineer who conducted the investigation that the seepage at Spring No. 3 is not from a spring proper but temporary overflow from the dyke above or percolation from the 10' stretch of canyon bed over which the water flows at Spring No. 1, which could probably be sealed off by grouting or other appropriate measures.

It appears that about the year 1898, the S. E. Yates Cattle Company was operating over the territory between Baker and the Nevada line and recorded filings upon a large number of springs including "Quail Springs" which are apparently the same as those now locally known as "Upper Springs" and are the three springs designated in Application 11612 as the proposed sources of appropriation. The filing on these springs was for "2 miners inches at this point and all additional water that may be developed near this point; said water to be used for mining, milling, stock and domestic purposes". Although Bessie Yates, widow of S.E. Yates had no knowledge of the filing, she remembers assisting her husband in cleaning out Upper Springs for

use by his cattle on various occasions near the turn of the century and that they were in undisputed possession of them, several hundred head of cattle having been watered there and at Wheaton Spring.

Upon the death of Mr. Yates, his wife and his nephew, L. E. Williams, came into possession of the springs and in 1925, when a cut-off from Los Vegas Road was constructed to the new road now known as "Highway 91", Mrs. Yates and Mr. Williams established a service station, hotel and cabins at the junction - the present Wheaton Springs Resort. The supply of water from Wheaton Spring being inadequate, a pipe-line was run to Spring No. 1 so designated in Application 11612.

According to Ord K. Bill of Cima, he made improvements on Spring No. 1 in 1931, constructed the tunnel at Spring No. 2 in 1933 and connected this spring to the main pipe line. Carl Welch of Nipton who worked on the line in 1933 stated that it was old at that time and needed replacements. L. E. Williams maintains that the water of Upper Springs has been used continuously at the Resort since 1926. Eventually Mrs. Yates disposed of her grazing and stock-watering rights to Fred Twisselman, Williams remaining in possession of the Resort together with water rights for domestic purposes at the Resort from Upper Springs. In 1944 Williams disposed of these assets to protestant Dilley.

Apparently realizing that the waters of Spring No. 1 were already appropriated, applicant Hale stated that he would be satisfied if given a permit to develop Springs Nos. 2 and 3. However, it is the consensus of opinion of those familiar with water development in that locality that the springs along the easterly side of Mineral Hill or Range are occasioned by one or more clay and rock barriers running parallel to the range and it has been their experience that exploitation of any one of them affects others in the immediate vicinity. That such is the case is evidenced by the fact that, although in rock formation, a recent lowering of Wheaton Spring completely dried up a flow in a tunnel several hundred feet distant and 35 feet higher; also it is said that diversion from Spring No. 2 which

is apparently on the same dyke as Spring No. 1 and 10 feet higher was discontinued because of its effect on the flow of Spring No. 1. It also appears that the seepage at Spring No. 3, which is below Spring No. 1, is temporary only, and will be almost entirely sealed off by proper development at Spring No. 1. That such is the case is indicated by the fact that the "old-timers" do not remember seeing any water at Spring Nos. 3, and by letter dated July 8, 1947 protestant Dilley informed this office that the seepage at Spring No. 3 had ceased.

Indications are that sufficiently extensive exploitation of Springs Nos. 2 and 3 to produce even a small supply of water would seriously diminish or obliterate altogether the flow of water at Spring No. 1 and that a permit so conditioned as to prevent interference with the present use of water by the protestants would be of no practical value to the applicant.

Mr. Hale has filed a five-acre veteran claim adjacent to the Wheaton Springs Resort along the highway of which about $1\frac{1}{2}$ acres overlap the Dilley mining claim. His object is to establish a service station and cabins to compete with the existing Resort. He has undertaken to have the Dilley claim declared non-mineral but apparently has not been successful, nor has his 5 acre filing been approved. This matter, however, does not come under the jurisdiction of this office. Suffice it to say that Mr. Dilley has informed the Division that a recent assay of surface ore showed a reasonable gold content, that the claim was staked along the vein strictly in accordance with mining laws and that assessment work has been kept up.

Summary and Conclusion

From the above the following conclusions are drawn:

- (1) The water from Spring No. 1 is already appropriated and is being applied to beneficial use. No adequate showing was made by the applicant to support his contention that the right to use water from this spring had been abandoned or lost through non-user.

- (2) Any development at Spring No. 2 will affect the flow of water at Spring No. 1 as it is on the same dyke or fault.
- (3) Water at Spring No. 3 is temporary seepage from above which will be almost entirely cut off by appropriate diversion works at Spring No. 1.
- (4) There is insufficient unappropriated water available at the three springs to justify the approval of Application 11612 and therefore permit should be denied.

ORDER

Application 11612 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733 (b) of the California Administrative Code and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11612 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 26th day of August, 1947.



Edward Hyatt, State Engineer

