

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

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In the Matter of Application 8193 of Ancho-Erie Mining Company, Inc.  
and Permit 3177 of Gaston Gold Mines, Ltd., heretofore issued  
in approval of Application 6059 to appropriate from South  
Fork of Poorman Creek in Nevada County for  
Power Purposes.

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DECISION A. 6059 - 8193 D-383

Decided *February 20, 1936*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, JANUARY 3, 1936

For Applicant

Ancho-Erie Mining Company

A. G. E. Hanke

For Protestants

Gaston Gold Mines, Ltd.)  
Frank Dillen )  
W. H. Taylor )

W. E. Wright

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for  
Harold Conkling, Deputy in Charge of Water Rights, Division of  
Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECTS

Application 6059 was filed by Claude Ferguson on September 18, 1928,  
and was approved subject to vested rights on December 7, 1928, by the issuance  
of Permit 3177 for an amount of water not to exceed 3 cubic feet per second to  
be diverted throughout the year from South Fork Poorman Creek for Power pur-  
poses. Diversion was to be made at a point within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 21,

T 13 N, R 11 E, M.D.B.&M. and the water was to be used at a power house within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 28, T 18 N, R 11 E, M.D.B.&M. where the water after use for power generation was to be returned to the stream. Several assignments of the permit were made and the records of this office now indicate that the permit stands in the name of Gaston Gold Mines, Ltd.

According to the terms of the permit actual construction work was to be commenced on or before March 1, 1929, to be completed on or before December 1, 1930, and the water applied to full beneficial use on or before December 1, 1931.

On August 3, 1932, an order was entered granting an extension of time until December 1, 1935, within which to complete construction work and to apply the water to full beneficial use under the permit.

Application 8193 was filed with the Division on December 19, 1934, by Ancho-Erie Mining Company for an amount of water not to exceed 3 cubic feet per second to be diverted from South Fork of Poorman Creek from June 1st to December 1st of each year for power and domestic purposes. It is proposed to divert the water at a point within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 15, T 18 N, R 11 E, M.D.B.&M. and use it for power and incidental domestic purposes within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 21, T 18 N, R 11 E, M.D.B.&M. After use for power purposes the water is to be returned to Poorman Creek within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 17, T 18 N, R 11 E, M.D.B.&M. This application was protested by Gaston Gold Mines, Ltd., Frank Dillon, and W. H. Taylor.

#### PROTESTS

Gaston Gold Mines, Ltd. claims a right to appropriate from South Fork of Poorman Creek initiated by the filing of Application 6059 and approved by the

issuance of Permit 3177 allowing not to exceed 3 cubic feet per second to be diverted throughout the year for power purposes. The point of diversion described in Application 6059, Permit 3177 is approximately three-quarters of a mile below applicant's proposed point of diversion and as any water diverted by the applicant will not be made available for use by the Gaston Gold Mines, Ltd., protestant alleges in effect that should Application 8193 be approved it would result in depriving the Company of water for power purposes at the time it is most needed.

Frank Dillon claims rights to divert water from South Fork of Poorman Creek based upon riparian ownership, and an appropriative right initiated prior to the effective date of the Water Commission Act in the amount of 500 miners inches. Diversion is made at a point about two miles below applicant's proposed point of diversion. Protestant alleges in effect that as it is not intended to return the water to South Fork of Poorman Creek the approval of Application 8193 would deprive him of water to which he is entitled and would render his property valueless. Water is used by him for mining, power, and domestic purposes.

W. H. Taylor alleges in effect that Application 8193 is in direct conflict with his prior Application 7903 under which he seeks to appropriate 30 cubic feet per second throughout the year for mining purposes. Protestant's proposed point of diversion is about three-quarters of a mile below applicant's point of diversion.

HEARING SET IN ACCORDANCE WITH SECTION 1a AND  
SECTION 20 OF THE WATER COMMISSION ACT

Application 8193 of Ancho-Erie Mining Company was completed in accordance with the Water Commission Act and the Rules and Regulations of the

Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on January 3, 1936, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California.

As the Ancho-Erie Mining Company alleged in effect that the project under Application 6059, Permit 3177 of Gaston Gold Mines, Ltd. had not been prosecuted with reasonable diligence, Application 6059, Permit 3177 was also set for hearing at the same time and place under Section 20 of the Water Commission Act in order that permittee might appear and show cause why Permit 3177 should not be revoked on the grounds of non-compliance with the permit terms.

