

B. S. H. L.

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the Matter of Application 4931 of Lead Mining Company
to appropriate water from four springs in Thompson
Canyon tributary to Panamint Valley for
Mining and Domestic Purposes

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DECISION A 4931 - D 165

Decided August 18, 1927

APPEARANCES AT HEARING HELD June 30, 1927.

For Applicant:
Lead Mining Company

E. H. Hughes

For Protestant:
Eva Lee Gunn

Jesse Hession

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights
assisted by Irvin M. Ingerson, Assistant Hydraulic Engineer,
Division of Water Rights.

Field Investigation made on July 1, 1927 by Irvin M. Ingerson.

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O P I N I O N

Description of Proposed Project

Through this application it is sought to appropriate waters of four springs located in Thompson Canyon, situated on the eastern slope of the north spur of the Slate Range, tributary to Panamint Valley in Inyo County, California. It is proposed to convey the diverted water through a suitable pipe line down Thompson Canyon for a distance of approximately one and one-half miles, thence to lift the water by pumping over an intervening ridge into the canyon immediately north of Thompson Canyon, thence to be conveyed by gravity in a pipe line to a point on or near the Hughes Group of claims which are designated as

the place of use. The water so delivered would be used for domestic and mining purposes in connection with the camp and mining operations on the Hughes property. Mining uses would consist of air compressor cooling water, dampening water for pneumatic drills and for ore concentrators.

An alternate plan is proposed by Mr. E. H. Hughes whereby he would agree to redevelop the springs named as the source of this application and convey the water so developed by gravity into the protestant's Thompson Canyon Pipe line for conveyance to the protestant's Minnietta group of claims in consideration of the protestant allowing the said Mr. Hughes the privilege of diverting, conveying and using on the Hughes Group of claims the waters of Jack Gunn Spring (also called the Modoc Spring), located above and in the same watershed as is located the said Hughes Group of claims, said watershed being the one immediately north of Thompson Canyon Watershed.

Application Filed, Advertised, Protested, Hearing Held and Investigated.

Application 4931 was filed in the name of the Lead Mining Company by E. H. Hughes, Manager, on February 24, 1926, and sought to appropriate a total of 0.005 second foot for domestic and mining uses.

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and was advertised under date of May 24, 1926 and being protested by Eva Lee Gunn under date of June 25, 1926 was set for a public hearing in the Court Room of the Court House at Independence, Inyo County, California, at 9:00 o'clock a.m. on June 30, 1927. Of this hearing applicant and protestant were duly notified. Both the applicant and protestant made appearances as above stated.

Testimony was introduced for the applicant tending to show the applicant's need for the appropriations sought and which attempted to show the availability of unappropriated water which could be appropriated without injury to the protestant.

Testimony was introduced for the protestant which tended to show that there is no available unappropriated water at the sources named and that further showed that the protestant held a record chain of title to all of the waters of Thompson Canyon including the sources named in this application such record dating back to about the year 1895.

It developed in the course of the hearing that actual physical location of the sources in question is a major issue in the controversy. The testimony taken at the hearing showed clearly that such testimony would be of little value until a more accurate and a more definite map could be made of the area in question.

Due to the contra-variant designations of the sources as stated by the witnesses at the time of the hearing it was deemed necessary to make a field investigation of the area in question and arrangements were made in accordance with the examiner's statements contained in the concluding paragraph of the transcript.

In accordance with these arrangements an investigation was made on July 1, 1927 which consisted of a compass survey extending up Thompson Canyon to tie in the locations of the various sources in question, and also of a study of the general physiography of the vicinity.

Consideration of Protest.

The protest of Eva Lee Gunn is based upon the contention that there has been a continued use of water from the various springs in Thompson Canyon by the owners or lessees of the Minnetta Group of claims and that such use has been for domestic, mining and milling purposes as the manner of operation of said property has demanded.

The fact that there has been an uninterrupted showing of assessment work, as required by the mineral laws of the United States of America, done upon

the Minnietta Group of claims and also the fact that there is on record a continuous chain of title to that same property including the water rights and pipe line from Thompson Canyon Springs extending from the year 1895 up to the present time, show conclusively that there has been no intention of abandonment of the diversion works, and, inasmuch as these sources are the only available water supply in the immediate vicinity of the Minnietta Mines, it appears conclusive that water must have been used each year to satisfy the demands of the operators of that property, or of those doing the annual assessment work.

In addition to the record rights above mentioned the protestant claims a prior vested right to the waters of Thompson Canyon by virtue of Application 2192, Permit 946, License 181 as filed before the State Water Commission on February 7, 1921 at 4:00 o'clock P.M. The sources named in said application are "Thompson Canyon Spring and Jack Gunn Spring together with all feed waters***".

The evidence shows that the parties operating the Minnietta property in the past have been in the habit of developing water and maintaining the pipe line up Thompson Canyon for whatever amount of water they would need in operating the mine and for domestic camp purposes; that is, during such years that only the annual assessment work was done, then the amount of water brought down to the tank on the Minnietta property was maintained flowing in only sufficient quantities to satisfy the domestic needs of the workmen at that mine; while at other times when a large crew was operating the mine and water was used in extensive mining and milling operations as well as for domestic uses, then the Thompson Canyon pipe was reconditioned and the springs in Thompson Canyon were developed so as to assure delivery of the entire available quantity of water to sparingly satisfy the needs of this larger use. In a remote section of the arid desert ranges such as this it would be unreasonable and uneconomical to

maintain the pipe line in a condition to convey a flow greatly in excess of the current needs of the water users, and it is therefore the opinion of this Division that the protestant's showing of continued use of water from the Thompson Canyon Springs is good and sufficient and that consequently the protestant enjoys a prior right to such waters of Thompson Canyon as have been customarily developed and diverted in the past.

