

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Application 18182 )  
by George S. and Tessie A. Bronson )  
to Appropriate from New World Tunnel )  
in El Dorado County )

Decision No. D 932

ADOPTED APR 30 '59

Substance of the Application

The application, filed June 13, 1958, is for a permit to appropriate 400 gallons per day, year-round, from New World Tunnel in El Dorado County for domestic purposes. The tunnel is located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 32, T11N, R11E, MDB&M, and water will be conveyed by pipeline a distance of about 1,200 feet for domestic use at one residence also located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 32.

Protests

Protests against Application 18182 have been received from John Capek and from Edwin L. and Frances F. Rogers. John Capek holds a prior right to appropriate from New World Tunnel by virtue of License 4846 (Application 12139). He claims that since February 1947 about 2,225 gallons per day have been used year-round under License 4846 for domestic and stockwatering purposes and that the amount requested by the applicants, or any amount granted to the applicants, would seriously affect his prior rights since the source is not producing sufficient water. He states that in the

past he has allowed the applicants "permissive use" of his pipeline and as a result his supply was seriously reduced. He also claims that the applicants could possibly satisfy their water needs from the creek (White Rock Creek) flowing through their property or from their own well.

Edwin L. and Frances F. Rogers claim prior rights to New World Tunnel under License 4884 (Application 12018) and License 4885 (Application 12218). These protestants likewise claim to be using water for domestic and garden uses, and that there is not sufficient water to allow the application to be approved.

#### Answer to Protests

In reply to the protests, the applicants state that it is their understanding that the land owned by them and the protestants was once owned by a Mr. Darrington, and that when the separate parcels were sold, the deeds contained a provision to the effect that the water of New World Tunnel was to be shared by all of the parties. On the basis of this provision, the applicants claim to have a vested right to a share of the water. They further claim that water has been used at their place for about five years and that during this time there has not, to their knowledge, been any shortage of water.

The applicants further allege that White Rock Creek frequently overflows into the well referred to by Mr. Capek, and as the health authorities of Placer and El Dorado Counties have warned against drinking water from any stream, the applicants believe that water from this well is not usable for household purposes.

### Field Investigation

Applicants and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on December 17, 1958, by J. J. Heacock, an engineer of the Board. The applicants and protestants were present or represented at the investigation.

### Records Relied Upon

The records relied upon in support of this decision are Application 18182 and all relevant information on file therewith, with particular reference to the Report of Field Investigation made on December 17, 1958, by the above-named engineer; reports of inspections made under Applications 12018, 12218, and 12139; and United States Geological Survey, Garden Valley quadrangle, 7½-minute series.

### Source

New World Tunnel, the source of the proposed diversion, is an old mining tunnel (reportedly about 180 feet long) driven into decomposed granite, with the portal at about elevation 2,360 feet. The portal of the tunnel has a cross section about 5.5 feet wide by 6 feet high with an arched crown and apparently no timbering. A concrete dam about 3 feet high by 5 feet long was built about 10 or 12 feet in from the portal to serve as a partial bulkhead creating storage in the tunnel. The tunnel apparently intercepts water along a fault in the mountain. However, El Dorado Irrigation District's Negro Hill Ditch is above the tunnel, lying

about 500 feet southerly and about 50 feet higher in elevation, and it is possible that the water in the tunnel is seepage water from this ditch.

The flow of the tunnel has not been accurately determined because the bulkhead forms a small reservoir, and to obtain an accurate measurement would require draining the tunnel. The parties have been reluctant to drain the tunnel because it would eliminate standby water in case of fire. The tunnel was visited by engineers of the former Division of Water Resources on August 4, 1951, when the flow of the spring was estimated to be about 4,000 gallons per day, and on June 8, 1955, when the flow was estimated to be about 3,000 gallons per day.