Of these hearings, applicant, permittee, and protestants were duly notified.

PRESENT RIGHT OF ANCHO-ERIE MINING COMPANY

On November 5, 1930, Gordon M. Battles filed Application 6824 to appropriate 3 cubic feet per second throughout the year from South Fork of Poorman Creek at a point within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, T 18 N, R 11 E, M.D.B.&M., the water to be used for power purposes and returned after use to Poorman Creek at a point within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 17, T 18 N, R 11 E, M.D.B.&M. This application was vigorously protested by one Frank Dillon on the grounds that diversion throughout the year would interfere with his prior right to divert water from South Fork of Poorman Creek but upon the amendment of the application to divert only during the period from about December 1st to about June 1st of each season, the objection was withdrawn and Application 6824 was approved on August 25, 1931, by the issuance of Permit 3774. On July 8, 1933, Gordon M. Battles assigned all his right, title and interest in Application 6824,

Permit 3774 to A. G. E. Hanke, G. H. Meese and R. E. Whitecomb who in turn assigned the application and permit to Ancho-Erie Mining Company, Inc., notice of this assignment being filed in this office on October 20, 1933.

The permittee proceeded with due diligence toward the consummation of the project to completion and the project was reported complete on October 20, 1933. On September 12, 1934, it was inspected by an engineer of this office and on May 1, 1935, the right initiated under Application 6824 was confirmed by License 1547 for an amount of water not to exceed 2.7 cubic feet per second to be diverted from about December 1st to about June 1st of each season.

At the time of the inspection of the project under Application 6824, Permit 3774 on September 12, 1934, the inspecting engineer reported that all of the water of the South Fork of Poorman Creek was being diverted. This amount was approximately 0.24 cubic foot per second. The inspecting engineer was informed that during the winter and spring months there was an ample supply of water to meet all requirements and that some water was usually available throughout the remainder of the year. The permittee was informed by the engineer that in the event water was available during that portion of the year not covered by permit it would be advisable to file another application to divert water during the period from June 1st to December 1st and also to file an application to appropriate water for mining purposes as some use of water was made in connection with stamps and tables not covered by Application 6824, Permit 3774.

The suggestion as to an additional power filing was apparently favorably received by permittee and Application 8193 was filed which is now before this office for consideration.

DILIGENCE UNDER APPLICATION 6059, PERMIT 3177

The 1929 progress report indicated that a diversion dam had been constructed on the South Fork of Poorman Creek, that the Gaston ditch had been reconstructed and rehabilitated and that the penstock had been rebuilt, all work having been done by Rescue-Eula Mining Company successor in interest to Claude Ferguson. It was also reported that water had been used in the operation of a compressor, sawmill and stamp mill and for domestic purposes from April to July, inclusive, 1929, the maximum consumption during any one month having been approximately 2 cubic feet per second. On October 24, 1929, the permit reverted to Claude Ferguson and F. F. Cassidy, the Rescue-Eula Mining Company having relinquished its bond.

Under date of October 12, 1930, Claude Ferguson informed the Division that he had assigned his interest in Permit 3177 to F. F. Cassidy. Cassidy subsequently assigned the permit to John F. Dickson.

According to the 1930 progress report construction work had been completed and the mine had been operated from May 1st to July 12, 1930, after which date no water had been available. John F. Dickson advised this office under date of April 18, 1931, that Permit 3177 had been transferred to Gaston Gold Mines, Ltd., the present permittee.

The 1931 progress report indicated that water was used from May 1st to July 15th after which date permittee reported that the creek usually ceases to flow and that it was proposed to construct a regulatory reservoir to conserve the night flow. Based upon permittee's representations an order was entered on August 3, 1932, granting an extension of time until December 1, 1935, within which to complete the construction work and to apply the water to full beneficial use under Application 6059, Permit 3177.

The 1932 progress report indicated no change; water had been used during the months of May and June.

The 1933 progress report indicated that a preliminary survey had been made for the regulatory reservoir and that water had been used during the month of June, the supply having failed in July.

No report was submitted for the year 1934 except a statement to the effect that the project had not been abandoned and that the Company was considering resumption of the work in the immediate future.

