

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

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In the Matter of Applications 7274 and 7284 of H. H. Hammer
to Appropriate from South Fork of Cottonwood Creek in
Tehama County for Irrigation, Domestic and Power
Purposes.

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DECISION A 7274 - 7284 D - 347

Decided *August 25, 1933.*

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APPEARANCES AT HEARING HELD AT RED BLUFF, CALIFORNIA, AUGUST 7, 1933.

For Applicant

H. H. Hammer

C. E. Wetter of
Wetter and Rankin, Attorneys,
Red Bluff, California

For Protestants

Louis and Mattie N. Bayles

M. J. Cheatham, Attorney,
Red Bluff, California

A. M. Combs, et al.

P. H. Coffman, Attorney
Red Bluff, California

A. F. Johnson

in propria persona

EXAMINER: Gordon Zander, Supervising Hydraulic Engineer, Division of Water
Resources, Department of Public Works, State of California.

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O P I N I O N

This proceeding as noticed for hearing involved action upon two ap-
plications, namely, Applications 7274 and 7284, but in the course of the hear-
ing on August 7, 1933, Applicant H. H. Hammer withdrew Application 7274 and
therefore the only application which requires any detailed attention at this
time is Application 7284.

Application 7284 is to appropriate 3 cubic feet per second for power purposes from March 1st to November 1st of each season from the South Fork of Cottonwood Creek, Tehama County. Diversion is to be made according to Exhibit #1 filed at the hearing, at a point 492 feet West of the center of the NW $\frac{1}{4}$ of Section 12, the water to be conveyed thence by ditch, tunnel and pipe line a distance of some 2000 feet to a point in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 12, T 26 N, R 8 W, M.D.B.&M. where the water will be returned to South Fork of Cottonwood Creek.

The two applications were protested by C. E. McCartney and Louis and Mattie N. Bayles. Mr. McCartney claimed that he and his predecessors in interest had been using the water since "several years prior" to 1917 for the irrigation of 10 to 20 acres in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 20, T 27 N, R 6 W, M.D.B.&M. Louis and Mattie N. Bayles claimed that they had been using the water for irrigation, stock watering and domestic purposes since about 1897 "within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 12, T 26 N, R 8 W, M.D.B.&M." but it is believed this statement as to location was in error because at the time of hearing on August 7th Mr. Bayles testified that his point of diversion was some 6 miles below that of applicant which would probably place his point of diversion in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 12, T 26 N, R 7 W. Both protestants objected to the applications on the ground that there was a shortage of water during the summer season and/ further diversions by the applicant would deplete the supply to which they were entitled.

The two applications were completed in accordance with the Rules and Regulations of the Division and the law, were subsequently advertised and thereafter because of protests were set for hearing, of which hearing applicant and protestants received due notice.

Application 7274 for irrigation and domestic purposes having been withdrawn the objections of protestants at the hearing centered upon the use for power purposes under Application 7284, it being their contention that there would be a dissipation of the waters to which they are entitled by reason of evaporation in the applicant's ditch and seepage therefrom. They testified that because of the peculiar stratification through which the diversion ditch was built seepage would be away from the creek rather than toward South Fork of Cottonwood Creek. However, no expert or detailed evidence was produced in connection with this point and the applicant testified that the seepage would be from his ditch directly back into the South Fork of Cottonwood Creek which (except at the tunnel) is parallel to the creek at a distance of 100 feet or less. As a concession, however, to the protestants applicant agreed that a condition might be inserted in any permit issued to him in approval of this application to the effect that where there was excessive leakage from his diversion ditch he would line it with concrete.

The use which is proposed by the applicant under Application 7284 is non consumptive and in the absence of any direct and expert testimony which would lead to a different conclusion, we are of the opinion that under the circumstances seepage from the ditch would return almost immediately to the creek with little or no substantial loss to users of water downstream. So far as increased evaporation losses from the ditch are concerned no testimony was introduced in support of this contention, and again in the absence of expert and definite testimony supporting such theory we are of the opinion that the evaporation loss would not be substantially greater in the diversion ditch of applicant than if the water were allowed to take its natural course down South Fork of Cottonwood Creek. Under the circumstances it would appear that approval of Appli-

cation 7284 is in order and that Application 7274 may be dismissed as per the request of applicant.

O R D E R

Applications 7274 and 7284 of H. H. Hammer having been filed with the Division of Water Resources and completed in accordance with the Rules and Regulations of the Division of Water Resources, and the Water Commission Act, said applications having been advertised, protests thereto having been received, a hearing upon these applications having been held in accordance with the provisions of Section 1a of the Water Commission Act, of which applicant and protestants received due notice, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7274 be rejected and cancelled upon the records of the Division, and

IT IS HEREBY FURTHER ORDERED that Application 7284 be approved subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms and conditions:

It is understood that wherever necessary applicant and permittee shall line the diversion ditch proposed hereunder with concrete or with other suitable materials to the end that excessive seepage losses may be avoided.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 25th day of August, 1933.

EDWARD HYATT, State Engineer

BY

Harold Conkling
Deputy

