

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Application 15239 by Katherine S. Wann to
Appropriate Water from an Unnamed Spring Tributary via Piute
Wash to Colorado River for Domestic Purposes and Irrigation.

oOo

Decision A. 15239 D. 802

Decided September 7, 1954

oOo

In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on February 9,
1954:

Katherine S. Wann

Applicant

R. E. Hartsif

Interested party

J. J. Heacock
Senior Hydraulic Engineer
Division of Water Resources
Department of Public Works

Representing the State Engineer

The protestant Imperial Irrigation District was unrepresented during the investigation.

oOo

OPINION

General Description of the Project

The applicant seeks to appropriate 8,000 gallons per day throughout the year from an unnamed spring located North 660 feet and West 600 feet from the Southeast corner of Section 3, T9N R21E, SBB&M. The spring is described as being tributary to Piute Wash, thence to Colorado River. The project includes a concrete dam, 4 feet high by 8 feet long and 1,000 lineal feet of two-inch steel pipe line. The water is to be used within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of the adjoining Section 2. A domestic supply is wanted for a house occupied by two people. Chickens and rabbits are to be watered and an acre of land irrigated. The application is silent as to any water right or source of water supply other than the one therein sought. It indicates that the applicant owns the proposed place of use, does not own the land at the proposed point of diversion. With reference to the latter it contains the entry, "Application has been made to the U. S. Land Office, Los Angeles, California."

Protests

The Imperial Irrigation District protests the application, allegations in its protest including the following:

"That the diversion of Imperial Irrigation District is at Imperial Dam in Imperial County, California.

"That the rights of Imperial Irrigation District to the use of water of the Colorado River and the rights of ... other ... specifically designated agencies to the use of waters of the Colorado River stem not only from their respective appropriations ... but from the Colorado River

Compact of 1922, the Boulder Canyon Project Act of 1929 and contracts made by the Secretary of Interior ... with said respective agencies for the use of 5,362,000 acre-feet per annum of said waters of the Colorado River for use in California.

"That in the light of the claims of Arizona in the case of Arizona vs. California, et al., now pending ... in the Supreme Court of the United States, and in the light of the prior appropriations and contract rights of said agencies, there are no unappropriated waters of the Colorado River available for said applicant."

R. E. Hartsif protested the application informally by letter to the Division dated December 11, 1953. Since that letter arrived after the expiration of the protest period, Mr. Hartsif was informed that his letter could not be accepted as a protest but that there would be a field investigation and that he would have an opportunity at that time as an interested party to discuss the situation with the investigator. Mr. Hartsif's letter reads in part as follows:

"I am protesting the granting of this permit for the following reasons —

- (1) There was no way that I know of that I could have known of said application before the forty days ... had expired
- (2) My wife and I own a bona-fide mining claim on which the water is located, ownership of which is undisputed.
- (3) The water in question is not a spring. It is developed water. Developed by a tunnel about one hundred and twenty (feet) into a sandstone hill.
- (4) The water has been used constantly for about five years to irrigate about one-half acre of alfalfa and garden and domestic use.

(5) The applicant owns or controls not one square foot of tillable soil on the premises for which she makes application. Said premises consist of a large gravel wash and sandstone hills. . . . The applicant applies for 8,000 gallons per day which exceeds the flow The flow is about 5,000 gallons per day and diminishes in summer. The small garden and alfalfa plot require all of the flow during the irrigation season. We bought the claim on May 26, 1952 and have since (done) a lot of work on it As soon as we can develop enough ore we will need all of the water for mining purposes

Answer

The applicant made no formal answer to the protests or to the more informal objection of R. E. Hartsif. However, certain passages in the applicant's letters to the Division indicate that party's position in the matter, such passages reading as follows:

In a letter received August 24, 1953 --

" ... the little spring comes from an old mine in an old rock and doesn't come near the Colorado River Just a small stream and will not hurt the Imperial Irrigation District."

In a letter received January 7, 1954 --

"From the way the letter reads, R. E. Hartsif has accused me crossing his land to go to the spring which isn't true, the spring is on public domain land and I have filed either to buy or trade as my land is next to the spring about 100 ft. from my line, it has been recorded. Hartsif is the one that crosses tax-paid property to go to that so-called mine"

Field Investigation

The applicant and the protestant of record (Imperial Irrigation District), with the approval of the Department having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted on February 9, 1954

by an engineer of the Division. The applicant and Mr. R. E. Hartsif, whose protest was received after the expiration of the protest period, were in attendance during the investigation. The protestant Imperial Irrigation District was unrepresented.

Records Relied Upon

Application 15239 and all data and information on file therewith.

