

*Stoddard*

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

oOo

In the matter of Application 8442 of Rose Mines, Inc. to  
Appropriate from Three Unnamed Springs Tributary to  
Rattlesnake Canyon in San Bernardino County for  
for Mining and Domestic Purposes

oOo

DECISION A. 8442 D # 388  
Decided 4/21/36

oOo

APPEARANCES AT HEARING HELD AT SAN BERNARDINO, APRIL 7, 1936..

<u>For Applicant</u> Rose Mines, Inc.	D. W. Swartout
<u>For Protestants</u> Estate of Alfred G. Watts by Edward James Watts	No appearance
Gentry and Swarthout	J. Dale Gentry

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of  
Water Resources, Department of Public Works, State of California.

oOo

OPINION

GENERAL DESCRIPTION OF PROJECT

Application 8442 was filed on September 11, 1935, by Rose Mines, Inc.  
It proposes an appropriation of 20 gallons per minute total from either or all  
of three springs located in the Rattlesnake Canyon watershed. It is proposed  
to divert the water throughout the year for mining and domestic purposes at  
the Rose Mine located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  Section 20, T 2 N, R 3 E, S.B.S.6M.

The springs are located as follows:

- (1) Within SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> Section 30, T 2 N, R 3 E, S.B.E.&M.
- (2) Within NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> Section 30, T 2 N, R 3 E, S.B.E.&M.
- (3) Within SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> Section 19, T 2 N, R 3 E, S.B.E.&M.

The water is not to be returned to any stream after use for mining purposes.

The application was protested by Edward James Watts for the Estate of Alfred G. Watts, deceased and by Gentry and Swarthout.

#### PROTESTS

Edward James Watts, on behalf of the Estate of Alfred J. Watts, deceased, claims a right to the use of the water which applicant seeks to appropriate based upon an appropriation initiated prior to the effective date of the Water Commission Act and constant use thereafter when available for mining and domestic purposes. Use of water by Alfred J. Watts is supported by an affidavit by one Albert Judd and by a letter signed by one J. Daggett Papin which are attached to and made a part of the protest. Protestant states that the protest may be disregarded and dismissed "if applicant does not in any way interfere with the source of water and takes his rights secondary to those of protestant."

Gentry and Swarthout claim a right to the waters which applicant seeks to appropriate based upon appropriation commenced prior to the effective date of the Water Commission Act and continuous use thereafter for stock watering and agricultural purposes. They allege in effect that should Application 8442 be approved it would result in depleting their water supply.

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

Application 8442 was completed in accordance with the Water Commission

Act and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on Tuesday, April 7, 1936, at 11:00 o'clock A.M. in Supervisors Chamber, Court House, San Bernardino, California. Of this hearing applicant and protestants were duly notified.

#### GENERAL DISCUSSION

The officials of the San Bernardino National Forest advised this office that right of access would be granted to the applicant subject to the condition that provision be made for two stock watering tanks and two tanks for fire protection to be provided by the Forest Service. Applicant and protestants were informed of these conditions laid down by the Forest Service and were advised by this office under date of February 7, 1936, that should Application 8442 be approved, the Division would incorporate a condition in the permit to the effect that at points convenient of access facilities shall be provided and maintained to allow free use of water for domestic and stock purposes by the public.

In reply, the applicant informed this office that the Company would be pleased to cooperate with the Forest Service in making water available to the cattlemen and to the public.

Protestant Watts, through his attorneys, gave this office to understand that this provision would be acceptable to him, and, although the protest was not withdrawn, his failure to appear at the hearing and to make any showing of cause for his failure to appear would seem to indicate that he had no objections to the approval of the application subject to the condition indicated.

No reply was received from protestants Gentry and Swarthout but J. Dale Gentry appeared for them at the hearing. Discussion at the hearing centered around the necessity to provide stock watering facilities and applicant again indicated his willingness to install such facilities for this purpose as were reasonably necessary. Protestants made no reference to other uses by them and therefore it would appear to be in order to approve Application 8442 subject to the usual terms and conditions and also to a special condition to the effect that at points convenient of access facilities shall be provided and maintained to allow free use of water for domestic and stock watering purposes by the public.

O R D E R

Application 8442 for a 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 the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that the said Application 8442 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and subject to the following special term and condition to wit:

"At points convenient of access facilities shall be provided and maintained, to allow free use of water for domestic and stock purposes by the public."

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 21<sup>st</sup> day of April, 1936.

EDWARD HYATT, State Engineer

BY

Harold Conkling

Deputy

WES:MF