#### Applicants' Project

The applicants currently obtain water from the source by means of a 400-foot extension to protestant Capek's pipeline. The water is used for domestic purposes at a fully plumbed house, including the irrigation of flowers and shrubs. The applicants stated at the investigation that they propose to install a pipeline of their own from the tunnel, and correspondence received subsequent to the investigation indicates that this installation may have already been made. The applicants have a small well about 5 feet in diameter and 7 feet deep equipped with a 3/4-horsepower electric motor which lifts the water about 40 feet to a 500-gallon redwood tank. The applicants are reluctant to depend on this as a source of supply because it would require the installation of a chlorination plant.

### Protestants' Projects

At the time of the investigation the records of the Board showed that protestant Rogers held Licenses 4884 and 4885 to appropriate water from New World Tunnel. License 4884, issued in the matter of Application 12018, allows a diversion of 300 gallons per day throughout the year for domestic purposes, and License 4885, issued in the matter of Application 12218, allows a diversion of 400 gallons per day throughout the year for domestic use. The investigation report indicates that the water under these licenses is diverted through a 3/4-inch pipeline, heading near the bottom of the bulkhead, for use at a four-room residence with about 2,000 square feet of lawn and garden. On December 18, 1958, the Board received notice that all right, title and interest in License 4885 (Application 12218) had been assigned to Seth F. and Marie Harris.

License 4846, issued in the matter of Application 12139, is held by John Capek and confirms a right to appropriate 2,225 gallons per day throughout the year from the tunnel for domestic and stockwatering uses. Protestant Capek has a 3/4-inch pipeline which siphons water over the top of the bulkhead and extends about 800 feet to his place of use. The report of inspection made on June 8, 1955, indicates that protestant Capek's use is at a fully plumbed house occupied by nine persons with about 13,200 square feet of lawn, garden and pasture, and five head of range cattle.

The protestants' places of use are both located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 32, T11N, R11E, MDB&M.

### Discussion

As previously stated, the flow of New World Tunnel has not been accurately determined and there is no hydrological data available, with the exception of the two estimates previously mentioned; namely, 4,000 gallons per day on August 4, 1951, and 3,000 gallons per day on June 8, 1955. The total appropriation allowed under the three licenses heretofore discussed is 2,925 gallons per day. Therefore, on the basis of the yield of the tunnel as estimated on two occasions during the period of the year when the flow would ordinarily be assumed to be reaching its minimum flow, it appears that there are times when surplus water is available. This conclusion is further supported by statements by all of the parties at the December 17, 1958, investigation that there are times during every year when surplus flow is available. On the other hand, the record indicates that there have been times during some years when the supply has been inadequate to meet the needs of all of the parties.

Because of the uncertainty as to the periods during which the supply may be inadequate, the Board believes that in fairness to the applicants the application should be unconditionally approved insofar as the season of diversion is concerned. Because of the nature of the supply and its proximity to the places of use, no interference should result to the prior right holders so long as the applicants observe the priority which, by law, will attach to the permit. Although the production of the tunnel and quantities diverted by the users is not known, reasonable and accurate means are available which can be employed to assure an equitable division

of the supply in accordance with the various priorities of the rights involved.

The available information indicates that all of the parties have a right of way to the tunnel, and that they may have a right to a share of the water by virtue of statements in their deeds. If such rights do exist they would not be increased nor impaired by any rights the parties may have pursuant to their water right applications with the Board as these are matters over which the State Water Rights Board has no jurisdiction.

#### Conclusions

The information indicates and the Board finds that unappropriated water exists at times in the source from which the applicants seek to appropriate, and that such water may be taken and used in the manner proposed by the applicants during those times without injury to other parties. It is therefore the conclusion of the Board that Application 18182 should be approved, and that a permit should be issued to the applicants subject to the usual terms and conditions.

#### ORDER

Application 18182 for a permit to appropriate unappropriated water having been filed, protests having been received, applicants and protestants having submitted stipulations to the proceedings in lieu of hearing as provided for under Section 737 of the California Administrative Code, Title 23, Waters, an investigation having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 18182 be and the same is hereby approved and it is ordered that a permit be issued to the applicants subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed four hundred gallons per day to be diverted from January 1 to December 31 of each year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before September 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1961.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1962.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.



Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at \_\_\_\_\_, California, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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Henry Holsinger, Chairman

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W. P. Rowe, Member

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Ralph J. McGill, Member