Information Secured by Field Investigation

The report of the field investigation of February 9, 1954 contains, among other statements, the following:

"The source of the proposed diversion is a developed spring that lies along the westerly edge of the 'Nonwater-Bearing Tertiary Sediments' as shown on the Geologic Reconnaissance Map - Colorado River Basin, which is included with the 'Division of Water Resources (Provisional) Water Quality Report #4, Ground Water Occurrence and Quality, Colorado River Basin Region, June 1953'."

"A tunnel about 4 feet wide by 7 feet high by about 100 feet long has been driven westerly through a low remnant of tightly cemented ancient alluvium. The adit is at a small seep, and the tunnel follows a fracture line and water develops along most of the length of the tunnel. Flow was measured at about eight and one-half gallons per minute, and Mr. Hartsif said it was very stable throughout the year, and from year to year."

"The source lies in Piute Valley and is approximately one and one-half miles northwesterly of the gap between the Dead Mountains to the north and the Sacramento Mountains to the south, where surface flow from the valley escapes and flows easterly to the Colorado River. The Dead and Sacramento Mountains are flanked along their westerly base by a fault, which in turn is flanked by old alluvium which is classed as nonwater-bearing. The spring and the Klinefelter Spring, approximately one-quarter mile northerly, lie above the westerly edge of the nonwater-bearing alluvium. Approximately one-quarter

mile easterly of the springs, along the Santa Fe Railway tracks, there are a few small moist spots supporting phreatophytes and some desert willow are in evidence about one-quarter mile southerly. No evidence of subsurface flow was found in the gap or on the large alluvial cone between the gap and the river."

"From the evidence on the ground, it would appear that flow from the spring is lost by evapo-transpiration in the immediate area, and any contribution to the Colorado River would be negligible."

"On March 1, 1946, Fete Domitrovitch filed a quartz claim, "Hillcrest #1", of which the southeast corner is common with the southeast corner of Section 3, T9N R21E, SBB&M. The claim is 1,500 feet north and south and 600 feet east and west; the easterly and southerly lines of the claim are in common with the like lines of Section 3. The source of the proposed appropriation would be near the west line of this claim. R. E. and May Hartsif purchased the claim from Domitrovitch on May 26, 1952; the quit claim deed is recorded on Page 364, Book 2964, Official Records of San Bernardino County."

"The claim has not been patented so does not show on the County Assessors book or in the tax records."

"Proof of assessment work was filed by R. E. Hartsif on June 6, 1953, and is filed in Book 331, Page 314, San Bernardino County Records."

"On June 23, 1952, R. E. Hartsif filed a location for a placer claim covering the $E\frac{1}{2}$ $SE\frac{1}{4}$ $SE\frac{1}{4}$ of Section 3, T9N R21E, SBB&M which overlies a portion of the quartz claim, but extends 60 feet westerly, and undoubtedly covers the proposed source of appropriation."

"The water is used by two elderly men that live on the claim for domestic purposes and to irrigate a small garden and about one-quarter acre of alfalfa. Also Mr. Hartsif hauls some water to Needles for drinking water as its quality is better than the City's domestic supply."

"The San Bernardino County Assessors records show that Mrs. Wann owns the $W\frac{1}{2}$ of $SW\frac{1}{4}$ of Section 2, T9N R21E, in fee, which covers the proposed place of use."

"Mrs. Wann contends that the land is Public Domain, but the San Bernardino County records indicate the mining claim is valid."

"E. Ross Housholder, 433 East Spring Street, Kingman, Arizona (California L. S. #2641) surveyed the property for Mrs. Wann, but his map did not show the location of the spring."

"A compass bearing was taken from the stone monument, purporting to mark the Southeast corner of Section 3, and it indicated that the spring location is substantially as shown on the application."

Discussion

It is an accepted legal principle that in California a riparian right attaches to a valid mining claim prior to patent from the United States, provided all attributes of the right are present. Those attributes appear to be present in the situation under discussion, the spring filed upon being located upon the Hartsif quartz claim, that claim reportedly being a valid claim, the spring itself being the result of tapping a certain fracture line followed by the Hartsif tunnel. It appears, therefore, that a riparian right attaches to the spring that results from the driving of the Hartsif tunnel. It appears further that that right is being exercised currently, and that substantially the full yield of the spring is being utilized beneficially, for domestic purposes and for irrigation, near the tunnel, on the Hartsif quartz claim.

Summary and Conclusion

The applicant seeks to appropriate 8,000 gallons per day, year-round, from an unnamed spring in San Bernardino County at a point described as lying 660 feet north and 600 feet west from the SE corner of Section 3, T9N R12E, SBB&M. The spring is said to be tributary via Piute Creek to Colorado River. The water is wanted for domestic purposes at a house located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 of the same township, for the watering of chickens and rabbits and for the year-round irrigation of 1 acre of land. The proposed conduit is a 2-inch pipe line, 1,000 feet long. The application mentions no other water right or source of water supply than the one sought therein. The applicant claims to own the proposed place of use but not the spring site. In regard to the latter the applicant states "application has been made to the U. S. Land Office, Los Angeles, California".

