

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

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In the Matter of Application 12352 by C. W. Bradshaw to Appropriate Water from an Unnamed Spring in an Abandoned Tunnel, Tributary via Bear Creek to Merced River, in Mariposa County, for Domestic Purposes and Irrigation.

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Decision A. 12352 D. 693

Decided February 5, 1951

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APPEARANCES AT HEARING AT MARIPOSA ON JULY 18, 1950

For the Applicant

C. W. Bradshaw

James A. Starritt, Attorney at Law

For the Protestant

L. W. Allred

L. A. MacNicol, Attorney at Law

EXAMINER - HARRISON SMITHERUM, Supervising Engineer, Division of Water Resources, for A. D. EDMONSTON, State Engineer.

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OPINION

General Description of the Project

The application initiates an appropriation of 0.025 cubic foot per second, from March 15 to December 31, from a source described as an unnamed spring in an abandoned tunnel, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T 5 S, R 19 E, M.D.B. & M. in Mariposa County, for dom-

estic purposes and irrigation. According to the application the proposed intake is 140 feet inside the tunnel. Water is to be conducted first to a 5000 gallon tank located outside the tunnel entrance and thence through 775 feet of 1 inch pipe to the place of use, a 5 acre orchard within the same quarter-quarter section. Domestic use is to include service to 20 people, the watering of 15 to 20 head of livestock and the irrigation of a $\frac{1}{4}$ acre garden.

Protest

C. W. Allred protested the application, claiming a right to the use of the water which the applicant seeks to appropriate. He states that the proposed point of diversion is in a tunnel on the "Pay Roll Quartz Claim", which he owns, that he developed that water supply in driving his tunnel and that he needs it for the operation of his claim for supplying motor radiators, compressor engines and rock bits, and for domestic purposes incidental to mining activities. He refers in his protest to a pending action in the Superior Court, Merced County, seeking to quiet title to the Pay Roll Quartz Claim.

Answer

The applicant asserts in his answer that the protestant's claim of title to the mining location mentioned is faulty, that the protestant did not develop the water supply in The Payroll Quartz Claim, that that water supply existed before the protestant's advent, that there was more water in the tunnel in 1923 than at present, that the tunnel was driven to nearly its present length by parties other than the protestant, that only the applicant has used the water in the past and that the protestant neither has used nor is using any of it.

The applicant further states that only he can put the water to beneficial use, since he is the owner of the surface overlying the mining location; and he states that the protestant's alleged mining location is not a bona fide location but was made primarily to harass and annoy him and to prevent him from putting otherwise wasted water to a beneficial use.

Hearing Held in Accordance with the Water Code

Application 12352 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of Article 733(a) of the California Administrative Code on Tuesday, July 18, 1950 at 10:00 o'clock A. M. in the Superior Court Room, Court House, Mariposa, California. Of the hearing the applicant and the protestant were duly notified.

General Discussion

At the hearing of July 18, 1950, before the introduction of testimony, protestant's counsel introduced by reference Court Action 3072 (Allred v. Bradshaw), California Superior Court, County of Mariposa and entered an objection to the introduction of any evidence of any nature on behalf of the applicant on the ground that the matter now being heard is res judicata (Page 6 of transcript). Protestant's counsel also offered into evidence (Page 7 of transcript) a certified copy of the judgment and decree of the case cited. According to the judgment and decree the plaintiff (Allred) is the owner of and entitled to the possession of the Pay Roll Quartz Claim, the defendant (Bradshaw)

is the owner, subject to patent conditions and reservations, of certain lands (including those overlying the mine tunnel), the plaintiff may mine and remove mineral deposits from the Pay Roll Quartz Claim and the plaintiff's title to that claim is quieted.

To sustain the objection by protestant's counsel would defeat the main purpose of the hearing, that purpose being to obtain information as to the existence or non-existence of unappropriated water. The objection therefore is not sustained.

