

State of California  
Department of Public Works  
Division of Water Resources

In the Matter of Applications 6468, 6477 and 6478 of  
Ballarat Mining Corporation and Application  
6713 of Ada Norris to appropriate  
from Springs in Mono County  
for Mining Purposes

Decision A 6468 - 6477 - 6478 - 6713 D 346

Decided July 24, 1933

Appearances at Hearing Held March 31, 1933.

For Ballarat Mining Corporation	-	Carl B. Sturzenacker, Atty.
For Ada Norris	-	Edward A. Penprase, Atty.
For Chris Wicht	-	John Dennison, Atty.

Examiner: Harold Conkling, Deputy in Charge  
of Water Rights.

O P I N I O N

Applications Involved

Application 6468 by Ballarat Mining Corporation is to appropriate 0.06 cubic foot per second from Sunset Spring in Jack Pot Canyon, a tributary to Panamint Valley, in Inyo County at a point in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 1, Township 22 South, Range 44 East, M.D.B. & M., for mining, milling and domestic uses at that point and in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 34, Township 21 South, Range 44 East, M.D.B. & M.

Application 6477 by Ballarat Mining Corporation as noticed for hearing was to appropriate 1.0 cubic foot per second from Cliff Spring, tributary to Panamint Valley, Inyo County, at a point in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 17, Township 21 South, Range 45 East, M.D.B. & M., for mining, milling and domestic uses at the point of diversion and in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 34, Township 21

South, Range 44 East, M.D.B. & M., but during the course of the hearing on March 31, 1933, applicant amended the application by eliminating the proposal to use water in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 34 and proposing to confine all use to the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 17 at the point of diversion.

Application 6478 by Ballarat Mining Corporation is to appropriate 0.03 cubic foot per second from Post Office Spring, a tributary of Panamint Valley, Inyo County, in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 10, Township 22 South, Range 44 East, M.D.B. & M., for mining and domestic use in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 34, Township 21 South, Range 44 East, M.D.B. & M.

Application 6713 by Ada Norris is to appropriate 0.50 cubic foot per second from a spring in Pleasant Canyon, tributary to Panamint Valley, Inyo County, at a point in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 12, Township 22 South, Range 44 East, M.D.B. & M. for mining, milling and domestic uses in Sections 7, 17, and 18, same township and range.

#### Description of Protests

Harry C. Porter and 34 others filed a general protest "against the applications of the Ballarat Mining Corporation, Mary Ann Thompson, Orpha Hart, Harriet Thompson, or any of them for the appropriation of waters in the vicinity of Ballarat" upon the ground that "those people do not do any legitimate mining or other business in this section and therefore have no use for such waters, and do not use any water except what they use at their place in Ballarat for domestic purposes, and their only purpose in securing such waters is to force others, who are legitimate operators and developers of this section to close down and quit all developments." This protest was assumed to apply to Applications 6468, 6477 and 6478 but Porter et al., failed to amplify when notified the protest was incomplete and unacceptable in the form submitted. Although notified of the hearing on

March 31, 1933, no appearance was made on behalf of Mr. Porter and his associates, and no cause of failure to appear has been shown. It is therefore considered that these protestants have failed to support the burden of proof appropriate to a moving party and their protest is dismissed.

Chris Wicht protested Application 6477 upon the ground that by virtue of riparian ownership and use begun prior to 1914 he possessed a water right below Cliff Spring which would be infringed were the Ballarat Mining Corporation to appropriate as proposed in Application 6477. During the course of the hearing on March 31, 1933, Mr. Wicht arrived at an understanding with applicant whereby in consideration of the latter's amendment of Application 6477 to eliminate any exportation of water to points outside the canyon he would withdraw his protest. Such an amendment was thereupon made and therefore Mr. Wicht's protest may be deemed adjusted.

Ballarat Mining Corporation protested Application 6713 of Ada Morris upon the ground that "All of this water is required by above corporation -- same to be used on mines of commercial value adjacent to spring for mining, domestic, milling." Protestant set up as the basis of its water rights which would be infringed both riparian ownership and an appropriation initiated by Application 3998, claiming that it had used the water from 1922 to 1927, since which time its use had been prevented by interference of applicant Ada Morris and others. Protestant further claimed that the spring in question was situated on the Willow Mine property owned by protestant, and that the use proposed by applicant would pollute the common source of supply.

Unappropriated Water Is Available Under Application 6713

The source named in Application 6713 by Ada Morris is the same as that named in Application 3998 of Ballarat Mining Corporation. The last named application was filed May 22, 1934, and a permit was issued in approval there-

of on June 13, 1925, allowing 0.5 cubic foot per second throughout the year for mining and domestic purposes. An inspection of the project was made by an engineer of the Division on April 2, 1931, and the following facts with respect to available water at this point and the uses made by protestant appear from our own engineer's report of his inspection and from the transcript of testimony given at the hearing by applicant, protestant and other witnesses on March 31, 1933.

The so-called spring from which Mrs. Morris seeks to appropriate and which is claimed by Ballarat Mining Corporation, is situated in Pleasant Canyon at a point some three to four miles southeasterly from Ballarat. A watershed area of some eight square miles lies upstream. The geological formation immediately above in the bottom of the canyon is said to be much faulted and of such an open porous nature that when the flow of waste becomes low it proceeds beneath the surface. This subsurface flow is forced to the surface at the so-called spring by an intrusion of diorite which acts as an underground dam.