Sources and their Situation.

The nature of the geologic formation in the vicinity in question, and the existence of impervious strata of folded rock striking transversely to the main channel of Thompson Canyon account for the presence of seeps and springs in the channel of the canyon at the lowest surface contact with the aquifers. These springs and seeps derive their water from lateral gravity percolation through the minute fractures of the contributory strata. The testimony attempts to show that these springs are interconnecting to a considerable degree and that the aperiodic appearance and disappearance of the springs are accounted for by that fact. However, it is the opinion of this Division that interconnection exists only to a minor degree and that the prevalence of tectonic disturbances cause weaknesses of hydrostatic pressures in the contributory aquifers by the formation of transverse fissures temporarily allowing water to leak to lower surface outlets.

It is therefore the opinion of this Division that the springs in question in Thompson Canyon are not interconnecting in the larger sense, that is, the lower spring is not primarily dependent upon an upper spring for its entire supply.

Investigation of the sources has shown clearly that the amount of water which can be developed in the springs in question in Thompson Canyon cannot exceed a reliable maximum flow of five gallons per minute or its equivalent of 0.011 second foot.

The field investigation and survey show that the springs in question in Thompson Canyon are situated in the SW $\frac{1}{4}$ of Section 31, T 19 S, R 42 E, M.D.M. and not within Section 20, T 20 S, R 42 E, M.D.M. as shown incorrectly both on the application maps accompanying the above application, 4931, and on the license maps for Application 2192. In view of this discovery a study and comparison of the records and files of the United States Land Office in Sacramento showed that the springs in question are within the limits of Public Water Reserve No. 13 as created by proclamation of the President of the United States of America of December 1, 1913, to-wit:

"Withdrawn Public Water Reserve No. 13 Cal. No. 1.
All land within one quarter mile of springs located about two miles south and west from Modoc Line in what will be when surveyed probably Section 31 and 32".

The above order of withdrawal effectively bars the Division of Water Rights from approving any applications to appropriate the waters of such designated springs unless the land whereon such springs are situated is first clear-listed in accordance with the provisions of Circular 1028 of the United States Land Office.

Inasmuch as the applicant has not obtained a clear-listing for access to the springs in question this application cannot be approved.

Use of Water by Traveling Public in Desert Area.

The springs in question are located in Thompson Canyon which is tributary to and on the west side of Panamint Valley in an arid desert area where water assumes the position of being the prime necessity of life. The desert traveler depends upon these springs when he is in this vicinity. Travel up Thompson Canyon trail has access directly to the springs themselves, while travel in Panamint Valley for many years past has relied upon the existence of the small storage tank at the end of the Thompson Canyon pipe line on the Minnietta property. This Division is committed to the policy of assuring protec-

tion to the traveling public in these desert areas in providing and maintaining the status of such use in its usual and customary manner.

Further Development of Sources.

It is the opinion of the Division that the springs in Thompson Canyon, situated in the SW $\frac{1}{4}$ of Section 31, could be developed considerably more than they are at present and that the water so obtained would probably satisfy all of the present water requirements of the operators of the Minnietta property. If such additional development work was done then some or all of the waters from Jack Gunn Spring (also known as Modoc Spring) situated in Modoc Canyon, might be conveyed by gravity to sites of prospective mining and domestic use located within the confines of its own watershed. An agreement between the prospective users in Modoc Canyon and the owners of the Minnietta pipe line might be consummated in this regard.

Summary.

As a concluding summary in this matter it is the opinion of this Division,

That there is no unappropriated water in the four springs named as the source of this application;

That the protestant's use of water from the said four springs antedates the executive order creating Public Water Reserve No. 13;

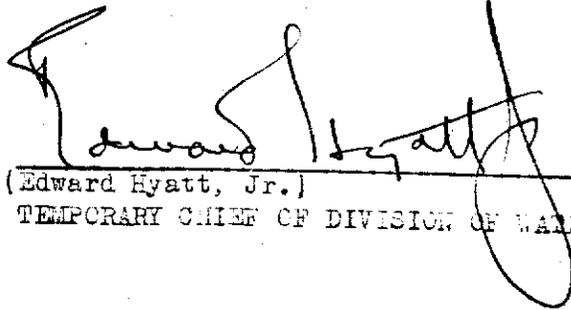
That the inclusion of the contiguous area to the said four springs within Public Water Reserve No. 13, bars this Division from approving any applications to divert water therefrom under the present conditions.

O R D E R

Application 4931 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held, a field investigation having been made and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 4931 be cancelled upon
the records of the Division of Water Rights without prejudice.

Dated at Sacramento, California, this 18th day of August , 1927.



Edward Hyatt, Jr.

(Edward Hyatt, Jr.)
TEMPORARY CHIEF OF DIVISION OF WATER RIGHTS

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