

*Mr. Stoddard*

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

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In the Matter of Application 9857 of Fresno Banner  
Mining Company to appropriate from Kingsman Creek  
in Madera County for Mining and Domestic Purposes

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Decision No. A. 9857 D. 462

DECIDED: October 2, 1940

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APPEARANCES AT INVESTIGATION CONDUCTED AT SOURCE OF THE  
PROPOSED APPROPRIATION ON SEPTEMBER 4, 1940.

For Applicant

Fresno Banner Mining Company

C. L. Clark & G. W. Berry

For Protestant

Grace H. Cranmer

Mr. Cranmer

For Interested Parties

Polly Wm. Mahly  
H. H. Welch

Mr. Mahly  
Richard J. Lambert

For Division of Water Resources

Bisceo Kibbey, Associate Hydraulic Engineer

O P I N I O N

Application 9857 was filed by the Fresno Banner Mining Company on March 20, 1940. It proposes an appropriation of 0.15 cubic feet per second from Kingsman Creek tributary to San Joaquin River via Fine Gold Creek, to be diverted throughout the year for mining and domestic purposes. The point of diversion is described as being within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 6, T 9 S, R 22 E, M.D.B. & M. and the place of use as being within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 6, T 9 S, R 22 E, M.D.B. & M. After use for mining purposes the water is to be returned to Fine Gold Creek within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 26, T 8 S, R 21 E, M.D.B. & M.

### Protest

Grace M. Cramer owns lands on Pine Gold Creek which are riparian to said Creek. She also claims an appropriative right initiated prior to the effective date of the Water Commission Act and diverts water at points within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 36, T 8 S, R 21 E, M.D.B.M. for stock watering, irrigation and mining purposes, using at times the entire summer flow. She alleges in effect that should Application 9657 be approved it would result in depriving her of water to which she is entitled. She also objects to the return of any water containing mill tailings on her property.

Although not a record protestant, Mr. J. E. Carpenter by letter dated September 5, 1940, offered certain facts which he requested be given consideration by the Division before action was taken on the application.

### Investigation

On March 4, 1940, an investigation of Application 9657 was conducted in the field by an engineer of this office. Of this investigation applicant and protestant were duly notified and urged to have representatives present to submit their side of the case.

### Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations were signed by the applicant and protestant at the time of the investigation and have been approved and accepted by the Division of Water Resources. The records relied upon in the determination of the matter are as follows:

Amended Application and accompanying map	filed	Mar. 21, 1940
Amended protest of Grace M. Cramer	filed	June 18, 1940
Office report by W. E. Stoddard	dated	July 15, 1940
Letter from John E. Carpenter	filed	Sept. 6, 1940
Stipulation signed by protestant	filed	Sept. 10, 1940
Stipulation signed by applicant	filed	Sept. 10, 1940
Memorandum of Investigation by B. Kibbey	dated	Sept. 11, 1940
Supplementary memorandum by B. Kibbey	dated	Sept. 13, 1940

The results of the field investigation are set forth in Mr. Kibbey's report of September 11, 1940 to which reference is made.

It is apparently agreeable to all interested parties that Application 9857 be approved provided that a special clause be incorporated in the permit to the effect that applicant would divert only when the flow in Little Pine Gold Creek where it crosses the north and south center line of Section 31, T 8 S, R 22 E, M.D.B.M. exceeds 5 g.p.m. and with this understanding, stipulations under Regulation 12B were signed by the applicant and protestant. The stipulation signed by Mrs. Grammer was also signed by D.D. Church, executor of the Estate of John Walker, deceased, although he was not a record protestant. Mr. Carpenter informed this office by telephone that the proposed clause was satisfactory to him.

ORDER

Application 9857 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation by the Division of Water Resources having been made and a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources pertaining to Appropriation of Water in California:

IT IS HEREBY ORDERED that Application 9857 be approved subject to such of the usual terms and conditions as may be appropriate and to the following special term and condition, to wit:

"Diversion of water under this permit shall be made only when the flow of water in Pine Gold Creek where it crosses the north and south center line of Section 31, Township 8 South, Range 22 East, Mt. Diablo Base and Meridian, is in excess of five gallons per minute."

WITNESS my hand and the seal of the Department of Public Works of  
the State of California, this 2 day of *October*, 1940.

EDWARD HYATT, State Engineer

By HAROLD CONKLING  
Deputy

(Seal)

WES:m