

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF APPLICATIONS NUMBERS 2510-2515-2516-2517-2518
2643-2702-2945-3008-3009-3010-3031-3060-3087-3263-3264-3372, OF
W. H. SAMSON FOR PERMITS TO APPROPRIATE WATER IN THE WATERSHEDS
OF TRINITY RIVER AND OF CLEAR CREEK, A TRIBUTARY OF THE SACRA-
MENTO RIVER FOR POWER AND AGRICULTURAL PURPOSES. ALSO IN THE
MATTER OF APPLICATIONS NUMBERS 2665-2666-2667-2678 OF HUMBOLDT
PLACER MINING COMPANY TO APPROPRIATE WATER IN THE WATER SHED OF
STUARTS FORK OF TRINITY RIVER FOR MINING PURPOSES.

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DECISION NO. 2510-2515-2516-2517-2518-2643-2702-2945-
3008-3009-3010-3031-3060-3087-3263-3264-
3372-2665-2666-2667-2678, D 112

Decided June 15, 1926

APPEARANCES AT HEARING HELD NOVEMBER 9, 1925, on the four applications
by HUMBOLDT PLACER MINING COMPANY

For Applicant:

John Hancock of Nutter, Hancock &
Rutherford, Attys., Stockton, Cal.

For Protestant W. H. Samson:

E. L. Randall, Atty., Corning, Cal.
Trinity Dredging Company, Estate of

No appearance:

John C. Van Matre, J.H. & E.H. Boyce.
Edward Hyatt, Jr., Chief of Division
of Water Rights

Examiner:

APPEARANCES AT HEARING HELD MAY 26, 1926, on the seventeen applications
by W. H. SAMSON

For Applicant:

No appearance

For Protestant Humboldt Placer Mining Co: John Hancock, of Nutter

Hancock & Rutherford, Attys., Stockton, Cal.

For Humboldt County and all protestants therein: John F. Quinn, Atty.,

Special Counsel, Eureka, Cal.

For Trinity County and Trinity Valley Farm Centre: C. A. Paulsen, Dist.

Atty., Weaverville, Cal.

No appearances:

Various protestants in the watersheds of
both the Trinity and Sacramento watersheds.

Examiner:

Edward Hyatt, Jr., Chief of the Division
of Water Rights

O P I N I O N

We have here two separate groups of applications to appropriate, the essential details of which are set forth in the following Table No. 1. One group is by W. H. Samson of Corning, California, who proposes to divert the waters of Trinity River, including Stuart's Fork by tunnel through the Trinity Mountains eastward into Clear Creek and the Sacramento River watershed, picking up the waters of Clear Creek also and developing power at 7 power houses en route and utilizing the appropriations ultimately for the irrigation of some 100,000 acres in Tehama County, and other lands on the west side of Sacramento Valley as far south as Dixon. The other group of applications is by Humboldt Placer Mining Company and proposes appropriations from Stuart's Fork of Trinity River and tributaries thereof for placer mining purposes in Trinity County. The two projects are therefore in conflict over the use of the waters of Stuart's Fork.

Only five of the seventeen applications of W. H. Samson were ever completed sufficiently for advertising and of these there were two which remain today grossly deficient; i.e., applications Nos. 3010 and 3264, to appropriate water for agricultural purposes which have never definitely specified the acreage proposed to be irrigated, although the general vicinity thereof has been designated. These five were advertised and vigorously protested by mining interests on Trinity River, by Trinity and Humboldt counties and by other public agencies of those counties and individuals who claim that the waters of Trinity River are urgently needed for mining and agricultural development in the Trinity River watershed and that the diversion of water eastward into Sacramento Valley or to any other watershed