Imperial Irrigation District protests the application for the alleged reason, in effect, that there are no unappropriated waters in Colorado River or in the tributaries of which Piute Creek, to which unnamed spring is said to drain, is one.

One R. E. Hartsif registered an objection to the proposed appropriation, by letter, after the expiration of the protest period. He was informed that his letter could not be accepted as a protest due to its late submittal but that the application was to be investigated in the field and that he might attend the investigation and present his objections at that time. This he did. The basis of his objection as

expressed in his letter is that the source filed upon lies upon his claim which he (Hartsif) owns and that the yield thereof has been used for five years for domestic purposes and irrigation and will continue to be so used.

The applicant makes no formal answer either to the Imperial Irrigation District's protest or to the informal objection by Mr. Hartsif. In letters to the Division, however, the applicant wrote on one occasion to the effect that water issuing from unnamed spring does not reach Colorado River and cannot hurt Imperial Irrigation District; and on another that unnamed spring is on public land and that she has filed "either to buy or to trade".

The applicant and the record protestant (Imperial Irrigation District) having stipulated to proceedings in lieu of hearing, a field investigation was conducted on February 9, 1954. The applicant participated in the investigation, as also did Mr. Hartsif, whose letter of objection had not been accepted as a protest because of its late submittal. No representative of Imperial Irrigation District was present during the investigation.

At the investigation on February 9, 1954, it developed that the spring filed upon by the applicant is in reality a tunnel some 4 feet wide, 7 feet high and 100 feet long; that it was yielding about 8.5 gallons per minute when visited; that its yield, according to Mr. Hartsif, is very stable; that the flow issuing from the spring or tunnel is lost by evapotranspiration in the immediate vicinity and cannot, therefore, contribute materially to Colorado River. The field investigation developed also that

one Pete Domitrovitch filed a quartz claim in 1946, the claim being 1500 feet north and south and 500 feet east and west, its easterly and southerly lines coinciding with the easterly and southerly boundaries of Section 3, T9N R21E, that unnamed spring is situated near the west line of the quartz claim, that R. E. and May Hartsif purchased the claim from Domitrovitch in 1952, that the claim has not been patented and does not show on the County Assessor's books or tax records, that proof of assessment work has been filed, that in 1952 R. E. Hartsif filed a location for a placer claim covering the $E\frac{1}{2}$ $SE\frac{1}{4}$ of the same Section 3, that the placer claim overlies a portion of the quartz claim but extends 60 feet farther west and undoubtedly includes the spring, that the water from the spring is used by two elderly men who live on the claim, that the water from the spring is used for domestic purposes and the irrigation of a small garden and a quarter acre of alfalfa, that some water is hauled to Needles for drinking, in view of its superior quality, that according to the San Bernardino County Assessor's records, Applicant Wann owns the $W\frac{1}{2}$ $SW\frac{1}{4}$ of Section 2, T9N R21E, in fee, that while Applicant Wann contends that the spring lies upon the public domain the San Bernardino County records indicate that the Hartsif mining claims are valid, that a compass bearing from the purported SE corner of the section in question indicates the spring to be located substantially as described in the application.

The Hartsifs, as owners of the mining claim within which the spring in question is located, appear entitled under the riparian doctrine to utilize waters issuing from the spring. This they appear to be doing currently, for domestic and irrigation purposes, up to the approximate yield of the spring.

In view of the apparent existence of a riparian right in favor of the Hartsifs to the use of waters issuing from unnamed spring and the utilization upon the Hartsif mining claim currently of substantially the entire yield thereof, it is the opinion of this office that unappropriated water in that spring which is the source from which the applicant seeks to appropriate is non-existent and that Application 15239 should, therefore, be denied.

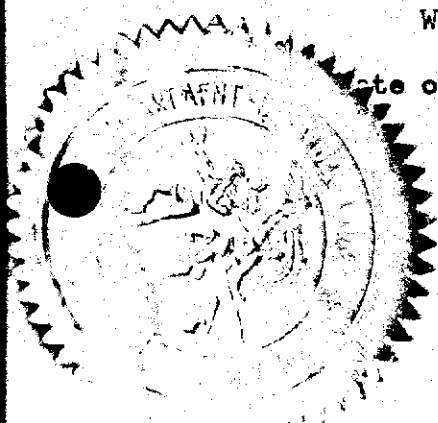
cOo


ORDER

Application 15239 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulation having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15239 be rejected and canceled 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 7th day of September, 1954.




A. D. Edmonston
State Engineer