

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

Opinion

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In the Matter of Application 5188 of Comanche Mining
and Reduction Company to appropriate from Mont-
gomery Creek, Tributary of Owens River in
Mono County for Power and Domestic
Purposes.

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DECISION A 5188 D - 222
Decided *April 4, 1929*

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APPEARANCES AT HEARING HELD FEBRUARY 28, 1929.

For Applicant

Comanche Mining and Reduction Company No appearance

For Protestants

Elsworth G. Taylor No appearance

Austin Taylor No appearance

EXAMINER: Harold Conkling, Chief of the Division of Water Rights,
Department of Public Works, State of California

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 5188 was filed on September 7, 1926, by Comanche Mining
and Reduction Company. It proposes an appropriation of 10 cubic feet per
second throughout the entire year from Montgomery Creek, tributary of Owens
River in Mono County for power and domestic purposes. The point of diversion
is described as being located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25, T 1 S,
R 32 E, M.D.B. & M. and the place of use at a power house within the SE $\frac{1}{4}$ of
NE $\frac{1}{4}$ of Section 27, T 1 S, R 32 E. Water is to be returned to Taylor Irriga-

tion Ditch within the said SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 27. The application was protested by Elsworth G. Taylor and Austin Taylor.

PROTESTS

Elsworth G. and Austin Taylor both claim prior vested rights to the use of water from Montgomery Creek and allege in effect that there are no unappropriated waters in said creek which are available for appropriation by the applicant.

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

Application 5188 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 in accordance with Section 1a of the Water Commission Act on February 28, 1929, at 10:00 A.M. o'clock in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestants were duly notified.

GENERAL DISCUSSION

The applicant informed this office under date of June 9, 1928, that it had acquired the lands of the protestants including the water rights pertinent thereto. Several attempts were then made by this office to obtain the withdrawal of the protests, thus obviating the necessity of holding a hearing, but as these attempts were not successful it was necessary as provided by law, to set the matter for a public hearing before final action could be taken as it appeared to be the desire of the applicant to proceed under the application and not to rely wholly upon the acquired rights by purchase.

No appearances were made at the hearing by either party. It is assumed that protestants have no further interest in the matter and the protests are therefore dismissed. It was our suggestion to the applicant that

there would be no necessity of an appearance by him at the hearing if the protestants failed to contest the matter further and therefore failure of applicant to appear at the hearing may be assumed to be due to his knowledge of the fact that protestants would not appear.

CONCLUSION

The use to which applicant proposes to put the water is a useful and beneficial one, this office has been advised that there will be no objection on the part of the Federal Power Commission to the approval of the application and there appears to be no reason why Application 5188 should not be approved.

ORDER

Application 5188 of Comanche Mining and Reduction Company for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests 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 Application 5188 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this *4th* day of *April* 1929.

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

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