

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

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In the Matter of Revocation of Permit 2772 heretofore issued upon Application 4771 of Alhambra Mining Corporation, Allowing an Appropriation of 7.5 cubic feet per second by direct diversion and 500 acre feet per annum by storage of runoff of Crater Lake Basin in Alpine County for Power Purposes.

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DECISION A 4771 D - 296

Decided *September 28, 1931.*

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APPEARANCES AT HEARING HELD August 21, 1931

For Permittee

Alhambra Mining Corporation

Mr. and Mrs. J. W. Hopkins

For Protestants

Fred Settlemeier  
W. F. Dressler

Fred Settlemeier  
Fred H. Dressler

EXAMINER: E. H. Bryan, Hydraulic Engineer, Division of Water Resources, State of California.

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OPINION

On April 30, 1927, Application 4771 of Alhambra Mining Corporation was approved by the issuance of Permit 2772 allowing the appropriation of 7.5 cubic feet per second by direct diversion from January 1st to December 31st and 500 acre feet per annum by storage to be collected between about October 1st and about August 31st of each season from the runoff of Crater Lake Basin tributary to West Fork of Carson River for power purposes.

According to the terms of the permit actual construction work was to begin on or before July 1, 1927, to be completed on or before October 1, 1930, and complete application of the water to the proposed use was to be made on or before October 1, 1930.

When acting upon the application this office was not advised of the fact that there was a question as to right of access, the applicant having claimed ownership of the point of diversion, whereas it subsequently developed that W. F. Dressler and H. W. Settlementer are vested with an adjudicated right to impound 320 acre feet per annum in a reservoir created by means of a dam constructed across the natural outlet of Crater Lake with priority of August 19, 1895, during the period between November 1st of each year and June 1st of the succeeding year. This right is covered by a decree entered November 29, 1931, in the Superior Court of the State of California, in and for the County of Alpine, in an action entitled "In the matter of the determination of the rights, based upon prior appropriation, of the various claimants of the waters of the West Fork of the Carson River and its tributaries in California."

From evidence before this office it appears that permittee's proposed diversion site is identical with the dam described in the above referred to adjudication proceedings, originally built by the Alpine Land and Reservoir Company and subsequently purchased by Fred Settlementer and S. F. Dressler.

According to the 1927 progress report filed in this office November 19, 1927, \$2,250.00 had been spent on a 30 H.P. Pelton wheel, a compressor and pipe line to divert the overflow from the creek above the falls to the Pelton wheel and a building had been constructed over the

machinery. No actual work on the pressure tunnel or flume was reported.

Progress report for 1928 filed November 30, 1928, states no use of water under permit was made and that the old dam had washed out wrecking permittee's power plant and roads. No progress on tunnel was reported.

Progress report for 1929 filed November 6, 1929, reports no progress.

Progress report of 1930 filed October 24, 1930, reports the completion of 25 feet of tunnel.

After the destruction of the dam a controversy developed between permittee on the one hand and Settlemeyer and Dressler on the other, the latter insisting on reconstructing the dam and the former refusing to either allow or assist them to do so.

Under date of October 24, 1930, this office advised permittee as follows:

"The time for completion of construction and use terminated on October 1, 1930, and in view of the lack of progress since the washing out of the dam above you in May, 1928, the Division can not consistently allow a further extension at this time. We realize the difficulties which have prevented progress, however, and shall withhold action pending a further showing by you until July 1, 1931. If you desire to proceed with the development it is expected that on or before that date you will have either filed with this office evidence that construction of the diversion dam and appurtenant works is under way, or that a suit to quiet title to the property on which the dam is to be located has been initiated, or that an agreement has been reached with the Dresslers and Settlemeyers whereby you may enter freely upon the premises of the previously existing dam and begin construction at will.

"If you elect to accept the first alternative, steps should be taken at once to complete an application to this office for approval of plans for the dam."

On May 27, 1931, Messrs. Dressler and Settlemeyer submitted a statement of diligence in support of their adjudicated rights at Crater

Lake. They stated that in the year 1928 (when the Crater Lake dam washed out) they spent a large sum in improving the roadway into the lake in order to rehabilitate the dam. In 1929 they claim that they partially rehabilitated the dam and stored some water. In 1930 they did some work on the outlet works and cleared the dam site and in 1931 expect to do some further work on the road and the outlet works.

It appearing to this office that permittee had failed to comply with the terms and conditions of the permit, the matter was set for a public hearing, in accordance with Section 20 of the Water Commission Act, on August 21, 1931, at 10:00 A.M. in Public Works Building, Sacramento, California. Of this hearing, W. F. Dressler, H. W. Settlemeyer and permittee, were duly notified.

From testimony introduced at the hearing and facts as evidenced by records of this office, it appears that permittee has failed to complete construction within the time specified in the permit, that although control of the point of diversion is disputed he refuses to initiate a suit to quiet title thereto, that although more than four years have elapsed since permit was issued and he has been advised of the necessity thereof, permittee has failed to file an application for approval of plans for the dam and that he has shown a lack of diligence in the matter.

It would appear therefore, that this office cannot consistently withhold action longer and therefore Permit 2772 should be revoked.

#### **ORDER**

Permit 2772 having heretofore been issued in approval of Application 4771, it appearing to the Division of Water Resources that permittee has failed to comply with the terms and conditions of the permit, a hearing

having been held at which permittee was afforded an opportunity to appear and show cause why the permit should not be revoked because of failure to comply with the terms and conditions thereof, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Permit 2772 be revoked and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 28<sup>th</sup> day of Sept, 1931.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

RCO:MF