

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

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In the Matter of Application 5611 of Lloyd Summers to
appropriate water flowing from Mammoth Tunnel in
Mono County for Domestic Purposes.

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DECISION NO. A 5611. D-206

Decided *October 13, 1928.*

APPEARANCES AT HEARING HELD AT SACRAMENTO, OCTOBER 1, 1928

For Applicant

No appearance.

For Protestant

V. G. Preston of
Preston & Braucht, Attys.
Bank of Italy Building
Merced, California.

EXAMINER: E. N. Bryan, Deputy Chief of Division of Water Rights.

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O P I N I O N

This is an application to appropriate 0.085 cubic foot per second from April 1st to November 1st of the outflow from Mammoth Tunnel, an abandoned mine appurtenance in Mono County for the domestic benefit of a 300 lot subdivision now in process of being marketed by applicant. A protest against the application was filed by Alvin Bodle.

The application was filed July 18, 1927, 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 the office of the Division of Water Rights in Sacramento.

After three postponements on applicant's initiative this hearing was convened on October 1, 1928 applicant and protestant having been duly notified.

The protest by Alvin Bodle states that for more than forty years protestant has made beneficial use of all water yielded by the source and that there is none subject to appropriation. It is applicant's claim that when he bought the land he is now selling he had an agreement with the vendor that sufficient water should be reserved to Summers to meet domestic requirements.

Three days prior to the hearing Mr. West of Inman and West, attorneys of Sacramento, visited the office of the Division of Water Rights at Mr. Summer's request to the end that he might properly represent applicant at the hearing. After examining the record he stated his belief that applicant's position was untenable and that his office would not represent the applicant. Applicant was therefore not represented at the hearing.

Protestant Bodle secures water for his land through a ditch whose intake is on a tributary of Lake Mary. This ditch passes below the mouth of Mammoth tunnel in such a way that the entire flow from the tunnel is intercepted and carried by the ditch.

At the hearing it was shown by Thomas Williams, a predecessor in interest of protestant and by protestant Bodle that not only has protestant used the entire yield of the source for many years for the irrigation of his 160 acres but has found it necessary to augment this supply by drawing on a separate source. Even so at times there is not enough water to irrigate more than about 50% of the area under irrigation.

It appears that during the last three months of the year 1926 applicant was allowed by protestant to use water from the source but such use was clearly permissive and a written agreement between Bodle and Summers

contains an admission by applicant that he has no right to use the ditch or water flowing therein except as covered by the agreement which automatically terminated December 31, 1926.

Protestant has made full and definite showing that the entire yield of the source is appropriated. Applicant has made no showing to the contrary. We are therefore of the opinion that this application should be denied on the ground that there is no unappropriated water in the source named therein.

O R D E R

Application 5611 for a permit to appropriate unappropriated water having been filed with the Division of Water Rights as above stated, 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 5611 be denied and cancelled on the records of the Division of Water Rights.

Dated at Sacramento this 13 day of *October*, 1928.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS