

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

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In the Matter of Applications 4214, 4498, 5025 of the Burnham Chemical Company, Applications 5932, 5933 and 5934 of the American Potash and Chemical Corporation, Application 5973 of the Engineers Exploration Corporation and Application 5998 of Nellie E. Dean to appropriate from certain springs and washes tributary to the Searles Lake Drainage Area in Inyo County for mining, domestic and industrial purposes, and in the Matter of Revocation of Permit 2635 heretofore issued upon Application 5025 of the Belcher Extension Consolidated Mines Company allowing an appropriation of 0.03 cubic foot per second from two unnamed springs tributary to Miley Canyon in Searles Lake Drainage Area in Inyo County for mining, milling and domestic purposes.

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DECISION A 4214, 4498, 5025, 5932, 5933, 5934, 5955,
5973, 5998, D 259

Decided

May 28, 1930

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APPEARANCES AT HEARING HELD March 14, 1928.

For Applicant

Burnham Chemical Company

G. E. Burnham
E. H. Linney

For Protestants

Don W. Whipple and Charles Miller

D. W. Whipple
U. W. Harwood
J. F. McCullough
J. A. Otto

Davenport Mining Claims and
Bliss Mining and Milling Company

J. M. Kerr

American Potash and Chemical Corporation

R. W. Mumford
W. E. Byrne

Arondo Mines Company

J. M. Kerr

Engineers Exploration Corporation

U. W. Harwood
J. F. McCullough

P. G. O'Neil, et al

no appearance

J. K. Miller and Russ Avery

no appearance

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

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APPEARANCES AT HEARING HELD May 8, 1929

Burnham Chemical Company and Belcher Extension Consolidated Mines Company	H. E. Linney
Engineers Exploration Corporation	M. M. Holman
American Potash & Chemical Corporation	R. K. Oberteuffer
Kellie E. Dean	In propria persona

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

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APPEARANCES AT HEARING HELD May 19, 1930

None.

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O P I N I O N

The physical characteristics of the several applications are shown by the accompanying table.

PROTESTS

Application 4214

Don W. Whipple claims a right to divert water within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T 23 S, R 42 E, M.D.M. by virtue of a mining claim, application and use of water prior to December 19, 1914. He alleges in effect that the approval of the application will result in depriving him of water used on Alpha No. 1 and Alpha No. 2 mining claims.

P. G. O'Neil and three others protest against the appropriation of water which they allege is on their Sweetwater and Bercham mining claims.

California Trust Company, Executor and Russ Avery, Owner of Arondo Mine claim that the waters of the springs from which applicant proposes to

divert have been heretofore appropriated by them; that there is an agreement between them and the owners of the Davenport claims whereby the latter are using the water; that if the appropriation is allowed their mining claims will become worthless.

The Owners and Lessees of Davenport Mining Claims, et al claim to have leased certain mining claims upon which all of the springs named in the application are located and that all of the water from said springs is necessary for the operation of its mines.

The American Potash and Chemical Corporation claims prior rights under Application 2523, Permit 1052 and alleges that if Application 4214 is approved this would prevent it from securing the necessary water to meet the demands for a domestic supply at Trona and for its industrial uses.

Application 5973

The Burnham Chemical Company in Application 4214 attempted to appropriate from Spring D-1 which is identical with the "Sainter Spring" described in Application 5973 of the Engineers Exploration Company. When it developed that this spring was situated upon a mining claim of the latter, the Burnham Chemical Company ordered the spring (D-1) stricken from its Application 4214 and withdrew its protest to Application 5973.

Application 5998

The Burnham Chemical Company claims that the spring designated as Sweepstakes Spring in Application 5998 is identical with Spring B-1 in its Application 4214, and this appears to be the fact.

HEARINGS HELD IN ACCORDANCE WITH SECTION 1a OF THE
WATER COMMISSION ACT ON APPLICATIONS 4214 and 4498

Applications 4214 and 4498 of the Burnham Chemical Company were completed in accordance with the Rules and Regulations of the Division of Water Rights. Application 4214 being protested and Application 4498 although unprotested having for a proposed source of diversion one of the sources named in Application 4214, the two applications were set for a public hearing on March 14, 1928 at 10:00 o'clock A.M. in Room 1026 Sun Finance Building, Los Angeles, California.