The 1935 progress report indicates that no use of water had been made that year and that it would be necessary to either line the ditch with cement or to lay a 20 inch pipe therein to convey the water during the summer months. No work was done that year except to make minor repairs to the ditch and flume. The report indicated that the Company was negotiating with an eastern company to take over the project and an extension of time was requested to December 1, 1936.

APPLICATION 7903 BY W. H. TAYLOR

W. H. Taylor has pending before this office Application 7903 seeking to appropriate 30 cubic feet per second throughout the year from South Fork of Poorman Creek, the water to be diverted at a point within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 21, T 18 N, R 11 E, M.D.B.&M. and to be used for mining purposes at the Union and Eureka (Relief Hill Mine) properties within Sections 4 and 9, T 17 N, R 10 E, M.D.B.&M. Mr. Taylor also has Application 7072, Permit 3979 to appropriate from Rob Roy, Deadman, Roscoe and Logan Canyons and Application 7302, Permit 4184 to appropriate from North Fork of Poorman Creek, both permits having been assigned to him by Relief Hill Mining Company and he has pending before this office Application 7631 to appropriate from an unnamed stream and South Fork of Middle Fork of Yuba River, Application 8002 to appropriate from North

Fork Poorman Creek, Application 8003 to appropriate from Weaver Lake and Application 8126 to appropriate from South Fork of Middle Yuba River. Mr. Taylor advised this office under date of February 7, 1935, that the works proposed under Applications 7631, 7903, 8002, 8005 and 8126 comprise a single comprehensive project and that it was unlikely that he should desire to obtain a permit under any single application in advance of action on the entire group. Action on Application 7903 is therefore being suspended while waiting developments in connection with Application 8126 of W. H. Taylor and Applications 2272 and 2277 of the Nevada Irrigation District to appropriate from South Fork of Middle Yuba River which are apparently in conflict.

#### USE OF WATER BY FRANK DILLON

The record indicates that Frank Dillon initiated an appropriative right to divert 500 miners inches of water from the South Fork of Poorman Creek by posting a notice on April 2, 1910, and recording same on April 8, 1910, in Book 2 of Water Rights at page 39, Nevada County records and that in addition to the right so initiated Frank Dillon's property is riparian to the South Fork of Poorman Creek. No evidence was presented at the hearing to indicate that the appropriative right had been lost by non user nor that his claim to riparian ownership was invalid.

The testimony indicated that Frank Dillon is the owner of the Ladybug Mine and has a three-quarters interest in the Treasure Box Mine; that in 1910 or 1911 a dam was constructed on the South Fork of Poorman Creek by means of which water was conveyed to a mill constructed in 1911-1912 for mining and power purposes; that at the present time water is diverted by means of this dam for the operation of a Sullivan 10 x 12 Compressor; that in 1932 another dam was constructed at a point higher up on the stream for the pur-



pose of diverting water and utilizing a 500 foot drop for the operation of a unit consisting of five 1,000 lb. stamps which is preliminary to a larger unit to be installed in the future; that water is also used in connection with concentrators and generators for the generation of electricity for lighting purposes and for household and fire protection purposes, and that a company is now being organized to take over the mine.

The record indicates that water was used by Dillon in 1932 and 1933, that in 1934 water was used during the months of March, April, May and June until the flume was blasted out after which water was used for washing gravels until the flume could be rebuilt. In 1935, Mr. Dillon testified that he used "every bit of water in the creek" (Transcript page 50) for driving the compressor and for household purposes, the mill being run during the months of May, June and at intervals up to August. He further testified that after August the water was used for washing gravel up to the month of December. The flow began to diminish about June 9, 1935, he testified, and upon investigation it was found that water was being diverted above through a flume which conveyed water to the Ancho-Erie Mine and only after serving a notice upon the operator and threatening to have him arrested for stealing water was the water allowed to pass on down the creek.

The year 1935 is apparently the first year that Dillon has been aware of any shortage in the amount of water required because of diversions above as prior to 1935 the testimony indicates that the mill was operated during the period of the year when there was plenty of water available for his needs and during the summer months he was engaged in either repairing the ditches or washing gravels. Apparently Dillon now wants to utilize the water as long as possible for the generation of electrical energy which re-

quires considerable more water than that required for mining purposes. Mr. Dillon testified at the hearing that since 1909 he had completed 4,000 feet of underground development; that 350,000 tons of ore were available at the mill at the present time; that there was a cross-cut tunnel driven through the mountain the entire length of his claim; that he needed the water for his development and that he had expended \$105,000 and twenty-five years of his life in the undertaking.