TABLE NO. I

A - APPLICATIONS BY W. H. SAMSON

No	Filed	Sources	Amounts	Acres	Power Houses
2510*	8/18/21	Stuart's Fork	30 c.f.s. & : 18,523 A.F. :		
		Deer Creek	20 c.f.s. & : 12,741 A.F. :		#1-Deer Creek :
2515 :	8/24/21 :	Van Matre Creek	50 c.f.s. :		#2-Van Matre Creek :
2516 :	" :	Owens Creek	50 c.f.s. :		#2-Van Matre Creek :
2517 :	" :	Stuart's Fork	51,300 A.F. :		#4-Slate Creek :
2518 :	" :	Deep Creek	50 c.f.s. :		#3-Van Matre Creek :
2643 :	11/19/21 :	Stuart's Fork	125 c.f.s. & : 35,000 A.F. :		#4-Slate Creek :
2702 :	12/23/21 :	Rush Creek	100 c.f.s. :		#2-Van Matre Creek :
2945*	7/27/22 :	Trinity River	2,000 c.f.s. & : 400,000 A.F. :		#5-French Gulch :
3008 :	8/26/22 :	Trinity River	2,000 c.f.s. & : 1,000,000 A.F. :	82,000 Ac. circ. Dixon :	
3009 :	" :	Trinity River	2,000 c.f.s. & : 1,000,000 A.F. :	70,000 Ac. circ. Willows :	
3010*	" :	Trinity River	1,250 c.f.s. & : 400,000 A.F. :	100,000 Ac. in Tehama Co. :	
3031 :	9/12/22 :	Clear Creek	2,000 c.f.s. & : 20,000 A.F. :		#6-S.Fk. Clear Cr. :
3060 :	9/29/22 :	Clear Creek	1,250 c.f.s. & : 200,000 A.F. :	100,000 Ac. circ. Corning :	
3087 :	10/16/22 :	Trinity River	925 c.f.s. & : 450,000 A.F. :	74,000 Ac. circ. Chico :	
3263*	2/23/23 :	Clear Creek	2,000 c.f.s. & : 300,000 A.F. :		#7-Middle Creek :
3264*	" :	Clear Creek	1,250 c.f.s. & : 200,000 A.F. :	100,000 Ac. circ. Corning :	
3372 :	4/24/23 :	Clear Creek	2,000 c.f.s. & : 300,000 A.F. :		#6-S.Fk. Clear Cr. :

* Application advertised.

The stream named is the stream near whose confluence with Trinity River or Clear Creek the power house is located.

B - APPLICATIONS BY HUMBOLDT PLACER MINING COMPANY

No	Filed	Source	Amount	Remarks
2665	11/30/21	Stuart's Fork	75 c.f.s.	Applications in present
2666	"	Owens Creek	25 c.f.s.	form specify development
2667	"	Van Matre Cr.	25 c.f.s.	of "Humboldt" and "Buckeye"
2678	12/ 7/21	Slate Creek	25 c.f.s.	mining properties

will seriously limit the ultimate mining and agricultural development, interfere with fishing and destroy the scenic beauty of those counties. We are, however, not required to pass upon the merit of those protests because the plans of applicant have not matured sufficiently to justify approval of even those applications which were completed sufficiently for advertisement and it appears further time cannot be allowed for completion of the remaining applications as diligence commensurate with the size of the project has not been exercised in the development of the project.

The first of this group of applications was filed on August 18, 1921, and the remaining sixteen were filed over a period of twenty months ending April 24, 1923. Almost five years have elapsed therefore since the first application was filed and more than three years since the last application was filed. Some general surveys were made and some detail surveys of reservoir sites during this time. Applicant collected some stream flow data also during this time and had some engineering studies made of certain phases of the project but so far as we are advised never undertook any complete and competent engineering study of the feasibility and cost of the project such as would be necessary before financing could be arranged.

In April, 1923, applicant petitioned the Division to declare his seventeen applications a single enterprise and unit under the provisions of Section 11 of the Water Commission Act whereby diligence upon one may be considered diligence upon the remaining applications and appropriations. This petition the Division was obliged to deny on the grounds that the necessary prerequisites to declaring a single enterprise and unit did not

exist in that applicant did not own or control the reservoir sites and apparently no immediate construction was contemplated or possible.

Extensions were allowed from time to time in order that applicant might prosecute such work as was necessary to complete the remaining applications and either organize an irrigation district or negotiate some other arrangement with the owners of lands to be irrigated in Sacramento Valley whereby he could dispose of the water for irrigating purposes after it has passed through the last power house.

Action was also delayed for a time on account of uncertainty as to the attitude of the Federal Power Commission toward allowing necessary rights of way. The matter was investigated for the Federal Power Commission by a special Board of Engineers and eventually on February 9, 1925, a preliminary permit was issued by that office allowing permittee 18 months in which to make necessary engineering investigations, collect stream flow data, and complete an application for license.

The Division was not disposed to press the applicant to complete the applications pending before it while uncertainty existed as to the attitude of the Federal Power Commission because of the expenditure which would have been required. Applicant, however, on October 27, 1924, assured the Division that he would "at once proceed to complete the applications" pending before the Division upon receipt of preliminary permit from the Federal Power Commission.

The applicant did not at once undertake the completion of his applications. After preliminary permit was issued by the Federal Power Commission, however, the Division continued the matter from time to time until January 1, 1926, in the expectation that applicant would

pursue the engineering investigations and collect the stream flow data required by the preliminary permit of the Federal Power Commission, demonstrating diligence in connection with the project in that way rather than by immediately undertaking the requisite work to complete the applications pending before the Division.