This hearing was adjourned without presentation of full cases in the hope that the conflicting interests could best make their presentation through a joint field inspection trip with an engineer of the Division. Such a trip was made on April 26, 1928. While it cleared the situation to a certain extent it did not succeed in bringing about a solution and these two applications were set for further hearing on May 8, 1929, with Application 5955 by Burnham Chemical Company, Applications 5932, 5933 and 5934 of American Potash and Chemical Corporation, Application 5973 of Engineers Exploration Corporation, Application 5998 of Nellie E. Dean, and Application 5023, Permit 2625 of the Belcher Extension Consolidated Mines Company.

At this hearing the taking of testimony was concluded except as to the conflict between Application 5023 of Belcher Extension Consolidated Mines Company and Applications 5932, 5933 and 5934 of American Potash and Chemical Corporation. In anticipation of a settlement of this conflict by the parties "out of court" no evidence was then taken on this conflict. The matter was continued from time to time until it becoming apparent that

no settlement was in prospect, Application 5023, Permit 2635 was set for further hearing on May 19, 1930, at which time permittee was required to show cause why this permit should not be revoked because of failure to comply with the terms and conditions thereof.

Of these several hearings the parties in interest received due notice.

ANALYSIS OF CONFLICTS IN THE SEVERAL APPLICATIONS

An understanding of the conflicts which exist and which prompted the protests will perhaps be best understood by taking up the several applications in their order.

Application 4214 originally embodied eight points of diversion as follows: Springs A-1, A-2, A-3, B-1, C-1, C-2, D-1 and Homewood Springs. C-1 and C-2 were withdrawn at the hearing on March 14, 1928. Spring D-1 was withdrawn at the hearing held on May 8, 1929 and under date of June 21, 1928, the applicant advised that Homewood Spring might be dropped from Application 4214 when and if Application 4498 by the same applicant and covering the same spring, were approved. As will be shown hereafter it is now in order to approve Application 4498 and therefore Homewood Spring may be considered stricken from Application 4214.

Under date of October 9, 1928, applicant petitioned to include an additional spring known as Spring Upper A-3 and has shown that this is in fact the same spring area as included under A-3 and was omitted from inclusion by error when the application was completed. It may be considered therefore that Spring Upper A-3 is a part of the same source as A-3. As this application is now presented for action therefore it embodies five springs or sources as follows: Springs A-1, A-2, A-3, Upper A-3 and B-1.

It appears that Spring A-1 is upon the Alpha mining claims of Don W. Whipple, a fact which is admitted as late as May 20, 1930, in a letter from the Burnham Chemical Company. The applicant, Burnham Chemical Company, has been unsuccessful in negotiating for right of access and inasmuch as Mr. Whipple has a possessory right to the ground surface and is in a position to deny right of access Application 4214 should be denied insofar as it relates to this particular spring.

Spring A-2 it appears is located upon the open, unentered public domain of the United States. Under date of June 4, 1928, and again on June 26, 1928, applicant was advised that because of the executive order of withdrawal of April 17, 1926, appropriation from this spring could not be approved unless an approved right of way were secured from the U. S. government. Under date of August 1, 1928, applicant stated in a letter to this office that it was proceeding in an effort to secure a clear listing of this spring but we are not since advised of any progress in the matter. It is therefore in order that appropriation from this spring be denied in accordance with Regulation 14. We cannot, in view of the decision in the case of Silver Lake Power Company v. City of Los Angeles (176 Cal. Rep. 96) accept the view expressed in the letter from William Spry, Commissioner of the General Land Office, to H. H. Linney, Attorney for applicant, under date of December 27, 1928, that Application 4214 having been filed prior to the date of withdrawal above noted will give a right of access.

