

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

*Decision  
file*

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IN THE MATTER OF APPLICATION NUMBER 2384 BY WILLIAM B. SALSTROM  
TO APPROPRIATE FROM INDIAN CREEK, IN HUMBOLDT COUNTY, FOR MINING  
PURPOSES

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DECISION NO. 2384. D-87  
Decided January 15, 1924.

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APPEARANCES AT HEARING HELD AUGUST 15, 1924:

For Applicant:	E. S. Mitchell, for Metzler & Mitchell, Attorneys at Law.
For Protestant:	H. C. Nelson, Attorney at Law, for Milo Young.
Examiner:	Edward Hyatt, Jr., Chief of Division of Water Rights.
In Attendance:	T. R. Simpson, Assistant Hydraulic Engineer, Division of Water Rights.

O P I N I O N

Application Number 2384 was filed by William B. Salstrom on June 10, 1921, to appropriate three cubic feet per second during the season from October 1st to May 1st and one-tenth cubic foot per second from May 1st to October 1st, from Indian Creek, in Humboldt County, for mining purposes. This application was protested by Milo Young.

This application having been completed in accordance with law and the rules and regulations of the Division of Water Rights,

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and having been protested was set for public hearing at the court-house in Eureka at 1:30 o'clock, P. M., on August 15, 1924. Due notice of this hearing was given and appearances were made as above noted.

Prior to the above hearing a field inspection of the territory involved was made by Engineer Simpson of this office on August 5, 1922.

The protest of Milo Young is based upon a notice of appropriation filed and recorded in 1911, alleged use since 1911, alleged riparian rights appurtenant to his mineral location, and a decreed right to 15 cubic feet per second.

Applicant claims that any rights protestant may have had, have lapsed through non-use.

The protestant occupies a placer mining claim riparian to Indian Creek near its confluence with the Klamath River. The proposed development of applicant is a diversion from Indian Creek above the headgate of protestant and a taking of the waters out of the Indian Creek watershed for mining use.

It appears that since the filing and recording of notice to appropriate the protestant has maintained his right to occupy and mine a placer mining claim; that his right of occupancy has been maintained by the performance of the required amount of annual assessment work on said claim; that one Grimm "jumped" said claim but was ejected therefrom by decree of the Superior Court rendered on April 10, 1917; that in said decree it was adjudged that this protestant was "the true and lawful owner" of this claim "together

with a water right of six hundred inches of water flowing in said Indian Creek"; that protestant's claim is riparian to Indian Creek; that protestant's use of water has consisted of the irrigation of two acres of apple and peach trees; that protestant's use of water for mining purposes has been negligible; and that protestant's assessment work has consisted in sluicing about one cubic yard of gravel, flume and ditch maintainance, a sluice box, a small excavation, and some blasting to make a small reservoir.

Although \$100 worth of labor per year will maintain a mining claim in good standing, it does not follow that such assessment work will be sufficient to inaugurate or to maintain an appropriative right to use water. Assessment work may be devoted to structures and excavations incidental to and included under legitimate mining claim development without the inclusion of beneficial use of water. Such apparently has been the case in question and for aught that appears from the evidence or that appeared upon the ground at the time of Engineer Simpson's inspection in 1922, the total use of water which has been made on the claim for mining could be made in a few hours of real bona fide application.

It is therefore held that protestant has failed to support his claim of right as an appropriator from Indian Creek for mining purposes for his use of water has not been sufficient to entitle him to that status.

As to the decree of court referred to, the same is not an impediment to the claim of this applicant. It did not adjudicate any other question than the right of possession as between the parties

thereto. The State of California was not a party to the suit and the existence or non-existence of unappropriated water in the source was not in issue. Nor did the decree adjudicate or declare that protestant had beneficially used the water. Furthermore the statutory period for loss by non use has more than elapsed since 1917. (Section 20a Water Commission Act, Statutes 1913, Chapter 586 as amended).

As to the claim of right by virtue of riparian ownership or possession the protestant has failed to establish his case. In section 11 of the water commission act it is provided that ten years of consecutive non-use raises a conclusive presumption that water not used upon riparian land for said period is not needed upon such riparian land and is therefore subject to appropriation. The protestant having failed to beneficially use water for ten years cannot now maintain a riparian right to the unused water.

It further appears that the normal dry weather flow of Indian Creek is about one cubic foot per second and that said flow is therefore more than adequate to enable protestant to irrigate his apples and peaches as he has done in the past and also permit the applicant to use the one-tenth second foot applied for from May 1st to October 1st. It was evident at the time of field inspection, August 5, 1922, that the one-quarter second foot being diverted was more than ample for the irrigation needs of protestant.

It is therefore concluded that the water supply is ample to enable the proposed appropriation without injuring protestant's agricultural use and that there is sufficient unappropriated water

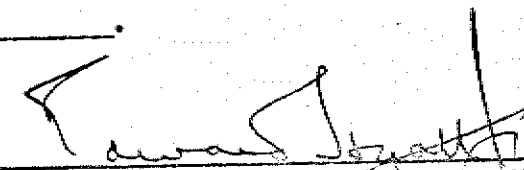
available to justify the issuance of a permit to applicant as  
prayed for.

O R D E R

Application Number 2384 for a permit to appropriate  
water having been filed with the Division of Water Rights, a  
protest having been filed, a public hearing having been held, and  
the Division of Water Rights now being fully informed in the  
premises:

IT IS HEREBY ORDERED that said Application Number  
2384 be approved and that a permit be granted to the applicant  
subject to such of the usual terms and conditions as may be  
appropriate.

Dated at Sacramento, California, this 18th  
day of January, 1926.

  
CHIEF OF DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

SEB:  
TRS: HA