

Mr. Stoddard

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

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In the matter of Applications 8440 and 8441 of William
E. Gump to appropriate from Rush Creek a trib-
utary of South Fork of Salmon River in
Siskiyou County for mining, power
and domestic purposes.

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DECISION A. 8440 and 8441. *D-394*

Decided - *Nov. 4, 1936*

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APPEARANCES AT HEARING CONVENED AT YREKA, CALIFORNIA, JANUARY 20, 1936;
CONTINUED TO FEBRUARY 19, 1936; TO MARCH 20, 1936; TO APRIL 20, 1936;
TO MAY 20, 1936; TO JUNE 22, 1936; TO JULY 20, 1936; TO AUGUST 20, 1936;
AND CONCLUDED SEPTEMBER 21, 1936.

For Applicant

William E. Gump

Gardiner M. Johnson,
Attorney at Law,
Kahl Building,
San Francisco, California.

For Protestants

William H. and Abbie M. Quans

George A. Tobbe Jr.,
Attorney at Law,
Yreka, California.

EXAMINER: Everett H. 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 R I G I N

GENERAL DESCRIPTION OF PROJECT

Application 8441 is to appropriate 5 cubic feet per second from Rush
Creek a tributary of South Fork of Salmon River for mining and domestic
purpose, diversion to be made in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 21, Township
35 North, Range 10 West, M.D.B. & M. and use to be made within the NW $\frac{1}{4}$ of

SW $\frac{1}{4}$ of Section 12, Township 37 North, Range 11 West, M.D.B. & M.

Application #141 is to appropriate 10 cubic feet per second at the same point for power and domestic purposes, the water to be used in the same 40 acre subdivision.

Applicant proposes to use an existing ditch which is said to have been built about 1879. It was formerly known as the Wheeler-Bennett Ditch and in more recent years has been known as the Greaser Ditch, which ditch has been used for the irrigation of ranch properties now owned by the protestants and formerly known as the Hoff or Greaser Ranch, and the Farnsworth Ranch.

While the applications indicate that the water is to be returned to the South Fork of Salmon River within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 12, Township 37 North, Range 11 West, M.D.B. & M., the record indicates that it is applicant's intention to develop power and use the water for mining purposes at a point where water in this ditch is dropped abruptly through some 80' of vertical pipe, and that the water will thereafter continue either to the property of protestants, or will be allowed to take a natural course into the South Fork of Salmon River.

PROTESTS

The applications were protested originally by Farnsworth Brothers, one of the predecessors in interest of William H. and Abbie M. Quans. Subsequently the applications were protested by William H. and Abbie M. Quans and the Farnsworth protest was dismissed, it being considered their protest had been superseded by the Quans protest.

Protestants William H. and Abbie M. Quas claim a prior right to not less than 800 miner's inches for irrigation, domestic and mining purposes from Bush Creek through the ditch which applicant proposes to use, basing their claim of right upon a use said to have begun about 1852 and to have been continued since that time. The claim is that the water has been used for mining and domestic purposes as well as for irrigation and it is alleged in the protest that the amount of water which it is sought to appropriate is not available and that the amount which is available is insufficient to satisfy the needs of protestants under their claim of prior and existing right.

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

Applications 8440 and 8441 of William E. Gump were completed in accordance with the requirements of the Water Commission Act and the Rules and Regulations of the Division of Water Resources, and being protested were set for hearing in accordance with Section 1a of the Water Commission Act in the Council Chamber, City Hall, Dulles, at 1:30 P. M. on Tuesday, January 21, 1936. The parties in interest, however, appeared before the examiner at 4:30 P. M. on Monday, January 20, 1936, with the request that the time of hearing be advanced by stipulation to that hour, which was done. The hearing was not concluded at that time and was continued to February 19, 1936; to March 20, 1936; to April 20, 1936; to May 20, 1936; to June 22, 1936; to July 20, 1936; to August 20, 1936, and concluded on September 21, 1936. Of this hearing applicant and protestants were duly notified.