Spring A-3 it was found was situated upon the Abundant #2 mining claim of Don W. Whipple. Applicant purchased this claim from Mr. Whipple and therefore has right of access. Right of access to Spring Upper A-3 is cleared by a letter, copy of which is in our files, from William Spry, Commissioner of the General Land Office, to H. H. Linney, Attorney for

applicant, under date of December 27, 1928. The American Potash and Chemical Corporation made some effort to prove at the hearing on March 14, 1928, that appropriations from Spring A-3 might affect its appropriations from Wests Spring near the location of Spring A-1 under its Applications 1159 and 2523 but the showing was inconclusive. Spring A-3 is located approximately a mile distant from Wests Spring and some 700 feet higher in elevation. While it is in the same canyon there is no evidence to show how soon, if at all, diversions at the upper spring would be reflected in a diminution of the flow at the lower spring and it is entirely possible that there would be sufficient inflow that the draft upon the upper spring would not be reflected at the lower springs by reason of the storms of an intervening winter season. It is our thought that the same condition prevails with respect to spring Upper A-3. It appears therefore that there is no bar to the approval of Application 4214 insofar as it relates to these two springs. While Mrs. Nellie E. Dean at one time protested the petition to include spring Upper A-3 she afterward withdrew this protest.

Spring B-1 it appears is upon the Sweepstakes mining claim of the Davenport Mines Company, et al. Applicant attempted to prove that the assessment on this mining claim had not been kept up. Protestant, however, presented exhibits in the way of copies of the proof of annual assessments and the showing by applicant's own witnesses of lack of diligence was ineffective. At the hearing on May 8, 1929, a course was pointed out to the applicant whereby it could have cleared up this point but no showing of progress to that end has been made. We are therefore inclined to the view that right of access to Spring B-1 is denied to the applicant by reason of the fact that this spring is situated on a valid mining claim and the appropriation from this spring must be denied.

Application 4498 of the Burnham Chemical Company is to appropriate from Homewood Spring and it appears that it is upon a patented mining claim of the applicant who therefore enjoys right of access. The only adverse claim of right to use water from this spring which was set up was that of C. Miller of Trona who stated under date of November 17, 1926, in a letter to this office that he was the locator of this ground and used a portion of the water for domestic, irrigation and stock purposes. He apparently had no objection to the appropriation of the surplus at least, and it is therefore in order that Application 4498 be approved.

Application 5955 was not contested by any other claimant. In the form as now presented it proposes an appropriation of a total of 32 gallons per minute from 17 springs which are named or numbered as follows: E-2, E-3, E-4, E-5, E-6, E-7, E-8, E-9, E-10 and F-1, F-2, F-3, F-4, F-5, F-6, F-7 and F-8. Points of diversion E-4, E-5, E-6, E-7, E-8, E-9 and E-10 are stated by the applicant to be upon mining claims which it owns and right of access is therefore assured. Points of diversion E-2, F-3, F-4, F-5, F-6, F-7 and F-8 are stated by the applicant to be not springs or water holes coming within the scope of the executive order of withdrawal of April 17, 1926 but are instead developments of underground water proposed by applicant through the construction of tunnels, etc. It would appear therefore that right of access is assured to the applicant as there are no counter-claimants. Points of diversion E-3, F-1 and F-2 are by admission of applicant upon the mining claims of others and under date of June 25, 1928, applicant advised that it would drop these points from its application if it found itself unable to arrange for right of access with the mining claimants. We are not advised of any progress in this matter and it is therefore in order that appropriations from these three springs be denied.

Application 5023 by the Belcher Extension Consolidated Mines Company was approved by the issuance of a permit on October 5, 1926. It covers two springs which are included in Applications 5932, 5933 and 5934 of American Potash and Chemical Company which Company has set up a claim that the permit issued upon Application 5023 should be revoked because of lack of diligence. Because of this claim this application was included for hearing on May 8, 1929 but no evidence was taken because the interested parties advised that they were about to come to a settlement "out of court". The matter was continued from time to time as was noted above in the expectation that the parties would come to an agreement but there having been no showing of progress Application 5023 was set for re-hearing on May 19, 1930. There has been no report of progress by this permittee since February 7, 1928, and no appearance was made by the permittee at the hearing on May 19, 1930 although permittee was required by the notice to appear at that time and show cause why the permit should not be revoked for failure to comply with the terms and conditions thereof. It appears to the Division that the project has not been prosecuted diligently under Application 5023, Permit 2635 and it is therefore in order that this permit be revoked.

