

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

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In the Matter of Application 9953 of Frank C. Dunham to
Appropriate from an Unnamed Spring tributary to
Big Bear Lake in San Bernardino
County for Domestic Purposes

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Decision A. 9953 D. 484

Decided *December 5, 1941*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED
APPROPRIATION ON JULY 15, 1941

For Applicant

Frank C. Dunham

No appearance

For Protestant

Pearl W. Poupart

Mr. and Mrs. Poupart

For U.S. San Bernardino National Forest

D. M. Tucker

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer for Harold Conkling, Deputy
State Engineer in Charge of Water Rights, Division of Water Resources,
Department of Public Works, State of California.

O P I N I O N

General Description of Project

Application 9953, filed by Frank C. Dunham on July 11, 1940, proposes
an appropriation of 200 gallons per day throughout the entire year from "an
unnamed spring developed from seepage" tributary to Big Bear Lake in San Bernar-
dino County for domestic purposes on Lot 222, Big Bear Lake Special Use Tract of

the San Bernardino National Forest. The spring is located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, T 2 N, R 1 W, S.B.E.M.

Protest

Pearl W. Poupart claims that under her Application 3723, Permit 1685, License 634 she has a prior right to appropriate water from this spring and that if Application 9953 is approved it will result in depriving her of water to which she is legally entitled.

Investigation

On July 15, 1941 an investigation of the proposed development under Application 9953 was conducted in the field by an engineer of the Division. Of this investigation applicant and protestant were duly notified and both parties urged to be present or represented.

Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings were signed by both applicant and protestant and have been accepted and approved by the Division of Water Resources.

The records relied upon in the determination of the matter are as follows:

(a) Records filed with Application 3723

Report of Inspection made July 10, 1925 by Harold Conkling.
Report of Inspection made August 1, 1926 by F.W. Bush, Jr.
License 634 issued October 19, 1927.
1928 Report on Use of water under License 634.
Notice of assignment of License 634 to Pearl W. Poupart filed
6-24-29.
1931 Report on Use of Water under License 634.
1934 Report on Use of Water under License 634.
1937 Report on Use of Water under License 634.
1940 Report on Use of Water under License 634.
Letter dated December 9, 1940 from F.C. Dunham to Division.
Letter dated December 19, 1940 from Walter T. Casey to Division.
Letter dated December 30, 1940 from F.C. Dunham to Division.

Letter dated July 16, 1941 from F.C. Dunham to Division.
Letter dated July 17, 1941 from F. C. Dunham to Division.
Letter dated July 24, 1941 from F.C. Dunham to Division.
Letter dated July 30, 1941 from Division to F.C. Dunham.
Letter dated August 1, 1941 from F.C. Dunham to Division.
Letter dated August 9, 1941 from Division to F.C. Dunham.

(b) Records filed with Application 4654

License 698 issued to Frank C. Dunham on April 10, 1928.
Letter dated June 3, 1940 from F.C. Dunham to Division.

(c) Records filed with Application 9953

Application 9953 and supporting map filed July 11, 1940.
Amended Application 9953 and supporting map filed July 22, 1940.
Letter dated August 12, 1940 from D.M. Tucker to Pearl W. Poupart.
Letter dated August 12, 1940 from D.M. Tucker to F.C. Dunham.
Protest of Pearl W. Poupart filed August 30, 1940.
Answer to protest of Pearl W. Poupart filed September 11, 1940.
Letter dated December 2, 1940 from D.M. Tucker to Division.
Letter dated December 4, 1940 from F.C. Dunham to Division.
Letter dated December 6, 1940 from Division to D.M. Tucker.
Stipulation by applicant filed January 23, 1941.
Stipulation by protestant filed March 6, 1941.
Memorandum of field investigation made on July 15, 1941.

History

Application 3723 was filed by Fred H. Mielen on November 21, 1923 seeking an appropriation of 0.001 of a cubic foot per second from an "unnamed spring developed from seepage" to be used for domestic purposes on Lot 243 of the Big Bear Lake Tract of the San Bernardino National Forest. The right so initiated was confirmed by issuance of License 634 on October 19, 1927 for an amount of water not to exceed 75 gallons per day from about April 1 to about December 1 of each season. The amount of water was reduced at time of license to 75 gallons per day because it appeared to the engineer at the time of inspection that the normal yield of the spring did not exceed this amount, all of which was applied to beneficial use. Previous measurements of flow made by Mr. Mielen indicated that on April 19, 1924 the flow was 72 gallons

per minute and on September 15, 1924 the flow was 40 gallons per minute. On June 24, 1929 the Division received a letter from Fred H. Mielen asking that License 634 be transferred to Pearl W. Poupart and the records of the Division were changed to indicate that she was the owner of the license.

