

Before the Division of Water Resources
Department of Public Works
State of California

c0o

In the Matter of Application 9413 of W. B. Peters to
Appropriate from Bowan Canyon Creek, Tributary to
North Fork of El Dorado Creek in Placer County
for Mining and Domestic Purposes

c0o

Decision A. 9413 D 443

Decided

June 28, 1939

c0o

APPEARANCES AT HEARING HELD IN SACRAMENTO JUNE 26, 1939

For Applicant

W. B. Peters

No appearance

For Protestant

Walter S. Willey

No appearance

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

O P I N I O N

Application 9413 was filed by W. B. Peters on September 16, 1938.

It proposes an appropriation of 0.5 of a cubic foot per second from Bowan Canyon Creek throughout the year for mining and domestic purposes within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T 14 N, R 11 E, M.D.B.M. The point of diversion is described as being within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T 14 N, R 11 E, M.D.B.M. After use for mining purposes the water is to be returned to Bowan Canyon Creek within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, T 14 N, R 11 E, M.D.B.M.

Protest

Walter S. Willey claimed that he had for more than 40 years diverted water from springs near the head of Bowman Canyon situated in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T 14 N, R 11 E, M.D.P.M.; that the flow from these springs is diverted into the Gas Mill Ditch and conveyed to the Bachelder, Sigelow and Gas Mill Placer Mining Claims commonly known as the Oro Mine and that the entire summer flow of the springs which is approximately 27 inches has for more than 40 years been used on one or more of the aforementioned claims. He alleged in effect that should Application 9413 be approved it would result in interrupting the flow from the springs and interference with his diversion works and ditch.

Hearing Set in Accordance With Section 1a of the Water Commission Act

Application 9413 was completed in accordance with the Water Commission Act and 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 June 26, 1939 in Room 401, Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified and special attention was directed to the requirement that at least five days notice of intention to appear was required. This requirement was cited particularly because of the fact that applicant's attorney McKellips had been unable in recent months to communicate with the applicant. All parties were advised that in the absence of a notice from Mr. Peters or on his behalf of an intention to appear at the hearing there was no need of an appearance on behalf of the protestant as the Division would be disposed to deny the application.

General Discussion

Under date of June 15th Mr. Peters advised this office that failure to answer correspondence relative to Application 9413 had been due to the fact that he had been some distance from any Post Office and had not received his mail. He stated in effect that the water which he intends to appropriate will be diverted at a point about 200 feet down the canyon from where the protestant diverts his water and that water is available to him which passes the protestant's intake.

Under date of June 24, protestant's attorney T. L. Chamberlain advised this office to the effect that Mr. Willey had checked up on applicant's statement and found that Mr. Peters was taking water from a point about 170 feet below his ditch and that if this was the point at which the diversion was to be made he had no objection. Mr. Willey wished to go on record however that he objected to any digging, blasting, excavation or any other disturbance of the surface below his point of diversion which would tend to lessen the flow of the springs which constitute the source of supply of his diversion.

Mr. Willey's investigation confirmed essentially the applicant's statement as to the location of his point of diversion with respect to that of the protestant and it is therefore the opinion of this office that Application 9413 should be approved.

All permits issued by this office contain a provision that the same are issued subject to vested rights and therefore existing and vested rights cannot be legally infringed by the issuance of such a permit. The jurisdiction of this office in this proceeding extends only to the appropriation of water and if Mr. Peters infringes upon the rights of Mr. Willey by means of his construction methods, such infringement would not fall

within the jurisdiction of the Division but redress would lie through a court of competent jurisdiction.

ORDER

Application 9413 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 9413 be approved and that a permit be granted to the applicant 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 28th day of June, 1939.

Edward Hyatt, State Engineer

By HAROLD MONKLING
Deputy

(Seal)

WES:m