Applications 5932, 5933, 5934 were filed by the American Potash and Chemical Corporation as noted above to appropriate from springs covered by Application 5023, Permit 2635 by Belcher Extension Consolidated Mines Company. Applications 5932 and 5934 are to appropriate from springs situated upon what the applicant advises are valid mining claims held by itself and right of access is therefore available. Application 5933 is to appropriate from Avalon Wash and would therefore appear not to come within the scope of the withdrawal of April 17, 1926, and right of access would appear to be available in this case. Permit 2635 of Application 5023 be-

ing subject to revocation and right of access being available under Applications 5932, 5933 and 5934 and there being no counter-claimants it would appear in order to approve these three applications of the American Potash and Chemical Corporation.

Application 5973 of the Engineers Exploration Corporation is to appropriate from Bainter Spring which is the same spring originally described as D-1 in Application 4214 of the Burnham Chemical Company. Applicant 4214 withdrew from this spring and Applicant 5973 claims to hold the ground whereon the spring is situated under a valid mining claim. It appears therefore, that right of access is available under Application 5973 and there being no counter-claimant as to the water, approval of this application appears in order.

Application 5998 by Nellie E. Dean is in conflict with Application 4214 wherein it is proposed under that application to appropriate from Spring B-1. As is stated above it is the conclusion of this office that Mrs. Dean has a possessory right to the land whereon this spring is situated and inasmuch as there is no counter-claimant to the water, it would appear in order that Application 5998 be approved.

CONCLUSIONS AND SUMMARY

With respect to these several applications, and based upon the statement of fact and conclusions of law noted above, it is concluded as follows with respect to these applications:

That Application 4214 be approved insofar as it relates to Springs A-3 and Upper A-3, and that it be denied insofar as it relates to Springs A-1, A-2 and B-1.

That Application 4493 be approved.

That Application 5955 be approved insofar as it relates to Springs E-2, E-4, E-5, E-6, E-7, E-8, E-9, E-10 and Springs F-3, F-4, F-5, F-6, F-7 and F-8, and be denied insofar as it relates to Springs E-3, F-1 and F-2.

That Permit 2635 heretofore issued upon Application 5023 of the Belcher Extension Consolidated Mines Company be revoked.

That Applications 5932, 5933 and 5934 of the American Potash and Chemical Corporation be approved.

That Application 5973 of the Engineers Exploration Corporation be approved and

That Application 5998 of Nellie E. Dean be approved.

ORDER

Applications 4214, 4498, 5932, 5933, 5934, 5955, 5973 and 5998 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests thereto having been received, a field investigation having been made and public hearings having been held and the Division of Water Resources now being fully informed in the premises, and it appearing to the Division of Water Resources after hearing that the terms and conditions of Permit 2635 heretofore issued upon Application 5023 have not been complied with:

IT IS HEREBY ORDERED that Permit 2635 heretofore issued upon Application 5023 be revoked, and

IT IS HEREBY FURTHER ORDERED that Applications 4498, 5932, 5933, 5934, 5973 and 5998 be approved and permits be issued thereon subject to the usual terms and conditions, and

IT IS HEREBY FURTHER ORDERED that Application 4214 be approved and that permit be issued thereon subject to the usual terms and conditions insofar as it applies to Springs A-3 and Upper A-3 only, and that this application be denied insofar as it applies to Springs A-1, A-2, and E-1, and

IT IS HEREBY FURTHER ORDERED that Application 5955 be approved and that a permit be issued thereon subject to the usual terms and conditions insofar as it applies to diversions at points E-2, E-4, E-5, E-6, E-7, E-8, E-9, E-10, F-3, F-4, F-5, F-6, F-7 and F-8, and that said application be denied insofar as it applies to points of diversion Nos. E-3, F-1 and F-2.

Dated at Sacramento, California, this *28th* day of *May*

1930.

