

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

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In the Matter of Application 9536 of W.E. Wilson to appropriate
from El Dorado Canyon, West Branch of El Dorado Canyon and
Volcano Canyon, tributaries of Middle Fork of American River
in Placer County for Mining and Domestic Purposes

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Decision A 9536 D- 492

Decided *September 17, 1942*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED
APPROPRIATION ON JULY 21, 1942

For Applicant

W. E. Wilson

In propria persona

For Protestants

North Fork Ditch Company
American Bar Quartz Mining Co.

No appearance
Mr. J. Duffy

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 9536, filed by W. E. Wilson on March 30, 1939, it
is proposed to divert 75 c.f.s. from diversion point No. 1 on El Dorado Canyon
which amount will be conducted by conduit to point of diversion No. 2 on the
West Fork of El Dorado Canyon. At point of diversion No. 2 applicant proposes to
divert an additional 75 c.f.s. and this amount together with the 75 c.f.s. from
El Dorado Canyon will be conducted by conduit either to diversion point 3a or
to diversion point 3b on Volcano Canyon. At times when the water is conducted
to diversion point 3a an additional 75 c.f.s. is to be diverted at that point and
the total amount which it is proposed to appropriate under Application 9536

(i.e., 225 c.f.s.) will be conducted through a conduit to the place of use.

At other times the 150 c.f.s. from El Dorado Canyon and the West Fork of El Dorado Canyon will be dumped into Volcano Canyon at point 3a and allowed to flow down this canyon to diversion point 3b at which point the 150 c.f.s. will be rediverted and an additional 75 c.f.s. will be diverted from Volcano Canyon at diversion point 3b and the 225 c.f.s. will be conducted to the place of use.

The water is to be used for mining and domestic purposes at the Paragon Mine, located within the NW $\frac{1}{4}$ of Section 30, Section 19, SW $\frac{1}{2}$ of Section 18, T 14 N, R 11 E and the E $\frac{1}{2}$ of Section 13 and E $\frac{1}{2}$ of Section 24, T 14 N, R 10 E, M.D.B.M. After use for hydraulicking for gold the water is to be delivered to Volcano Canyon at a point within the SE $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 30, T 14 N, R 11 E, M.D.B.M.

Protests

The North Fork Ditch Company claims an appropriative right to 60 c.f.s. initiated in 1854 for mining purposes and for the irrigation of 12,000 acres within the Fair Oaks Irrigation District, Citrus Heights Irrigation District, Orangevale, Cardwell Colony, American River Colony and other lands. Its point of diversion is described as being on the North Fork of the American River within the S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 23, T 12 N, R 8 E, M.D.B.M.

Protestant claims that during years of low runoff there has not been sufficient water in the North Fork of the American River at its diversion dam to maintain a flow of 60 c.f.s. and alleges in effect that should Application 9536 be approved it would result in decreasing the low water flow of the American River to the injury of the protestant and that it would constitute an infringement of its existing rights.

Protestant has agreed that the protest may be dismissed provided that the diversion season named in the application be reduced to the period from October 1 to May 31 or if applicant will agree to limit the amount diverted to 2 or 3 c.f.s. during the period from June 1 to September 30.

The American Bar Quartz Mining Company claims rights based upon riparian ownership and an appropriative right initiated prior to the effective date of the Water Commission Act. It claims a right to 5000 miners inches throughout the year for mining and domestic use. Its point of diversion is described as being located within the NW $\frac{1}{4}$ of Section 25 and the NE $\frac{1}{4}$ of Section 26, T 14 N, R 11 E, M.D.B.M. Protestant claims that it intends to use the water for mining purposes on lands riparian to El Dorado Canyon and alleges in effect that should Application 9536 be approved it would result in depriving the company of water to which it is entitled. Protestant states that its protest may be dismissed if suitable protection is afforded to insure that it will always receive at least 5000 miners inches throughout the year and that the proposed appropriation will not ripen into a prescriptive right as against the Company.

Investigation

On July 21, 1942, an investigation of the proposed development under Application 9536 was made in the field by an engineer of the Division. Of this investigation applicant and protestants were duly notified and all were urged to be present or represented.

Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings were signed by applicant W. E. Wilson and by representatives of protestants North Fork Ditch Company and American Bar Quartz Mining Company. The stipulations have been approved by our office.

The records relied upon in the determination of the matter are as follows:

- (1) Application 9536. Complete File.
- (2) U.S.G.S. Water Supply Papers containing records of flow of North Fork of American River at Rattlesnake Bridge, California, from November 1930 to September 1937 and from December 1938 to September 1940.

General Discussion

It appears from the records that the main conduit of the North Fork Ditch Company which heads on the North Fork of the American River within the $S\frac{1}{2}$ of $NW\frac{1}{4}$ of Section 23, T12 N, R 8 E, M.D.B.M. has an estimated capacity of 65 cubic feet per second. The intake of the conduit is about seven miles upstream from the U.S.G.S. gaging station on the North Fork of the American River at Rattlesnake Bridge and approximately three miles downstream from the junction of the Middle Fork of the American River with the North Fork of the American River.

As the water which applicant is proposing to appropriate for mining purposes is to be eventually returned to Volcano Canyon which is tributary to the Middle Fork of the American River it would appear that the only loss to the protestant North Fork Ditch Company would be the amount of water lost by applicant in conveying the water from the original sources to the place of use and thence to the point of return.

The records of the United States Geological Survey indicate that during the seasons of 1931-32, 1934-35 and 1936-37 which approached normal there was water flowing down the North Fork of the American River at Rattlesnake Bridge in excess of the needs of protestant company which leads us to believe that in years of normal runoff the use which applicant proposes to put the water to can be made without interfering with the prior vested rights of the North

Fork Ditch Company. In years of subnormal runoff the burden will be upon the applicant to cease its operations at such times as they will interfere with protestants' diversion and use.

It appears that no use of the water has been made by the protestant American Bar Quartz Mining Company for at least a consecutive period of four years and possibly longer and it is doubtful when its use will be resumed. It would appear that any appropriative right which this protestant may have had at one time has been lost by non-user. While this protestant also claims a riparian right the fact remains that it is not now using the water and that its conduit system is admittedly not in condition to convey water. Riparian use which is prospective only cannot be urged as a basis upon which to deny the approval of an application.

At the time of the investigation the applicant stated that he had no intention of diverting water when such diversions would interfere with any valid rights which the American Bar Quartz Mining Company may have and under date of July 24, 1942 protestant informed this office to the effect that its protest could be considered withdrawn conditional upon applicant's recognition of its prior existing rights.

Under date of August 10 this office informed the American Bar Quartz Mining Company that since Mr. Wilson had previously informed the Division that he would recognize any valid water rights that it might possess and would govern his operations in such a manner as not to interfere with any such rights as might exist, it was considered that the conditions in its letter had been met and its protest against Application 9536 withdrawn and that further consideration of the application would be governed by that understanding.

It is the opinion of the Division that Application 9536 should be approved subject to the usual terms and conditions.

O R D E R

Application 9536 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation by the Division 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 with Respect to Protests and Hearings and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9536 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 17 day of September, 1942.

EDWARD HYATT, STATE ENGINEER

BY

Harold Corbly
Deputy State Engineer