Subsequent to issuance of license, reports on the use of water were received and the Division is fortunate in having a complete record of use from the time Mrs. Poupart acquired the water right to date. The records indicate that use of water was made every year except during the years 1934, 1935, 1937 and 1939. At no time was there a 3 year period of continuous non-use.

Application 4654 was filed on June 24, 1925 by Frank C. Dunham seeking an appropriation of 0.001 of a cubic foot per second from "an unnamed spring developed from seepage" to be used for domestic purposes on Lot 222 of the Big Bear Lake Tract of the San Bernardino National Forest. The spring is located about 90 feet southeast of the Poupart Spring. The right so initiated was confirmed by issuance of License 698 on April 10, 1928 for an amount of water not to exceed 350 gallons per day from about April 1 to about December 1 of each season.

Under date of June 3, 1940 Mr. Dunham informed this office that the yield of his spring was insufficient for his needs and that he had found "an abandoned spring" which to his knowledge had not been used for the past 8 to 10 years; that he had done some development on the spring and had extended the pipe from the "abandoned" spring to his spring and signified his intentions of filing an application to appropriate the water.

Consequently on July 11, 1940, Application 9953 was filed to appropriate from this "abandoned" spring which was found to be the source of

appropriation in Application 3723, License 634 of Pearl W. Poupart. The amount sought to be appropriated is 200 gallons per day throughout the year.

General Discussion

Application 9953 was vigorously protested by Pearl W. Poupart and Mr. Dunham just as vigorously insisted that the use of the waters of the spring had been abandoned and were subject to appropriation.

Action in the matter was withheld for some time in order to afford the parties at interest an opportunity to adjust the matter informally but with no success. Both applicant and protestant, however, stipulated that they would abide by a decision based upon the results of a field investigation to be made by this office and other records which might be on file with the Division.

On July 3, 1941 the attorneys of both applicant and protestant were notified that on Tuesday July 15, 1941 the situation in connection with Mrs. Poupart's protest against the approval of Application 9953 would be investigated and that an engineer of this office would be at the project in the late morning of that day. The desirability of both parties being represented at the investigation was directed to their attention.

On July 15, 1941 Mr. Biscoe Kibbey, representing the Division of Water Resources, made a field investigation at which Mr. and Mrs. Poupart and District Ranger Tucker were present. The investigation was made about 11 o'clock on July 15, 1941. Although Mr. Dunham subsequently informed this office that he was at his cabin from 8:50 A.M. to 4:30 P.M. on July 15 our field representative was unable to find him. Ranger Tucker knocked at the door of Mr. Dunham's cabin, making ample noise to arouse any sleeping person with unimpaired hearing but received no response and inasmuch as Mr. Dunham

had not signified his intention to be present no effort was made to locate him elsewhere. The party was at the Poupart cabin in close proximity to Mr. Dunham's cabin for sometime both before and after the investigation and it is difficult to understand why he failed to be present at the investigation.

Mr. Kibbey found that the yield of the spring was approximately 130 gallons per day at the time of the investigation although according to Mrs. Poupart the normal summer flow would not exceed 75 gallons per day, the amount of water for which license was issued and frequently it was less.

It appears that during the year 1940 after the upper portion of the Poupart pipe line had been removed Mr. Dunham had placed 90 feet of 3/4" pipe from the Poupart Spring to his own spring although no attempt had been made to secure right of way from the Forest Service and at the present time the line is disconnected.

Although Mr. Dunham claims that Mrs. Poupart has lost her right through abandonment the records of this office indicate that at no time has there been any 3 year period of non-use and although Mr. Dunham has been given ample opportunity to file affidavits attesting non-use of the waters of the Poupart Spring for the past 5 years or more no affidavits have been filed.

Although at times the yield of the spring may be in excess of the 75 gallons per day to which Mrs. Poupart is entitled the record clearly indicates that the normal flow does not exceed this amount and to approve another application to appropriate from this source would only result in an annoyance to Mrs. Poupart or her successors in interest. It is therefore the opinion of this office that the right which was confirmed under License 634 has not lapsed by non-use and that there is insufficient unappropriated water in the Poupart Spring to justify the approval of Application 9953 of F. C. Dunham.

O R D E R

Application 9953 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation by the Division of Water Resources having been made and a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9953 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 *December*, 1941.

EDWARD HYATT, STATE ENGINEER

BY

Harold Conkling
Deputy State Engineer