EDWARD HYATT, STATE ENGINEER

BY *Harold Conkling*
Deputy

YES: MP
ENB:

GENERAL FEATURES OF APPLICATIONS

Appl.	Name	Source	Amount	Point of Diversion	Purpose	Protestants
4214	Burnham Chemical Company	Spring A-1	3 g.p.m.	SW ₁ NW ₁ Sec. 26 T23S R42E	Dom. &	Don. W. Wilpler
		" A-2	5 g.p.m.	SW ₁ SW ₄ Sec. 23 T23S R42E	Min.	Charles Miller
		" A-3	9 g.p.m.	SW ₁ ST ₁ Sec. 22 T23S R42E		Davenport Min.
		" Upper A-3		NW ₁ SE ₁		Clarks, et al
		" B-1	5 g.p.m.	NW ₂ NW ₁ Sec. 26 T23S R42E		Calif. Trust Co
						2 Duss Avery,
						American Trona
						Corp., Kellie E.
						Dean
4403	Burnham Chemical Company	Homewood Spring	0.09 c.f.s.	NW ₁ NW ₄ Sec. 31 T23S R43E	Dom. &	None
						Min.
5023	Balcher Extension Con- Per. Solidated Mines Company	2 unnamed springs	0.05 c.f.s.	SW ₁ SW ₁ Sec. 1 T24S R42E	Min.	W. H. Stone
2635				SW ₄ SW ₄ Sec. 1 T24S R42E	& Dom.	
5932	American Potash & Chemical Corporation	2 unnamed springs	0.05 c.f.s.	SW ₁ SW ₁ Sec. 1 T24S R42E	Min.	Dom. & None
				SW ₄ SW ₄ Sec. 1 T24S R42E	& Mill.	
5933	American Potash & Chemical Corporation	Avalon Wash	0.0112 c.f.s.	SW ₁ SW ₁ Sec. 1 T24S R42E	Min.	Ind. & None
						& Mill.
5934	American Potash & Chemical Corporation	Pot Hole Spring	0.0112 c.f.s.	NW ₁ NW ₁ Sec. 12 T24S R42E	Min.	Dom. & None
						& Ind.
5955	Burnham Chemical Company	Spring E-2	1 g.p.m.	SW ₁ SW ₁ Sec. 28 T23S R42E	Min.	& None
		" E-3	1 g.p.m.	SW ₁ SW ₁ Sec. 28 T23S R42E		
		" E-4	1 g.p.m.	SW ₁ SW ₁ Sec. 23 T23S R42E		
		" E-5	1 g.p.m.	NW ₁ NW ₁ Sec. 33 T23S R42E		
		" E-6	2 g.p.m.	NW ₁ NW ₁ Sec. 33 T23S R42E		
		" E-7	3 g.p.m.	SW ₁ NW ₁ Sec. 33 T23S R42E		
		" E-8	2 g.p.m.	NW ₁ NW ₁ Sec. 33 T23S R42E		

Appl. No.	Name	Source	Amount	Point of Diversion	Dom.	Purpose	Protestants
5955	Burnham Chemical Company	Spring R-9	4 c.f.s.	NW 1/4 Sec. 33 T23S R12E	Min. &	Burnham Chem-	
		" R-10	5 c.f.s.	NW 1/4 Sec. 32 T23S R12E	Dom.	Corporation	
		" R-11	1 c.f.s.	NW 1/4 Sec. 34 T23S R12E			
		" R-2	1 c.f.s.	SW 1/4 Sec. 34 T23S R12E			
		" R-3	1 c.f.s.	SW 1/4 Sec. 34 T23S R12E			
		" R-4	2 c.f.s.	SW 1/4 Sec. 34 T23S R12E			
		" R-5	2 c.f.s.	SW 1/4 Sec. 34 T23S R12E			
		" R-6	1 c.f.s.	NW 1/4 Sec. 34 T23S R12E			
		" R-7	1 c.f.s.	SW 1/4 Sec. 33 T23S R12E			
		" R-8	3 c.f.s.	SW 1/4 Sec. 33 T23S R12E			
		Hotel 32 c.f.s.					
5973	Engineers Exploration Corporation	Bainter Spring	0.007 c.f.s.	SW 1/4 Sec. 18 T24S R13E	Min. &	Burnham Chemical	
5998	Nellie E. Dean	Sweepstakes Sor.	0.025 c.f.s.	NW 1/4 Sec. 26 T23S R12E	Min. &	Burnham Chem-	
					Dom.	ical Corp.	