Applicant Bradshaw's testimony at the hearing (Page 12 of transcript et seq.) was to the effect that he filed his homestead location notice in 1919, found the spring in 1919, opened it up enough for livestock to drink from it and ran livestock continuously from 1919 on, and that the livestock watered from the spring. He testified that the tunnel, old, abandoned and brush covered, was in existence when he found the spring. He testified further that in 1923 he cleared brush away from the spring and dug a bigger place for the stock to drink from, that in 1940 he allowed a saw mill to be built on the property and water piped thereto from the spring, that service to the saw mill lasted about a year, that litigation followed, and that after the litigation Mr. Allred, one of the parties interested in the saw mill filed a mining location on the site. He also testified that during the summer none of the water in question ever gets off from his land, that he has run 70 head of cattle on average, that those cattle watered from the spring, that in 1947 he cleaned out the spring and installed a pipe line and a 1100 gallon tank, that all of the water supplied from the spring is in use for

stock watering and that there is no surplus. On cross examination (Page 19 of transcript et seq.) he testified that the spring yields about a thousand gallons per day, that despite the filing of a mining location by Protestant Allred he (the applicant) claims a right to the water. Under questioning by the examiner he testified that it takes about a day for the water from the spring to fill his 1100 gallon tank but that he thinks that more water can be developed, as by further tunneling.

Protestant Allred testified at the hearing, among other things, (Page 33 of transcript et seq.) that he has visited the tunnel every few months since about 1920, that the present yield of the spring in his opinion does not exceed about 1000 gallons per day, that the yield has increased as the tunnel has been extended, that the present yield is not enough for mining operations, and that when unused the water runs out on a flat area and not into any watercourse.

Witness Johnson testified at the hearing (Page 57 of the transcript et seq.) that he worked in the tunnel in 1935, that the tunnel was then 60 or 65 feet long, that there was no water in the tunnel then, but that in the course of driving the tunnel some 100 feet further some water was developed, that initially water had to be hauled for drilling and other necessities but that after water was developed in the tunnel further hauling was unnecessary.

The hearing of July 18, 1950 closed with the understanding that it would be resumed to receive further testimony as to whether water issued from the source filed upon prior to the extension of the tunnel in 1935. After reference to the legal staff of the Division it

was decided and the parties were notified (by letters dated September 5, 1950) that the point in question is not material and that a decision should be rendered on the evidence of record.

Summary and Conclusions

Inasmuch as the water issuing from the spring from which the applicant assertedly has watered live stock continuously since 1919 originates upon and does not flow beyond his property, the issuance of a permit to him to appropriate such water would serve no useful purpose and would not be in the public interest. A larger supply such as the 0.025 cubic foot per second applied for, developed upon his own property, might also be utilized by him as satisfactorily by virtue of riparian ownership as by appropriation and again the issuance of a permit would be superfluous. The essence of the situation is that the applicant is adequately protected as a property owner in the utilization or exploitation of such water resources as may be available to him on his own property and that his application to appropriate in such a situation is unnecessary and does not merit approval. For the reasons stated it is the opinion of this office that Application 12352 should be rejected and cancelled.

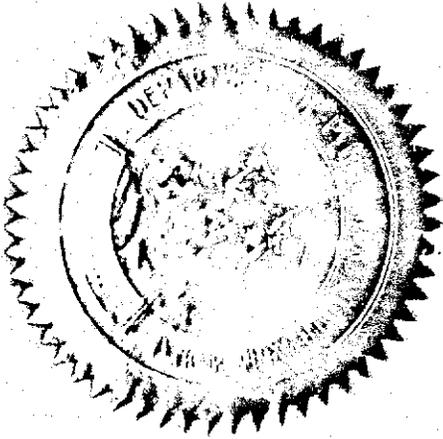
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ORDER

Application 12352 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 State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12352 be rejected and cancelled 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 5th day of February, 1951.




A. D. Edmonston,
State Engineer