

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

File

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In the Matter of Application 5743 of Gotthard Diethelm
to appropriate from an Unnamed Spring Tributary of
the Long Valley Watershed in Lassen County for
Mining and Domestic Purposes

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DECISION A 5743 D 219

Decided *March 12, 1929*

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Appearances at Hearing Held January 15, 1928.

For Applicant
Gotthard Diethelm

in propria persona

For Protestant
John P. Williams

in propria persona
Mrs. John P. Williams

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling, Chief
of Division of Water Rights, Department of Public Works,
State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 5743 was filed by Gotthard Diethelm on November 1, 1927.
It proposes an appropriation of 0.13 cubic foot per second from an unnamed
spring in Lassen County tributary to no stream and in the Long Valley water-
shed. It is proposed to divert the water throughout the entire year for min-
ing and domestic purposes at the Belmont Claims, numbered 1 to 13 in Sections
29, 30, 31 and 32, T 22 N, R 17 E, M.D.B. & M. The point of diversion is
described in the application as being located within the NW¹/₄ of the SE¹/₄ of
said Section 29. The application was protested by John P. Williams.

DESCRIPTION OF PROTEST

John P. Williams claims a vested right to the waters of the spring from which the applicant seeks to divert initiated in 1860 and alleges in effect that the proposed diversion would interfere with his use of water for domestic, stock watering and agricultural purposes as all of said water has been used for these purposes for the past 65 years. Protestant also alleges that the spring from which applicant seeks to divert is located upon patented lands owned and controlled by him.

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

Application 5743 was completed sufficiently for advertising in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on January 15th at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

GENERAL DISCUSSION

The spring from which the applicant seeks to divert is located in the Long Valley Watershed either at a point within the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 29 as described in Application 5743 or within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29, T 22 N, R 17 E, M.D.B. & M. as claimed by protestant. The spring is in close proximity of the line between these two forty acre subdivisions which line is also the dividing line between a homestead entry made by Thomas P. Warden on the south and the patented lands of John P. Williams on the north. From a survey made about two years ago by Charles E. Coughlin, County Surveyor of Lassen County, the spring appears to be located on Mr.

Williams' property, but from a more recent survey made by Messrs. King and Malone of Reno, it appears to be on the homestead entry of Mr. Warden, and on Belmont No. 10 lode claim as described by applicant.

Applicant bases his right of access on the fact that in 1925 he obtained mineral rights on this land. Prior to his acquisition of these rights however a homestead entry was filed by Thomas P. Warden on July 7, 1922, and approved on April 11, 1927, for grazing purposes whereby Mr. Warden will acquire the surface rights to the land when proof is submitted. Applicant Diethelm together with one Angelo Trosi filed an application to contest this homestead entry charging therein that portions of the homestead entry conflicted with the Belmont 1, 2, 3 and 4 lode claims located prior to July 7, 1922, the date of the homestead entry, and Belmont 5 to 11 inclusive lode claims located subsequently to July 7, 1922. The United States Land office has ruled that Belmont lode claims 1 to 4 inclusive were valid subsisting claims prior to the filing of the homestead entry and therefore the homestead entry was cancelled insofar as it conflicted with these lode claims. But as to the homestead entry on the lands involving Belmont claims 5 to 11 inclusive the Land Office has ruled that the homestead entry had the priority and the petitioners had the mineral rights only, the surface rights being acquired under the homestead entry.

It would therefore appear that if the spring is located upon Belmont lode claim No. 10 as described by applicant, he has no right to divert from the spring without the consent of the party who filed the homestead entry as his rights relate to mineral deposits only, nor has he any right of access to the spring without the consent of the owner should the spring be located upon the patented land of Mr. Williams.

Prior to the hearing there appeared to be some uncertainty on the

part of this office as to whether the applicant and protestant had the same spring in mind. Testimony presented at the hearing however clearly indicated that it was the same spring.

From information on file in this office and testimony presented at the hearing it appears that all of the waters of the spring from which applicant seeks to divert have been used by the protestant and his predecessors in interest since about 1860 for stock watering, irrigation and domestic purposes. At the present time about 7,800 head of stock and cattle are being watered therefrom during the summer and fall and about 15,000 head during the spring. Watering troughs have been placed in the immediate vicinity of the spring for this purpose. The approval of the application would therefore not be in order even though it were possible for the applicant to obtain right of access as there is apparently no unappropriated water in the source from which applicant proposes to divert.

It is therefore the opinion of this office that since applicant lacks the / necessary right of access and the waters of the source from which he seeks to appropriate are now and for a great many years have been, utilized for stock watering purposes, Application 5743 should be rejected.

O R D E R

Application 5743 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5743 be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this 12 day of March 1929.

Harold Conkling

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS