

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

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In the matter of Revocation of Permit and Reapplication thereon upon Application 1800 of Beardsley Copper Company for the Appropriation of 475 cfs. from Taylor Lake in Plumas County for Mining Purposes and in the matter of Application 8232 of J. N. Evans Estate Company to appropriate from Taylor Lake in Plumas County for Irrigation and Stock Watering Purposes

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DECISION A 1800-8232 B 171  
Decided October 3, 1927

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APPEARANCES AT HEARING HELD April 12, 1927

For Permittee	
Beardsley Copper Company	No appearance
For Applicant	
J. N. Evans Estate Company	J. L. Robinson
For Protestants	
Sutter Butte Canal Company	No appearance
Beardsley Copper Company	No appearance
W. F. Detert	in propria persona

EXAMINER: Everett N. Bryan, Deputy Chief acting for Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California.

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APPEARANCES AT HEARING HELD August 22, 1927

For Permittee	
Beardsley Copper Company	No appearance
For applicant	
J. N. Evans Estate Company	J. L. Robinson
For Protestants	
Sutter Butte Canal Company	No appearance
Beardsley Copper Company	No appearance
W. F. Detert	No appearance

EXAMINER: Everett N. Bryan, Deputy Chief acting for Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California.

C O N C L U S I O N

Application 1800 was filed May 3, 1920 by the Beardsley Copper Company. Under this application it was proposed to appropriate 475 acre feet per annum of the waters of Taylor Lake and 2 cubic feet per second from Davis Creek, tributaries of the North Fork of the Feather River.

When the application was examined by this office there appeared to be some question as to the Company's right of access, but this matter was presumably cleared up upon the receipt of a letter from the applicant under date of June 1, 1920 which informed this office that the points of diversion were on unpatented government land.

On January 24, 1921, the application was approved by the issuance of Permit 825 allowing an appropriation of 475 acre feet per annum from Taylor Lake to be collected therein from about December 1st to about May 15th of each season. The phase of the application appertaining to the proposed diversion from Davis Creek was very bitterly protested and action upon that feature was withheld and is still in abeyance.

At the time of the filing of the application the applicant asked to be allowed until August 15, 1920 to complete construction work and until September 15, 1920 within which to complete use but as the application was not approved until after the expiration of these dates the permittee was allowed until August 1, 1921 within which to complete construction work and until September 1, 1921 within which to apply the water to complete beneficial use.

On February 7, 1921 the permittee filed a statement with this office to the effect that construction work on the dam had been completed and that the ditches leading therefrom to Davis Creek had been cleaned out, the total cost of construction work having been about \$3000. Beneficial use of the water was not completed.

On October 30, 1922 an inspection of the project was made by an engineer of this office who reported that the construction work under the storage feature of the project had been completed but no use had been made of the water.

On January 12, 1923 an extension of time was granted until July 1, 1924 within which to complete the construction work and apply the water to beneficial use.

On December 19, 1923 the permittee reported that construction work had been completed at a cost of approximately \$9000 and that the use of water had been completed.

On September 13, 1924, a second inspection was made and according to the engineer's report an entirely new diversion conduit had been installed consisting mainly of an 8" x 8" covered wood flume about four miles long and 2000 feet of 3" pipe. The engineer reported that the water had not been put to complete beneficial use for mining and milling purposes although some water had been used for domestic purposes and for cooling water in the transformers and air compressor and that the period of storage had been from about December 31st to about June 21st.

Based upon this report, the permittees request for an extension of time to July 1, 1925 within which to complete use was granted on March 8, 1925.

The project was inspected again on September 17, 1925, by an engineer of this office who reported that there had been no new construction on the dam or diversion conduit. He was informed by the mine foreman that about 1500 tons of ore had been treated at the mill during the winter of 1924 and 1925 and that the capacity of the Ball Mill and Flotation tanks was approximately 75 tons per day which required a mill use of 25,000 gallons of water. The foreman stated that it was planned to install a new classifier in the mill thereby increasing the capacity to 300 tons daily but that at the present

time the mine was not sufficiently developed to supply ore for running the mill at its full capacity and that it would require two years of development in the mine before this supply could be obtained.

On March 16, 1926 another extension was granted allowing until July 1, 1927 within which to complete use.

On December 31, 1926 the permittee filed a petition for an extension of time until January 1, 1928 to complete the project wherein it set up a summary of the construction work already done and the fact that the dam would require strengthening. Permittee stated that water had been used for mining and milling purposes during the winter and early spring of 1923-24, but that during the summer of the year 1924 the agents of the J. H. Evans Ranch Company without notice to or the knowledge of the applicant turned the permittee's stored water down Hungry Creek and used the same for irrigation purposes at the J. H. Evans Ranch thereby making the resumption of milling operations at applicant's mine impossible for lack of water; that during the year 1925 the permittee had used some of the stored water for mining purposes but the greater portion was used by the ranch company; that during the year 1926 the J. H. Evans Ranch Company with the consent of the permittee used about one-half of the water stored in the lake, the permittee reserving the remainder for mining and milling purposes; that thereafter, without the knowledge or consent of the permittee, the representatives of said ranch company surreptitiously turned out the water remaining in the lake, making further mining and milling work impossible until the disappearance of the winter snows which would be about June 1, 1927; and because of the loss of water to the permittee its mill and dam, and other improvements, and other general repairs thereto necessary, which the same could be used.

In reply to this petition the Division of Water Rights advised the permittee that as there had been an application filed recently to appropriate

from Taylor Lake upon which a hearing would probably be held, it was believed that certain information might be presented at the hearing upon which this office might more intelligently act upon the request for extension.

Description of Project Under Application 5232.

The application referred to above was Application 5232 of the J. H. Evans Estate Company. This application was filed October 13, 1926 and proposes an appropriation from Taylor Lake of 200 acre feet per annum to be collected for storage in the lake during the period from about October 1st to about April 1st of each season and to be used for irrigation purposes on 510 acres of land lying within Sections 1, 2 and 11, T 25 N, R 11 E, Section 36, T 26 N, R 11 E, and Section 31, T 25 N, R 12 E, L.D.S. & M. The irrigation season was stated as being from about April 1st to about September 30th of each year.

The application was protested by the Sutter Butte Canal Company and the Beardsley Copper Company. W. F. Detert entered an informal protest.

Application 5232 was 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 was set for a public hearing at Room 707 Forum Building, Sacramento at 1:30 o'clock P.M. on April 14, 1927 at which time an adjournment was taken and the hearing convened at the same place at 1:30 o'clock P.M. August 20, 1927. As the Beardsley Copper Company entered a protest in the matter of application 5232 hearings were simultaneously set upon Application 1800, Permit 1st in accordance with the provisions of Sections 18 and 20 of the Water Commission Act which govern the revocation of permits on the grounds of lack of diligence. The J. H. Evans Estate Company having urged this office to deny any further extensions to the permittee. At these hearings permittee, applicant and protestants were all notified.

Protests.

The Sutter Butte Canal Company protested the application of the

J. N. Evans Estate Company on the grounds that the source of the proposed appropriation is tributary to Hungry and Indian Creeks which are in turn tributary to the Feather River from which the protestant uses water for irrigation purposes from about April 1st to about October 15th of each season and that in a year of less than normal rainfall there would not be sufficient water left in the Feather River in the event the application is approved to satisfy its existing rights.

The Beardsley Copper Company claims that in ordinary years the amount of water which may be stored in Taylor Lake is not large as the area of the contributory watershed does not exceed 300 acres and that if the application were approved it would deprive them of the water to which it is entitled under application 1800 and upon which \$9000 have been expended and asks that the proposed appropriation of the J. N. Evans Estate Company be not approved until the protestant has had a reasonable time to put the water to full use in view of the loss of time it has sustained by reason of the unlawful acts of the J. N. Evans Estate Company and that its right to the use of the flood waters stored in the lake be made paramount to any claim made by the applicant.

Although not a formal protestant in the matter H. I. Estert claims the ownership in fee of Taylor Lake and objects to an extension of time being granted to the Beardsley Copper Company and the issuance of a permit to the J. N. Evans Estate Company unless the latter should purchase his property.

Application 1800, Permit 828.

No appearance was made by the Beardsley Copper Company at either hearing but on August 24, 1906 Mr. L. C. Dougherty, a partner of Mr. Beardsley visited this office and stated that the dam under the name of Lake in application 1800, Permit 828 was not operated at the present time although there was a watchman in charge; that he was not certain how long it had been since any beneficial use of the water had been made. He stated also that Mr. Beardsley

was not financially able at the present time to develop the project and that certain circumstances had arisen which might make it necessary for him to take over the property himself and that if he did so, he would proceed along somewhat different lines than the previous owners who had attempted to establish a mill and operate it before having had a large body of ore blocked out. Mr. Longnecker's plan was to block out the various bodies of ore and ascertain what values were present before attempting to operate the mill, in which case he stated it would be a considerable length of time before the mill could be operated.

From information submitted by engineers of this office who at various times inspected the project of the Beardsley Copper Company and evidence presented at the hearings it would appear that although the construction work had been completed prior to January 1, 1924 at a cost estimated by the permittee to be approximately \$9000, very little beneficial use of the water had been made.

