

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

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In the Matter of Application 9658 of Division of Highways,
State of California to appropriate from Virginia
Creek, Tributary to East Walker River in
Mono County for Domestic Purposes

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Decision A, 9658 D. 468

Decided *February 10, 1941*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, JANUARY 21, 1941

For Applicant

Division of Highways

No appearance

For Protestant

Powell Estate

No appearance

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

OPINION

General Description of Project

Application 9658 was filed by the Division of Highways, Department
of Public Works, State of California, on July 10, 1939. It proposes an appro-
priation of 0.025 of a cubic foot per second to be diverted throughout the
year from Virginia Creek, a tributary of East Walker River in Mono County for
domestic purposes at a State Highways Maintenance Station located within the

NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 3 N, R 26 E, N.D.B.M. The point of diversion is described as being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 26.

PROTEST

On August 24, 1939, John V. Copren, administrator of the Estate of Florence J. Powell, deceased, filed a protest against the approval of Application 9688 in which he states that a portion of the estate consists of a tract of land containing approximately 159 acres of land to which is attached an old appropriative right to divert 300 miners inches from Virginia Creek at a point below applicants' proposed point of diversion; that this amount of water has been used and is now being used for the irrigation of this tract; that there are also others who have rights to the use of the water and alleges in effect that there is no water subject to appropriation under Application 9688.

Mr. Copren advised this office under date of September 21, 1940 that he had disposed of the 159 acre tract to Edmund Powell and that he assumed that the protest would inure to the benefit of the new owner. He was informed that the protest would be considered in effect until withdrawn or otherwise disposed of.

Under date of December 24, 1940, this office was informed by George L. Sanford, attorney at law, that Edmund Powell had died and that Flora E. Powell was acting as executrix and he was attorney for the estate. The protest must therefore be considered as being that of the Edmund Powell Estate.

FIELD INVESTIGATION

On September 24, 1940, a field investigation was made by an engineer of this office accompanied by C. Cleman representing the Division of Highways. Although Mr. Copren was advised of the proposed investigation and urged to be

present or to have a representative present no one appeared in behalf of the protestants.

Upon investigation it was found that protestant's land was uncultivated and that the 159 acres which was being irrigated should not require more than a continuous flow of 45 miners inches during the six months irrigation season; that the 300 miners inches claimed by the protestant was far in excess of the amount of water which could beneficially be used upon the 159 acres; that the estimated flow in Virginia Creek was approximately 480 miners inches which was possibly the seasonal low flow of the creek and that insofar as protestant was directly concerned it was not apparent wherein the diversion of 1 miners inch as proposed by the applicant would interfere with any rights which protestant might have.

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

Application 9658 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 public hearing in accordance with Section 1a of the Water Commission Act on Tuesday, January 21, 1941 at 10:00 o'clock A.M. in Room 401, Public Works Building, Sacramento, California. Of this hearing applicant and protestant (Edmond Powell) were duly notified. Notice of the proposed hearing was also sent to Mr. John V. Copren.

GENERAL DISCUSSION

It was not until after the hearing notices were sent out that this office was informed by Mr. George L. Sanford of the death of Edmond Powell. Mr. Sanford as the attorney for the Estate of Edmond Powell, deceased, after being informed of the history of the application and also of the investigation

which had been made by this office advised this office under date of January 10, 1941 that no appearance would be made at the hearing on behalf of the Edmond Powell Estate and that the Estate was not pressing the objections heretofore filed by Mr. Copren.

As no appearance was made at the hearing by either the applicant or the protestant, the opinion of the Division must necessarily be based upon the results of the field investigation which would appear to indicate that there is sufficient unappropriated water in Virginia Creek to justify the approval of Application 9658. Application 9658 should therefore be approved subject to prior vested rights.

ORDER

Application 9658 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 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 said Application 9658 be approved and that a permit be granted to the applicant 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 10th day of Feb. 1941.

EDWARD HYATT, State Engineer

By HAROLD CONKLING

Deputy

(Seal)