

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

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In the Matter of Application 6693 of Robert O. Fink to
Appropriate from Thoms Creek in Modoc County for
Agricultural Purposes.

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DECISION A. 6693 D-301

Decided *December 9, 1931*

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APPEARANCES AT HEARING HELD AT ALTURAS, March 13, 1931

For Applicant

Robert O. Fink

In Propria Persona

For Protestants

J. M. Royce)
Clyde Hays)
J. M. Johnson)
E. Daniel Royce)
George L. Baker)
Albert, Harold and Howard J. Stiner)
Hilan and Mary Renner)
Alfred DeWitt)
G. W. and G. I. Jones)
E. C. Watson)

E. C. Bonner

EXAMINER: Gordon Zander, Hydraulic Engineer, Division of Water Resources,
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 6693 was filed June 4, 1930, by Robert O. Fink. It proposes an appropriation of 0.62 cubic foot per second from Thoms Creek in Modoc County during the period from March 15th to June 15th of each year. (Page 10 of Transcript) The proposed use of the water is for the irrigation of 50 acres, the water to be diverted within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28,

T 43 N, R 15 E, M.D.B. & M. It is proposed to divert the water from the Thoms Creek watershed across the Warner Range through Cedar Pass into Cedar Creek and to redivert the water from Cedar Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T 42 N, R 16 E, M.D.B. & M.

The application was protested prior to the hearing by Clyde Hays, J.H. Johnson, E. Daniel Royce, George L. Baker, Albert Stiner, Harold Stiner, Howard J. Stiner, Milan Renner, Mary Renner and Alfred DeWitt. J. M. Royce, G. W. Jones, G. I. Jones and H. C. Watson entered appearances at the hearing and protested the application.

PROTESTS

The protestants all own land below the proposed point of diversion of applicant. All of the protestants, except J. M. Johnson and H. C. Watson, claim riparian rights on Thoms Creek and appropriative rights from said creek by virtue of long use since prior to 1914. J. M. Johnson owns land at the confluence of Thoms Creek with North Fork of Pit River and claims to use Thoms Creek water by three diversions from said North Fork below the inflow of Thoms Creek.

H. C. Watson owns land on Pit River in Big Valley about 60 miles below the proposed point of diversion, and alleges that a diversion of any water from the Pit River watershed into Surprise Valley will injure his property. He claims that there has been a shortage of water in Pit River for many years.

PRIOR RIGHTS OF APPLICANT

Applicant claims certain prior rights on Thoms Creek by virtue of a decree entered on May 22, 1901, in the case of D. H. Lighty v. John R. Cook, et al. This decree established a right of 5 cubic feet per second

for the Thoms Creek Ditch to be diverted into the Cedar Creek watershed. Applicant has an interest in said Thoms Creek Ditch to the extent of 0.92 cubic foot per second. Applicant proposes to divert supplemental water under Application 6693 for use upon the same lands through the same diversion system. Applicant has additional adjudicated rights from Cedar Creek for the same lands of 0.90 cubic foot per second and 3.8 per cent of the surplus water of Cedar Creek. The maximum irrigable area of applicant is about 50 acres.

PHYSIOGRAPHY AND HYDROGRAPHY

Thoms Creek has its source on the west slope of the Warner Range of Mountains near Cedar Peak. Its channel has a general southerly direction nearly parallel to and immediately west of the summit of the Warner Range from its source to Cedar Pass along a narrow valley in a fault line. From Cedar Pass the channel has a general westerly direction to its confluence with North Fork of Pit River.

The Thoms Creek watershed above the proposed diversion of applicant ranges in elevation from about 6700 feet to 8000 feet. Below the proposed diversion the elevation drops from about 6700 feet to about 4300 feet at the confluence with North Fork of Pit River. Under normal conditions the snow on the Warner Range below elevation 7000 feet is largely gone before the higher snows begin to thaw.

Supervision of the Thoms Creek Ditch, that delivers water into the Cedar Creek watershed has been exercised by the water master on Cedar Creek during the years 1926 to 1929, inclusive, and 1931. The records of the Division show that even though four out of five of these years have

been subnormal in runoff, the snow conditions at the head of the Thoms Creek Ditch were such that it could not be opened until after April 1st.

The runoff records that have been collected by the Division on a number of streams heading on each the east and west slopes of the Warner Range indicate that under normal conditions freshet flows occur during the period of melting of the low snows below elevation 7000 feet. Spring rains or the first few warm days of spring cause rapid melting of the snow in the lower watersheds. Surplus waters usually occur during such freshets but it is characteristic for such surplus to occur intermittently with a duration from a few hours to two or three days due to alternate freezes and thaws. The flow of the streams during the late spring is sustained by melting snows above elevation about 7000 feet, which thaws later and at a slower rate than the lower snows.

USE OF WATER BY PROTESTANTS

A plane table survey, made in 1930, of the irrigated lands on Thoms Creek above the XL Ranch shows about 400 acres under irrigation. There is an additional area of about 400 acres on the XL Ranch which may be irrigated from Thoms Creek water. Protestants all admitted at the hearing that surplus water over and above their requirements normally occurred in Thoms Creek for about three weeks during the spring. It is their contention however that none or very little of this surplus would be available for applicant because the freshets are caused by thawing of low snows below the proposed diversion. When there is more than 5 cubic feet per second in Thoms Creek at the head of the Thoms Creek Ditch, it is claimed that the inflow from the lower watershed has receded to such an extent that there is no longer a surplus of water in the creek, that is, that the runoff from the upper watershed is by natural

conditions held back and impounded in the form of snow and ice until such time as the flow from this source can be entirely used by the riparian owners.

SUMMARY

The records of the Division and the evidence at the hearing indicate that there is usually unappropriated water in Thoms Creek from two to three weeks during the early spring, but that one of the two following conditions usually prevails at such times:

1. Either the surplus water is due to melting snow below the proposed diversion and is not available for applicant, or
2. that applicant has his full adjudicated rights from Thoms and Cedar Creeks of 1.92 cubic feet per second and 3.8 per cent of surplus waters of Cedar Creek available for the fifty acres under the application and no additional water is required.

It is therefore concluded that permit should be denied to applicant.

ORDER

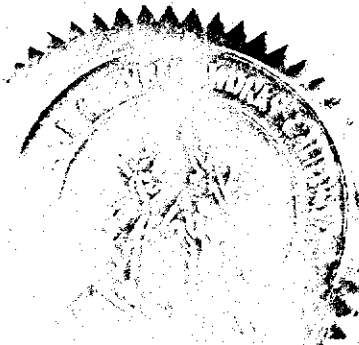
Application 6693 for permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and said Division now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 6693 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 9th day of December, 1931.

EDWARD HYATT, State Engineer

BY Harold Conkling
Deputy



RE: P