When the engineer for the Division visited the scene on April 2, 1931, he found approximately 0.032 cubic foot per second coming to the surface some 200 feet upstream from the diversion point named in Application 5998. Major John F. Duling testifying for Mrs. Morris, reported that he measured 0.034 cubic foot per second surface flow at this point on March 16, 1933, and estimated the underflow at 0.25 cubic foot per second. He testified further that it was his opinion there was a greater flow in May 1931 when he visited the spring, but he made no measurement at that time.

Mrs. Thompson, for Ballarat Mining Corporation, testified that when she had the water measured in 1924 "There was about 6 miner's inches."

The report of the Division's engineer and the testimony introduced at the hearing on March 31, 1933, indicates clearly that the only use of water

by Ballarat Mining Corporation in recent years has been to satisfy the domestic needs of men doing assessment work, and perhaps a small amount for drilling. Not since 1927 at the latest is there any claim of active mining operations in the vicinity by protestant. It was the conclusion of the Division, based upon the report of its engineer who visited the property on April 2, 1931, that the use of water from this source by Ballarat Mining Corporation did not exceed 400 gallons per day, or 2 per cent of the surface flow then available, and therefore the license issued in confirmation of the rights initiated by the filing of Application 3993 was for 400 gallons per day or 0.00065 cubic foot per second instead of the 0.50 cubic foot per second for which permit had been issued. The testimony introduced at the hearing on March 31, 1933, affords no basis for changing the conclusion previously reached with respect to this matter. It appears that the maximum use of water from this source by Ballarat Mining Corporation in recent years has not exceeded 400 gallons per day, and that this use was desultory and probably for not to exceed a few weeks at most each year.

Ballarat Mining Corporation insists that the reason it has made no greater use of the water in Pleasant Canyon in recent years is that Ada Norris and others have interfered and prevented mining operations. It was on this behalf that suit was brought by Ballarat Mining Corporation against Ada Norris et al., in the District Court of the United States for the Southern District of California, Central Division, (No. T-72-H) seeking to quiet title and for permanent injunction, which suit terminated unfavorably to plaintiff and as a matter of fact instead resulted in quieting the title of defendant Ada Norris to mining properties which were in conflict. The time within which to take an appeal from this decision has expired and it is final, and so far as we are advised Ballarat Mining Corporation is taking no legal steps to re-

assert its claim.

The spring itself is situated on another uncontested mining claim of Ballarat Mining Corporation but Mrs. Norris has applied for and secured from the Board of Supervisors of Inyo County a right of way along a public road along which she proposes to convey the water from the spring up the canyon some 2,000 feet to her place of use. As a matter of fact Mrs. Norris has already installed her diversion works and prior to the hearing was diverting water from the spring.

There is some question whether the Ballarat Mining Corporation's mining claim covering the land surrounding the spring is valid. The mining engineer, Major Duling, who appeared for Mrs. Norris, testified that it was not, but whether it is or is not is immaterial. Right of access is assured not only by the resolution of the Board of Supervisors referred to above but by continued previous occupation and use of Mrs. Norris, and insofar as the claim of riparian right of protestant is concerned the Division has on frequent previous occasions ruled it would not deny an application upon showing of prospective use by a riparian owner. It is clear there is water in the source far in excess of that which has been and is being used by protestant and this surplus is deemed by the Division unappropriated and subject to appropriation under Application 6713 of Ada Norris. As for the objection by Ballarat Mining Corporation that the use by Ada Norris should be denied because it will pollute the waters of the canyon and make them unfit for diversion and use below by protestant, this is a matter wherein the Division has no authority to afford relief. Should the fears of protestant Ballarat Mining Corporation in this respect be realized the courts are open for injunctive and other relief. It is not felt that the Division of Water Resources has authority to deny the application upon the prospect such damage

may occur (See Decision A 6278 D 267)

Summary and Conclusion

The uses proposed under Applications 6468, 6477, 6478 and 6713 of Ballarat Mining Corporation and Ada Norris are beneficial. The general protest of H. C. Porter et al. against Applications 6468, 6477 and 6478 was not completed or prosecuted and is therefore overruled. The protest against Application 6477 by Chris Wicht was adjusted and withdrawn after amendment of the application to propose a use limited to the immediate vicinity of the point of diversion. As for the protest of Ballarat Mining Corporation against Application 6713 it appears that protestant is not now and has not for several years at least used more than 400 gallons per day or some two per cent of the surface flow at the point of diversion, that the surplus (except such as is being already diverted and used by Ada Norris) continues on down Pleasant Canyon and finally disappears in the gravel, that applicant Ada Norris has right of access along the County Road from the source to her mining property by resolution of the Inyo County Board of Supervisors, and that the proposed use of applicant Ada Norris under her Application 6713 should not be denied because of a prospective future use by Ballarat Mining Corporation under asserted claim of riparian right. The Division is without authority to deny an application upon a showing that the use proposed may cause collateral damage to protestant through pollution of protestant's supply.

O R D E R

Applications 6468, 6477, 6478 and 6713 for permits to appropriate water having been filed with the Division of Water Resources and having been completed and advertised in due form, protests against the approval thereof having been filed with the Division and a hearing having been held after due notice to protestants, and the Division now being fully informed in the premises,

IT IS HEREBY ORDERED that said Applications 6466, 6477, 6478 and 6713 be approved and that permits be issued thereon subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 24 day of July, 1933.

EDWARD HYATT, State Engineer

By Harold C. Buehler  
Deputy

ENB:CG