DISCUSSION OF PROTEST

The contest in this case would appear to turn more upon the question of right of access through the existing Wheeler and Bennett, or Cramer, Ditch than upon the question of availability of unappropriated water. The showing of protestants with respect to available water in the source and the use thereof by themselves and their predecessors in interest is more or less incoherent and affords no reasonable basis upon which to form a sound conclusion. In one place we find assertions that 70 acres have been irrigated on each of two ranches, making a total of 140 acres, and that 2,000 miner's inches measured under a 4" pressure are required for beneficial purposes. Other testimony or affidavits submitted on behalf of protestants, would indicate that the amount of land irrigated on each of the two ranches is approximately 50 or 60 acres and that 100 miner's inches is required for each of the two ranches. The testimony with respect to the ditches which are used in the irrigation of these two ranches is also conflicting and uncertain and the testimony is not clear as to the years in which use has been made at the Farnsworth Ranch.

The evidence submitted by protestants and on their behalf as to the use for mining is also incomplete in that it fails to show the amount of water which has been used and the time or times when such use was made.

The evidence submitted on behalf of applicant is more direct and coherent as to the amount of water available and the use which has been made by protestants. Testimony on behalf of applicant was submitted by Lewis Jacob Young who is interested with the applicant in the development of the project which is here involved. Mr. Young testified that he had been familiar with the use of water through the Cramer Ditch since 1929 and that

he was a partner in operating the Gramer or Hoff Ranch in 1932 and 1933. During the last two years he has been operating the property of applicant. His testimony was to the effect that there was an abundance of water during the winter and spring months to and including April, that ordinarily there would be 300 to 400 miner's inches in Rush Creek during the summer but that in a dry year this might fall as low as 150 miner's inches. It was further his testimony that only some 30 acres were irrigated on the Hoff or Gramer Ranch, that the lower portion of the ditch leading to this ranch would not carry in excess of 50 to 60 miner's inches and that none of this water was used in recent years on any other ranch, except in 1932 and 1933 he and his partner sold some water to Farnsworth Brothers, at which time approximately 30 acres were irrigated on what was known as the Jordan Ranch. According to his testimony the waters of this source have not been used for mining purposes by owners of the Farnsworth Ranch in recent years and only a very limited use had been made for mining purposes by the owners of the Hoff Ranch.

Fortunately, however, it is unnecessary to attempt any conclusion from the testimony presented as to the quantities of water available and the use which has been made by protestants and their predecessors in interest, because of the fact, as stated above, that Mr. Young testified on behalf of applicant, and there was no denial on behalf of protestants, that the water which applicant proposed to divert for use would be returned after use to the same ditch, or ditches, which now serve and have heretofore served the property of protestants and their predecessors in interest. Under the circumstances, therefore, the question of lack of unappropriated water

does not enter because the use proposed will not interfere with the use of protestants. This showing on behalf of applicant is substantiated by the fact that during the past two years the predecessors in interest have undertaken to lease the use of this water to applicant and it is understood protestants themselves have entered into what purports to be a lease granting to the applicant the right to continue this use for another year.

The question as to right of access appears to be a more serious one from the standpoint of applicant who was advised that the Division could not consistently with its practice approve these applications so long as they propose the use of the existing ditch, unless and until it were shown that applicant had right of access, or means of obtaining same. However, on September 17th Mr. Gardiner M. Johnson, attorney for applicant, filed a copy of the Special Use Permit granted by T. J. Jones, Supervisor of Klamath National Forest, allowing the use of the Grazer, or Wheeler and Bennett Ditch. Mr. Johnson filed also a copy of a letter from Mr. Jones indicating that a Special Use Permit had been granted also to William M. Quass. Inasmuch as this ditch crosses U. S. Forest lands the U. S. Forest Service has assumed jurisdiction and it would appear that the question of right to the use of this ditch has been settled in favor of Mr. Camp.

CONCLUSION

Inasmuch as protestants have failed to show that the use of water proposed by the applicant will in any way interfere with a continuance of such use as has been made by them and their predecessors in interest, and inasmuch as applicant has secured a Special Use Permit from the U. S. Forest Service which permits him to share in the use of this ditch with protest-

ents, it would appear in order to approve these two applications.

O R D E R

Applications 8440 and 8441 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, and a public hearing having been held and the Division of Water Resources now being fully advised in the premises:

IT IS HEREBY ORDERED THAT said Applications 8440 and 8441 be approved and that permits be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *4th* day of *November*, 1936.

EDWARD HYATT, State Engineer

By _____

JOHN GREENING

Deputy

EM:CC