SCARCITY OF WATER SUPPLY DURING SUMMER AND FALL MONTHS  
INDICATED IN CONNECTION WITH APPLICATION 6824

Application 6824 was protested by Frank Dillon, and John F. Dickson, holder of Application 6059, Permit 3177, threatened to file a protest unless the season of diversion was amended. In a letter dated February 1, 1931, Mr. Bettles in whose name Application 6824 then stood, advised Mr. Dickson as follows:

"I have studied the water situation here fully and have had some experience with it. During the months of March, April and May and perhaps a portion of June, there is a great abundance of water. During that time it is my hope to accomplish enough mine work to determine whether it will be worth while to arrange for current. The water power is a seasonal proposition at best, and an uncertain one, but realizing that I have prepared to make use of it while there is plenty to accomplish the test, I would appreciate word from you some time in advance of your starting operations at the mine in order that I may adjust my plans accordingly ....."

Under date of March 13, 1931, Frank Dillon informed this office in connection with Application 6824 that during the months of July, August, September and sometimes during a portion of the month of June and nearly always the entire month of November, the flow in the South Fork of Poorman Creek was equal to or less than the capacity of his diversion canal and that practically the en-

tire flow during these months has been used during the last five years with the exception of the year 1930 at which time he was engaged in the construction of a higher ditch to increase his power drop preliminary to installing a larger plant.

Under date of July 14, 1931, Mr. Bettles advised this office as follows:

"..... As your records no doubt show the flow of water in the stream during the dry season is below the quantity applied for in any of the applications. The only time there is unappropriated water is during the months of runoff ....."

#### SUMMARY AND CONCLUSIONS

According to the United States Weather Bureau Records the precipitation during the 1934-35 season was approximately normal at Bowman dam and at North Bloomfield. Uncontroverted testimony presented at the hearing by Frank Dillon indicated that during the year 1935 insufficient water was available for his use during the summer and fall months and that in order to obtain water which was being diverted above him without apparently any color of right, he was obliged to threaten court action. The record also indicates that when the water supply decreases to such an extent that it is inadequate to use for power purposes, Mr. Dillon uses the small amount which may be available for mining operations.

It would appear therefore that diversion made under Application 8193 as proposed would deprive Frank Dillon of water which he claims under a prior vested right. If, as the record indicates there may be a small amount of water available for applicant's use during the early part of June, it is believed that the terms of License 1547 confirming the right under Application 6824 of the Ancho Erie Mining Company Inc. are flexible enough to permit of such use by this Company.

No testimony was presented by applicant in support of his contention that there was unappropriated water in the South Fork of Peorinan Creek during the period from June 1st to December 1st. Most of the testimony was directed to the merits of the project of the applicant and its needs for the water which in itself does not constitute a sound basis for the approval of Application 8193 without the availability of unappropriated water. It is therefore the opinion of this office that Application 8193 should be denied.

Relative to Application 6059, Permit 3177, it appears that construction was completed as originally proposed by the Rescue-Eula Mining Company in 1929 or 1930 and with the exception of the years 1934 and 1935 water had been diverted and applied to beneficial use. Although water was not used during the years 1934 and 1935 for power purposes under Application 6059, Permit 3177 the permittee is now negotiating with an eastern company to take over the project. In view of the uncertainty of permittee's plans, it is not felt that the Division would be justified in now granting a definite extension of time but it may well withhold action and maintain the permit in its present status pending the receipt of the 1936 progress report. Should use of water be made under Application 6059, Permit 3177 as proposed it would not deprive Mr. Dillon of any water to which he may be entitled as the water is returned to the stream after use for power purposes at a point above his intakes.

O R D E R

Application 8193 of Ancho-Erie Mining Company, Inc. for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed and complaint having been made by applicant that the Gaston Gold Mines, Ltd. had failed to comply with the terms and

conditions of its Permit 3177 heretofore issued in approval of Application 6059, public hearings having been held under Section 12 and Section 20 of the Water Commission Act, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 8193 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that action upon Application 6059, Permit 3177 be withheld until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 20th day of February, 1936.

EDWARD HYATT, State Engineer

By Howard L. Smith  
Deputy



Col/Ent