Apparently there were some mining and milling operations carried on during the winter season of 1924-1925. In November 1925 the shaft was pumped out after which it appears that practically no work has been done.

Testimony was presented at the hearing to the effect that on July 1, 1927 one G. H. Clark signed the claims of the Beardsley Copper Company, at least a year having elapsed prior to this date during which no work was done on the claim and that Mr. Clark had posted notices of location on Magina quartz claims Nos. 1 to 17 inclusive which were duly recorded in the office of the County Recorder of Idaho County. The notices of location were witnessed by one E. D. Seaborn, but the names of the individuals who witnessed the same either Mr. Clark or Mr. Seaborn, are connected with the Beardsley Copper Company.

It would appear that if the Beardsley Copper Company were considered at all in the matter that it would have attempted to have some one appear in

its behalf at the hearing. As the matter stands this office must act upon the evidence before it and upon the information submitted it seems entirely clear that the Beardsley Copper Company has not exercised due diligence in complying with the terms of the permit and has shown no good cause for an extension of time to complete its project.

From the evidence submitted at the hearing it would appear that the permittee had no right or access to Taylor Lake which belongs to Mr. Detert and had the office been so informed action upon the application of the Beardsley Copper Company would probably have been withheld for a reasonable period of time in order to allow the Copper Company to procure the same. This office was led to believe however that the company's dam was located on public land in which case it was not necessary to gain possession or withhold action upon the application.

As the Beardsley Copper Company has failed to comply with the terms of the permit and insufficient cause has been presented to grant the Company a further extension of time, it is the opinion of this office that Permit 625 heretofore issued upon Application 1800 should be revoked and this application cancelled upon the records of the Division.

Testimony was presented at the hearing to the effect that during the season of low runoff the J. N. Evans Estate Company had been using the entire flow of Indian Creek since 1905 and as the period of storage under Application 6252 is from about October 1st to about April 1st, a period during which normally there is an abundance of water for the lands in the Sacramento Valley, the protest of the J. N. Evans Estate Company appears to have little merit and should therefore be dismissed.



Application 5232.

Upon the revocation of Permit 525 there appears no doubt that there is sufficient unappropriated water in the source of the proposed appropriation to justify the approval of Application 5232 of the J. K. Evans Estate Company.

The Estate Company has acquired no right of access to Taylor Lake as yet however and claims that the price asked for the property of Mr. Detert is exorbitant. Action on the application of the J. K. Evans Estate Company should therefore be withheld for a reasonable length of time after the revocation of Permit 525 to allow the company to negotiate with Mr. Detert for the Taylor Lake property. If right of access is secured it would appear in order to approve Application 5232. If applicant fails to secure right of access approval of the application would serve no useful purpose and Application 5232 should be cancelled.

The purpose to which the applicant intends to put the proposed appropriation is a beneficial one and it is the opinion of this office that there is sufficient water available which is not being put to a useful or beneficial purpose to justify the approval of the application providing that the applicant is able to procure the necessary right of access.

C O N C L U S I O N

Permit 525 having heretofore been issued upon Application 1900 allowing until September 15, 1920 within which to completely apply the water to beneficial use and thereafter upon efficient saving of course the time having been extended to July 1, 1921 within which to completely apply the water to beneficial use, and the water being put to beneficial use as prescribed and it appearing to the Division of Water Rights that said permittee had failed to comply with the terms and conditions of the permit, a hearing having been held as provided in section 10

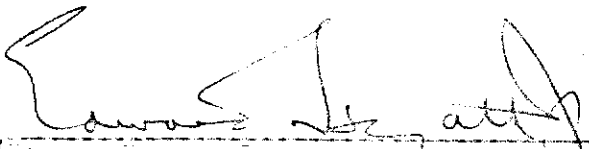
of the Water Commission Act and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Permit 225 heretofore issued upon Application 1800 be revoked and that said Application 1800 be cancelled upon the records of the Division of Water Rights.

Application 2232 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, <sup>a</sup>public hearings having been held and the Division of Water Rights now being fully informed in the premises and it appearing in order to approve said application providing right of access can be secured

IT IS HEREBY ORDERED that action on said application be withheld a reasonable time to the end that applicant may press negotiations for purchase of the required lands for dam and reservoir site and if said rights of way are secured it is ordered that Application 2232 be approved and a permit issued thereon and if said rights of way are not secured then it is ordered that said application be rejected and cancelled upon the records of the Division of Water Rights.

Dated at Sacramento, California, this 3rd day of October, 1927.

  
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(Edward H. Hunt, Sr.)  
TREASURER CHIEF OF DIVISION OF WATER RIGHTS

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