On November 9, 1925, Samson and his associate, Mr. C. D. Hill, appeared as protestants at a hearing before the Division upon the applications of Humboldt Placer Mining Company, some of their applications being prior and some subsequent to those of that company. Humboldt Placer Mining Company pressed them for definite information as to the status of their project and when they would be in a position to proceed. They testified that they were not financially able to proceed with the project alone but were in negotiation with other parties looking toward the arrangement of finances.

They admitted that they had been unsuccessful in forming an irrigation district and that no steps had been taken toward incorporating a company which could proceed with the work, and could give no definite information as to when they might be in a position to proceed with construction if permits were issued upon their applications.

On December 5, 1925, Samson asked for a further extension of time until August 9, 1926, which was the date theretofore set by the Federal Power Commission for the expiration of its preliminary permit, - advising the Division that negotiations were under way looking toward financing the project, which negotiations should be concluded within the next sixty days, thereby enabling active work on the project to be under way before August 9, 1926, and the requirements of the Federal Power Commission

and of the Division to be met. This request was taken under advisement until February 1, 1926, when the Division advised Mr. Samson:

"We would point out in case there is a misconception in your mind, that the issuance of a preliminary permit by the Federal Power Commission is not in itself cause for an extension on applications for water. The time granted under the preliminary permit was for the securing of records and preparing plans and the actual filing of an application for license and one of the necessities for the procurement of a license is a State permit for the necessary water. Therefore applications should be vigorously prosecuted in order to allow the necessary action before the preliminary permit period expired."

"You are advised that the Division of Water Rights has allowed an extension of two months, or until April 1, 1926, on all these applications. If at the end of this time financing has been arranged to assure compliance with the Federal Power permit and the water applications are complete before this office, a further extension will be in order. However, if no progress has been made in the time allowed the Division will set the whole project for a hearing immediately."

On March 3, 1926, the Federal Power Commission advised Mr. Samson that thirty days were allowed him in which to show cause why his preliminary permit should not be revoked for failure to comply with Article 3-A. And on April 27th there having been no showing by applicant as requested in our letter of February 1st, a hearing was set for Wednesday, May 26, 1926, at 10 o'clock A. M. in Room 707 Forum Building, Sacramento, for the purpose of "allowing applicants, protestants and other parties interested in the above numbered applications to inform themselves as to the nature and effect of the proposed appropriations and to present facts, maps, exhibits and other material which may have a hearing upon same, in order that the Division of Water Rights may be fully informed in acting upon the applications."

Applicant, although in receipt of due notice, failed to appear at this hearing and has since failed to show any cause therefor. There were,

however, appearances on behalf of various protestants as noted above.

Briefly stated, the situation appears to be as follows:

These seventeen applications by W. H. Samson are for a single enterprise or project as the applicant has himself represented. While three of the power applications are substantially complete, applicant has manifested no desire to proceed with the appropriations proposed therein independently of the appropriations proposed in the remaining fourteen applications which are grossly incomplete. Although the project had its inception almost five years ago, and the latest application was filed more than three years ago, there has been no complete and competent engineering study of the matter such as would be required to determine within reasonable limits the cost and economic feasibility of the project.

The applicant has admitted that he is not in a position to finance the project himself and he has failed to show that other responsible parties are interested.

He does not own the land to be irrigated and he has failed to show any legal relationship to the owners of said land. The movement to organize an irrigation district which was initiated several years ago failed of accomplishment and there appears no alternative vehicle has been provided by which water may be delivered to the land which it was proposed to irrigate.

Applicant is not, so far as we are advised, a public utility, nor has he negotiated any contracts for disposal of the power which it is proposed to generate.

The time which was allowed by the Federal Power Commission within which to make field investigations and gather water supply data is about to expire and revocation of the preliminary permit issued by that office

appears in prospect because of applicant's failure to observe the conditions of Article 3 A of said permit. Our understanding is that the Commission is now merely waiting action by this office.

In other words it appears that the diligence manifested by applicant to date has been altogether incommensurate with the size of the project and that the plans of applicant remain incomplete and uncertain.

On the other hand we have the definite showing on behalf of Humboldt Placer Mining Company that it is not only ready but anxious to proceed under Applications pending before us; i.e., Applications 2665, 2666, 2667, 2678.

Mr. George E. Waggoner, agent for this mining company testified that he also represents Charles A. Ogren of New York who has an option to purchase the La Grange mining properties; that \$900,000 is immediately available for taking up this option which is being maintained by Ogren at a monthly cost of \$400, and that the La Grange property would be developed conjointly with the Humboldt and Buckeye properties when it is apparent to the holders thereof that water will be available for the purpose. They hesitate, however, to exercise the option so long as there exists any uncertainty as to the action which may be expected upon the applications covering the Samson project and their own applications.

