

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

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IN THE MATTER OF APPLICATIONS NUMBER 3035 AND NUMBER  
3549 OF J. E. WEST TO APPROPRIATE WATER IN THE WATER-  
SHED OF HEPSYDAM CREEK AND FROM WHISKEY CREEK RESPEC-  
TIVELY IN SIERRA COUNTY FOR MINING PURPOSES

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DECISION NO. 3035-3549 D 66

Decided July 31, 1925.

APPEARANCES AT HEARING HELD JUNE 16th and 17, 1925.

For Applicant : E. I. Feenster, Attorney, Visalia

For Protestant: Dr. L. H. Fordham was not present on June 16th  
but appeared in propria persona on June 17th.

Examiner: Edward Hyatt, Jr.  
Chief of the Division of Water Rights

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O P I N I O N

These applications cover appropriations for a mining project in the Slate Creek watershed in Sierra County. They are briefly summarized as follows:

Application Number 3035 filed July 13, 1922, is for the appropriation of 5 second feet to be collected from side hill drainage in a ditch to be constructed which would also divert the flow of certain tributaries of Hepsydam Creek.

Application Number 3549 filed July 25, 1923, as amended at the hearing specifies the appropriation of 4 second feet from August 1st to March 1st and 60 second feet from March 1st to August 1st of each season from Whiskey Creek. Both applications propose to benefit certain mining claims contiguous to these creeks, and were protested by Dr. L. H. Fordham.

These applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and, being protested, were set for a public hearing at Room 707 Forum Building, Sacramento, at 10:00 a. m. on June 16, 1925. Of this hearing applicant and protestant were duly notified. Protestant made no appearance at the hearing but on June 17th submitted information under oath which was made a part of the transcript and is given due consideration in these findings.

The protest of Dr. Fordham is based on the so-called "Star" or "Garnet" water claim initiated July 7, 1913 by the posting of a notice of appropriation of 400 inches of water for use on certain mining claims in the immediate vicinity, such water being derived from the sources specified by applicant. Testimony submitted by applicant indicates that for a number of years the right claimed by protestant has not been exercised and has therefore lapsed from non-user. Protestant does not deny that no use has been made since July 1922 and shows the use of only a small amount for a few years previous to that time but is very definite in stating that there has never been any intention to abandon.

The evidence submitted by the two parties in interest as to past use of water by the protestant is conflicting. It is unfortunate that through a misunderstanding on the part of protestant as to the hour set for the hearing the opposing claimants were not brought together in such a manner that witnesses could be cross-examined by opposing counsel. We gather however from the evidence submitted by both sides that past use of water by protestant has been desultory, occasional and altogether incomparable to the available