

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

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In the matter of Application 8123 of United States Tahoe
National Forest to appropriate from an unnamed Spring
Tributary to Woodruff Creek in Sierra County,
California for Domestic Purposes.

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DECISION A. 8123 D-372

Decided *February 20, 1935*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, FEBRUARY 8, 1935.

For Applicant

U. S. Tahoe National Forest

No appearance

For Protestant

Andrew Bachele

No appearance

EXAMINER: Everett N. 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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OPINION

GENERAL DESCRIPTION OF PROJECT

Under Application 8123 the U. S. Tahoe National Forest proposes to appropriate an amount of water not to exceed 6,000 gallons per day from an unnamed spring within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8, T 19 N, R 10 E, M.D.B.&M., tributary to Woodruff Creek and the North Fork of the Yuba River in Sierra County. It is proposed to divert the water throughout the entire year for domestic and stock watering purposes at Serpentine Ranger Station of the U. S. Forest Service within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8, T 19 N, R 10 E, M.D.B.&M. The application was protested by Andrew Bachele.

PROTEST

Mr. Bachel's claims an old appropriative right to divert from Woodruff Creek known as the Stewart and Schreiber right initiated prior to the effective date of the Water Commission Act under which water is supplied to the community of Goodyears Bar for domestic and irrigation purposes. His point of diversion is described as being about 2000 feet southerly of the town of Goodyears Bar and below the point where any water from the spring might enter Woodruff Creek. He alleges in effect that should Application 8123 be approved it would result in decreasing the amount of water available at his point of diversion.

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

Application 8123 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on February 8, 1935, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

GENERAL DISCUSSION

From information submitted by the Forest Supervisor in connection with Application 8123 it appears that for fourteen or fifteen years Mr. Bachel's has been obtaining his water supply from Woodruff Creek at a point above where the flow in Woodruff Creek might be affected by any water from the spring described as the source of appropriation in Application 8123 and only recently has he again been diverting water from the lower intake described in his protest. It was urged by the Forest Service that by virtue

of this change Mr. Bachels had forfeited the right to claim any of the waters of the spring by reason of non use.

In connection with Application 5844, Permit 3737 of the Kate Hardy Mining Company, on May 7, 1931, B. F. Ballard, manager of that company, informed this office that in 1920 or 1921 the rights on Woodruff Creek were adjudicated as follows:

Andrew Bachels	6/8 interest
Kirkpatrick Mining Co.	1/8 interest
Kate Hardy Mining Co.	1/8 interest

That at the termination of the suit which resulted in the adjudication, the Kirkpatrick Mining Company was given the privilege of dumping its tailings into Woodruff Creek and to avoid the pollution of his water supply Andrew Bachels was forced to move his point of diversion above the point where the debris was dumped into the creek. He stated that in 1929 Andrew Bachels again moved his point of diversion to a point on one of the tributaries of Woodruff Creek and was then conveying his water through a flume owned jointly by the Kate Hardy Mining Company and the Kirkpatrick Mining Company and emptying it into his original ditch.

Mr. Bachels on the other hand informed this office on May 8, 1931, that the original or lower point of diversion had never been abandoned; that the water which he was then using was delivered to his old ditch from two tributaries of Woodruff Creek through a flume constructed by the two mining companies but that at the time the change was made he intended to continue diverting from his original point of diversion but was advised by his attorney to allow the mining companies to continue delivery of water to him at their own risk as his right would not be lost until after four years had elapsed. He stated that the change had been made in 1929.

On December 17, 1934, Mr. Bachele informed this office that neither he nor his predecessor in interest has ever moved or given permission to move the intake upstream; that a judgment had at one time been rendered against the Kirkpatrick Mining Company for polluting the waters of Woodruff Creek and that subsequently the Kate Hardy Mining Company to avoid a similar action, had constructed a flume and pipe line for the purpose of conveying water to Goodyears Bar from a point further upstream and had promised to enter into a permanent agreement with Mr. Bachele which it had failed to do. Mr. Bachele stated that the original intake had always been used except during the period when Woodruff Creek had been polluted with mining debris and that for a period of about one year there had not been any pollution.

The above statements of both applicant and protestant have not been supported by testimony and therefore this office is not in a position to determine whether or not the protestant has a valid right to the use of any increment of flow between the upper and lower points of diversion on Woodruff Creek.

That there is no continuous surface connection between the spring and Woodruff Creek is admitted by the protestant, and as it is the general practice of this office to reject protests of such a nature, the Forest Supervisor was so informed and was told that it would not be necessary for him to appear at the hearing unless protestant indicated his intention to appear, in which event he would immediately be notified.

Protestant's attorney, under date of January 21, 1935, applied for an extension of time within which to endeavor to reach an adjustment with the applicant but was informed that as the Forest Service was pressing this office for action because of the prospect of availability of relief funds to be used in construction work, we would be reluctant to postpone the hearing except by stipulation of the Forest Service. He was informed however that

if an appearance was made by the protestant this office would be obliged to continue the matter for a sufficient length of time in order to give the applicant an opportunity to make an appearance.

No appearance was made at the hearing on behalf of Mr. Bachels, although notice of the hearing was received by him, and neither was cause shown for failure to appear.

CONCLUSION

That there is no surface connection between the spring from which applicant seeks to appropriate and the stream from which protestant diverts is admitted by both applicant and protestant. Moreover the validity of protestant's right to claim the waters of the spring has been questioned by the applicant and protestant did not appear at the hearing to present testimony in an attempt to refute the applicant's contention.

In view of the above it is the opinion of this office that Application 8123 should be approved.

ORDER

Application 8123 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 8123 be approved and that a permit be granted 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 *20th* day of *February*, 1935.

EDWARD HEATT, State Engineer

BY BARBOLA CONKLING

Deputy