We have also the assurance of official representatives from both Humboldt and Trinity Counties that the case of Humboldt Placer Mining Company is but typical of many smaller enterprises in those counties which have been waiting and must continue to await development while uncertainty continues relative to the Samson project. Under the

circumstances we must therefore hold that the applications covering the Samson project are incomplete, that insufficient diligence has been exercised to justify further allowance of time for the completion thereof, and that they should be cancelled.

Applications 2665-2666-2667 & 2678 by Humboldt Placer Mining Company were filed November 30, 1921 and December 7, 1921. These applications propose the use of water from Stuart's Fork of Trinity River and its tributaries, Slate, Van Matre and Owens Creek for mining development of the Humboldt and Buckeye properties which lie to the South of Stuart's Fork. All of the water so used would be returned to Stuart's Fork, Trinity River or its tributary, Rush Creek, at various points near the properties.

Within 2 months of the date of the first filing, all of these applications were made complete and, so far as lay within control of the applicant, met all requirements of the Division prerequisite to issuance of permits. Applicant has indicated readiness to proceed with the development specified in the applications and as hereinbefore indicated now proposes to operate the La Grange property, the largest placer mine in the world, in addition to the Humboldt and Buckeye properties. All of these properties have heretofore been mined and a large part of the conduits required for the project are in existence, although in bad repair from lack of use.

These applications were completed in accordance with the requirements of the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing in room #707 Forum Bldg., Sacramento, at 10:00 o'clock A. M., on November 9, 1925. Of this hearing applicant and pro-

testants were duly notified.

The protest of Trinity Dredging Company states a claim to 100 second feet from Stuart's Fork and $12\frac{1}{2}$ second feet from Slate Creek for mining purposes. J. H. and E. H. Boyce and the Estate of John C. Van Matre claim water for the irrigation of a total of about 800 acres gross, for which 10 second feet should be ample if in fact all of it is irrigated, although the total claimed in their protests is about 45 second feet.

Evidently the Dredging Company's diversion from Slate Creek is effected upstream from applicant's proposed diversion on that source and need not therefore be considered as a cause of action. Claims to rights by protestants to divert from Stuart's Fork as shown above total 110 second feet. The best available information on the flow of Stuart's Fork is a water supply study by William S. Post made on behalf of W. H. Samson, which shows that at times the flow of Stuart's Fork reaches in excess of 500 second feet at the point of diversion proposed by Humboldt Placer Mining Company. Mr. Waggoner testified that he had seen as much as 10,000 inches of water flowing in Stuart's Fork during the latter part of July and that about November 1, 1925, there was about 5,000 inches of water in that stream. These statements were not denied by opposing parties present. It further appears that since September, 1922, no water has been used by the Trinity Dredging Company. Since their claims to right as stated in their protest are based on appropriations it would appear under section 20a of the Water Commission Act that any such water may now be subject to appropriation.

In view of available information as to flow of the sources it is not seen wherein rights to use water for the irrigation of 800 acres could constitute a bar to issuance of permits to appropriate unappropriated water subject to vested rights. Furthermore none of these protestants appeared at the hearing nor have they substantiated their claims as set forth in their protests since the Mining Company in answering the protests denied that the appropriations sought would injure the protestants in the exercise of any rights which may be vested in them.

The protests of W. H. Samson against these applications are based on his rights under applications which are to all intents and purposes cancelled upon the records of the Division of Water Rights and need therefore receive no further consideration as any cause of action he may have stated has ceased to exist.

O R D E R

Applications Numbers 2510-2515-2516-2517-2518-2643-2702-2945-3008-3009-3010-3031-3060-3087-3263-3264-3372 by W. H. Samson for permits to appropriate water having been filed with the Division of Water Rights, as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that each of these seventeen applications by W. H. Samson be denied and cancelled upon the records of the Division of Water Rights, and

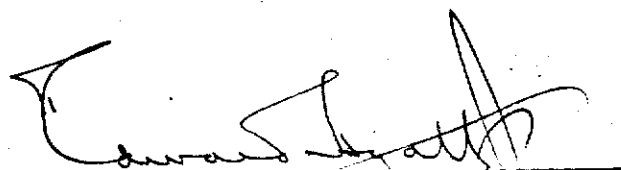
Applications 2665-2666-2667-2678 by Humboldt Placer Mining Company for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed,

a public hearing having been held, and the Division of Water Rights
now being fully informed in the premises:

IT IS HEREBY ORDERED that said applications Numbers 2665-2666-
2667 and 2678 be approved and that permits be granted to the applicant
subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 15th day of June,

1926.



CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

JCF:CC