

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 9385 of Bob F. Wofford
to Appropriate from Cold Creek in Trinity
County for Power and Domestic Purposes

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Decision A 9385 D 460

Decided August 21, 1940

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APPEARANCES AT HEARING HELD AT SACRAMENTO, AUGUST 20, 1940

For Applicant

Estate of Bob F. Wofford, deceased

No appearance

For Protestants

W.H. and Eleanor M. Simmons

No appearance

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

O P I N I O N

Application 9385 was filed by Bob F. Wofford on August 17, 1938.

It proposes an appropriation of 0.5 cubic foot per second to be diverted from
Cold Creek (also known as Johnson Creek) a tributary of South Fork of Trinity
River, in Trinity County, for power purposes and incidental domestic use.

It was proposed to divert the water throughout the entire year and to return
the water after use for power purposes to the South Fork of Trinity River.

Application 9385 was protested by W.H. and Eleanor M. Simmons upon
the grounds of possible interference with their use of water under an approp-
riative right initiated prior to the effective date of the Water Commission
Act.

1939

Under date of April 25, the Division informed the applicant and
the protestants that this office would investigate the situation in the

field provided that the parties at interest would agree to abide by the decision of this office based upon the facts as determined by the investigation.

Mr. Wofford consented to the investigation but no word was received from the protestants. Nevertheless on May 25, 1939 a field investigation was made by an engineer of the Division at which both applicant and protestants were represented. Subsequent to this investigation the protestants asked that a further investigation be made as the conditions of stream flow on May 25, 1939 were not truly representative and agreed to abide by a decision of this office rendered subsequent to a second investigation.

Notwithstanding the fact that on May 13, 1940 applicant Bob Wofford was killed by protestant W. H. Simmons, a second investigation was made by an engineer of the Division on June 27, 1940, at which Norman McPhail, applicant's step-son was present. Subsequent to the investigation Mrs. Wofford and Mrs. Simmons were interviewed in Weaverville.

Mrs. Wofford was agreeable to limiting the season of diversion to the period from about September 1 to about June 1 and Mrs. Simmons had no objection to the issuance of a permit during the period from October 1 to May 15. It was the opinion of the Division, however, that diversion by the applicant during the period from June 1 to October 1 should be denied as little or no unappropriated water was present in Cold Creek during this period and such diversion by the applicant would only result in interference with the rights of the protestants.

The interested parties were advised to that effect and informed that it was proposed to approve Application 9385 for 0.5 cubic feet per second to be diverted from about October 1 to about June 1 of each season.

In order to conform to the provisions of the law which necessitates a hearing upon a protested application before action can be taken by the

Division, Application 9385 was set for hearing in accordance with Section 1a of the Water Commission Act on Tuesday, August 20, 1940, at 2:00 o'clock P.M. in Room 401 Public Works Bldg., Sacramento, California. Of this hearing the interested parties were duly notified and also given to understand that no appearances need be made.

ORDER

Application 9385 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, field investigations having been made, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9385 be approved and permit issued subject to such of the usual terms and conditions as may be appropriate but with the season of diversion limited to the period from about October 1 to about June 1 of each season.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 21st day of Aug., 1940.

EDWARD HYATT, State Engineer

(Seal)

By HAROLD CONKLING
Deputy