

Before the Division of Water Resources

Department of Public Works

State of California

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In the Matter of Application 8535 of E. Morris Vail to appropriate water from Lake Hawley, tributary to Hawley Creek and the East Fork of North Fork of North Yuba River in Sierra County for Mining and Domestic Purposes.

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Decision A. 8535 D- 525

Decided January 14, 1946

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Appearances at Hearing Held at Sacramento, Dec. 10, 1945

For Applicant

E. Morris Vail

No appearance

For Protestant

Mrs. Ray Siedletz

No appearance

Examiner

Gordon Zander, Supervising Hydraulic Engineer
Division of Water Resources, Department of
Public Works, State of California

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OPINION

General Description of Proposed Project

Application 8535 was filed with the Division of Water Resources on January 21, 1936, for a Permit to appropriate from Lake Hawley, 5 cubic feet per second throughout the year by direct diversion and 450

acre-feet per annum by storage to be collected from November 1 to July 1 of each season, to be used for mining and domestic purposes within Sections 33 and 34, T. 21 N., R. 11 E. and Sections 3 and 4, T. 20 N., R. 11 E., M.D.B. & M., as shown on a map filed with the Division. The proposed point of diversion is located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 14, T. 21 N., R. 11 E. M.D.B. & M. After use for mining purposes the water is to be returned to the Middle Fork of the North Fork of Yuba River within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T. 21 N., R. 11 E., M.D.B. & M.

Mr. Vail proposes to construct a dam at the outlet of Lake Hawley which will be 27 feet in height and which will increase the capacity of Lake Hawley by 450 acre-feet, the amount which he proposes to store in the lake.

Protest

Mrs. Ray Siedletz has approved Application 8402 before the Division for the appropriation of an amount of water not to exceed 3 cubic feet per second to be diverted throughout the year from the East Fork of North Fork of Yuba River at a point within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24, T. 20 N., R. 10 E., M.D.B. & M., some eleven or twelve miles below applicant's proposed point of diversion for mining and domestic purposes within the said NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24.

Mrs. Siedletz alleges in effect that should Application 8535 be approved it will result in depriving her of water to which she is entitled under her earlier priority during periods of low stream flow as it is the applicant's intention to transport the water to another watershed.

The record indicates that the protest of Mrs. Siedletz might have been withdrawn, were it not for the fact that she fears that her lessees will hold her responsible for a water shortage, should there be one, and

bring a suit for damages against her if she did not press the protest. However, it appears from correspondence with Mrs. Siedletz that she did not wish to attend a hearing and she was informed under date of August 31, 1936 that failure on her part to appear at a hearing if one became necessary, would be interpreted as an abandonment of her protest.

Hearing Set in Accordance

With the Water Code

Application 8535 was completed in accordance with the Water Code and the requirements of the Division of Water Resources and being protested was set for public hearing in accordance with the Water Code on Monday, December 10, 1945 at 10:00 o'clock A.M. in Room 401, Public Works Bldg., Sacramento, California. Of this hearing applicant and protestant were duly notified.

Mrs. Ray Siedletz was informed at the time notice of hearing was sent to her that if she intended to appear it would be necessary to arrange for the services of a court reporter, otherwise no testimony need be taken and that we would appreciate an early reply stating whether she intended to appear. No reply was received.

Applicant was also informed that from previous correspondence with Mrs. Siedletz it was doubtful that she would appear at the hearing and that if she did not appear it would be interpreted as an abandonment of her protest and that it would not be necessary for him to be present at the hearing.

General Discussion

No appearance was made at the hearing by Mrs. Siedletz although a returned registration card signed by her agent indicates that notice of the hearing was received by her as well as a copy of a letter to the applicant stating that if no appearance was made at the hearing by her it would be interpreted as an abandonment of her protest. The protest of Mrs. Siedletz

is therefore dismissed.

It is the applicant's contention that during the period when the reservoir will be filling, there will be sufficient increment to the flow of the East Fork of the North Fork of North Yuba River between his proposed point of diversion and protestant's point of diversion to satisfy the demands of Mrs. Siedletz; that the runoff from Lake Hawley usually ceases in the spring at which time there is plenty of water flowing in the East Fork, but that should there ever be water running into Lake Hawley at times when no water is available at protestant's intake he would allow an equal amount of water, less evaporation losses, to flow down Hawley Creek to the East Fork.

While it appears from the record that Mr. Vail at one time was agreeable to amending the season of direct diversion named in his application to the period from November 1 to July 1 if such an amendment would result in the withdrawal of the protest, Mrs. Siedletz did not consent to such an amendment and we do not believe that it is necessary.

There are many tributaries of the East Fork which contribute to its flow and it is our opinion that the proposed appropriation will not interfere with her prior right under Application 8402 during a season of normal runoff and that during a period of less than normal runoff it is doubtful that any direct flow would be available for applicant himself.

ORDER

Application 8535 for a permit to appropriate water having been filed with the Division of Water Resources, as above stated, a protest having been filed, a public hearing having been held and it appearing that the protest has been abandoned.

IT IS HEREBY ORDERED that Application 8535 be approved and that a permit be issued thereon 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 14th day of January, 1946.


Edward Hyatt, State Engineer.

