

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

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In the Matter of Application 10341 of The Western  
Pacific Railroad Company to Appropriate from Kellogg  
Ravine in Plumas County for Domestic Purposes

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Decision A. 10341 D- 488

Decided: *May 11, 1942*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED  
APPROPRIATION ON APRIL 24, 1942.

For Applicant

The Western Pacific Railroad Company

J.W. Grace and H.M. Smitten

For Protestant

Eva C. Eyraud

In propria persona

For Division of Water Resources

A. S. Wheeler, Assistant Hydraulic Engineer, for Harold Conkling, Deputy  
State Engineer in Charge of Water Rights, Division of Water Resources,  
Department of Public Works, State of California.

O P I N I O N

General Description of Project

Under Application 10341 filed in this office on December 9, 1941,  
the Western Pacific Railroad Company proposes to appropriate from Kellogg Ravine  
tributary to the East Branch of the North Fork of Feather River in Plumas County  
an amount of water not to exceed 0.002 c.f.s. to be diverted throughout the  
year for domestic purposes within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T 25 N, R 7 E,  
M.D.B.M. The point of diversion is described as being within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of  
said Section 21.

### Protest

Application 10341 was protested by Mrs. Eva C. Eyraud who claims a right to the waters of Kellogg Ravine which right was initiated prior to December 19, 1914, the effective date of the Water Commission Act. She claims that water has been diverted for mining, irrigation and domestic purposes from a point about 100 feet below the Western Pacific Railroad tracks which point is approximately 1600 feet below the proposed diversion point of the applicant. She claims that at the present time water is being used for the irrigation of two acres of land and for domestic purposes. She alleges in effect that there is not sufficient water for her own use during the months of July, August, September and October.

### Investigation

Stipulations under Regulation 12B having been signed by Mr. T. L. Phillips, Chief Engineer of the Western Pacific Railroad Company and by Eva C. Eyraud and approved by this office, an investigation was conducted in the field by an engineer of this office on April 24, 1942 at which Messrs. J. W. Grace and H. M. Smitten, representing the applicant, and Mrs. Eva C. Eyraud the protestant, were present.

According to the report of the engineer who investigated the proposed development, the Western Pacific Railroad Company has been using water for domestic, garden and lawn irrigation, fire protection and miscellaneous purposes throughout the year since 1910 from the diversion system of the Rich Bar Placer Mine under an agreement with the mine owners. Under Application 10341 however it now seeks to initiate a right in its own name and upon the approval of Application 10341 the agreement with the mine owners will be terminated. The present use of the company was estimated to be 2300 g.p.d. which is much

more than the quantity of water applied for.

As to the use by the protestant, it appeared doubtful that the beneficial use exceeded 0.05 or 0.06 c.f.s. and no cultivated crops had been irrigated for the past four years. It appeared that the protestant was chiefly concerned over the capacity of the pipe line proposed by the applicant, which capacity was in excess of the amount applied for and she was of the opinion that possibly a larger amount of water would be used than the amount applied for. Mrs. Eyraud was assured by the investigating engineer that the applicant could not legally use any greater amount under the application than it had applied for and that certain clauses protecting her interests would be inserted in any permit which might be issued by the Division. She stated that she would be willing to withdraw her protest upon receipt from the Division of a letter stating that any permit issued in approval of Application 10341 would limit the use to 1300 g.p.d. and that the permit would contain the regular protective clauses, such clauses being set forth in the letter.

#### Conclusion

Under date of April 29, 1942, Mrs. Eyraud was informed by letter that any permit issued in approval of Application 10341 would be for the approval of an application "for a permit to appropriate unappropriated water of the State of California, subject to existing rights" and that it would be expressly issued "subject to vested rights" and that the permit would contain the following clauses:

(1) The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed thirteen hundred (1300) gallons per day from January 1 to December 31 of each season.

(2) All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Division of Water

Resources in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Under date of May 4, 1942 Mrs. Eyraud informed the Division in effect that she was agreeable to the approval of Application 10341 upon the basis set forth in our letter of April 29th and consequently her protest may be dismissed and permit issued.

ORDER

Application 10341 for a permit to appropriate water having been filed with the Division of Water Resources as above stated; a protest having been filed; stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources having been received; a field investigation by the Division of Water Resources having been made and the Division now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10341 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 11<sup>th</sup> day of May 1942.

EDWARD HYATT, State Engineer

By Harold Conkling  
Deputy State Engineer

