

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

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In the Matter of Applications 6913 and 6914 of A. J. Warrington
to appropriate from Virginia Creek and Dog Creek, respectively
in Mono County for Placer Mining Purposes.

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DECISION A. 6913, 6914 D 325

Decided

July 13, 1932

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APPEARANCES AT HEARING HELD AT SACRAMENTO, SEPTEMBER 12, 1931

For Applicant

A. J. Warrington

J. M. Walthall

For Protestants

Merle F. Kelley-Bradshaw
Walker River Irrigation District
I. A. Strosnider
Joe Scieriene

In propria persona
No appearance
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EXAMINER: Everett N. Bryan, Hydraulic Engineer for Harold Conkling,
Deputy in Charge of Water Rights, Division of Water Resources,
Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECTS

Applications 6913 and 6914 were filed on March 17, 1931, by A. J. Warrington for the purpose of obtaining a water supply for placer mining purposes.

Under Application 6913 it is proposed to appropriate 3 second feet of the waters of Virginia Creek, tributary to East Walker River in Mono County, to be diverted from about January 1st to about December 15th

of each season at a point within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 2, T 3 N, R 25 E, M.D.B.&M. The water is to be used for placer mining purposes within Section 2, T 3 N, R 25 E, M.D.B.&M. after which it will be returned to Virginia Creek at the intersection of said creek with the north line of said Section 2.

Under Application 6914 it is proposed to appropriate 5 second feet of the waters of Dog Creek, tributary to Virginia Creek and East Walker River in Mono County, to be diverted throughout the entire year at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16, T 3 N, R 25 E, M.D.B.&M. The water is to be used for placer mining purposes within Sections 11 and 14, T 3 N, R 25 E, M.D.B.&M., after which it will be returned to Virginia Creek within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 11.

Both applications were protested by Walker River Irrigation District, I. A. Strosnider, Joe Scieriene and Merie F. Kelley-Bradshaw.

PROTESTS

The Walker River Irrigation District under Application 1389, Permit 2536 has the privilege of diverting 57,000 acre feet per annum from East Walker River from about September 1st to about July 20th of each season for agricultural purposes. It claims that there is no unappropriated water in the sources from which applicant proposes to divert, and that there is a suit pending in the U. S. District Court for the District of Nevada, entitled "United States of America, Plaintiff, v. Walker River Irrigation District, et al., Defendants," wherein the United States of America claims a shortage of water on behalf of the Walker River Indian Reservation and seeks to enjoin any additional use of water by Walker River Irrigation District, et al.

I. A. Strosnider and Joe Scieriene allege in effect that they are the owners of a large tract of land riparian to East Walker River; that they have appropriated and are vested with the right to the use of 32.0 and 33.3 cubic feet per second, respectively, of the waters of East Walker River, Virginia Creek and its tributaries; that the granting of these applications will result in interference with their prior rights and that the proposed appropriation would pollute waters which they divert.

Mrs. Merie F. Kelley-Bradshaw alleges that the approval of Application 6913 will result in interference with an appropriative right initiated by Thos. Kelley in July 1913 and that the approval of Application 6914 would permit applicant to divert water from Dog Creek above her point of diversion and return it to Virginia Creek below her point of diversion thereby leaving her point of diversion on Dog Creek dry. Protestant's rights are based upon a filing by Thos. Kelley in December, 1912.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE
WATER COMMISSION ACT

Applications 6913 and 6914 were completed sufficiently for advertising in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on September 12, 1931, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing, applicant and protestants were duly notified.

DISCUSSION OF PROTESTS

No appearances were made at the hearing on behalf of protestants Walker River Irrigation District, I. A. Strosnider and Joe Scieriene. The

attorney for these protestants informed this office prior to the hearing that they had decided to submit the matter upon proofs previously submitted in the matter of Application 6278 of A. J. Warrington and upon protests filed in connection with Applications 6913 and 6914.

Application 6278 of A. J. Warrington was approved on September 6, 1930, by the issuance of Permit 3557 allowing Mr. Warrington to appropriate 3 cubic feet per second of the waters of Dog Creek from about October 1st to about June 20th of each season. Under Application 6278, Mr. Warrington had also asked for an appropriation of 200 acre feet per annum to be stored and subsequently released but this feature of Application 6278 was denied and in order to extend the season of direct diversion Application 6914 was filed which specified the same amount of water and the same point of diversion, but specified a season of diversion extending throughout the entire year. This application was filed with a definite understanding that should Application 6914 be approved Application 6278, Permit 3557 would be withdrawn. (See letter from applicant's attorney dated April 2, 1931.)

Application 6278 having been protested, a public hearing was held in connection therewith on January 27, 1930, and as a result of the hearing, Decision A. 6278 D 267 was rendered in which it was held that this office was without authority to deny an application upon a showing that there might be damage to downstream users by reason of the silt and debris conveyed by the water returned to the stream after use by applicant for mining purposes, and that relief in such instances lay in injunctive or other appropriate court measures rather than in denial of the application. It was held also, that, in view of the fact that the water sought to be appropriated would be returned to the stream above protestants' points of diversion, no ground of objection had been stated by the protestants which would warrant the denial of the direct diversion feature of the application.

As protestants, Walker River Irrigation District, I. A. Strosnider and Joe Scieriene advanced the same objections to the approval of Applications 6913 and 6914 as were advanced against the approval of Application 6278 and as no further testimony has been submitted in support of their contentions, it is the opinion of the Division that their protests against the approval of Applications 6913 and 6914 should be dismissed.

Mrs. Merie F. Kelley-Bradshaw presented no evidence in support of her contention at the hearing. She stated that she had no objection to the applicant using any surplus water which might be available and that she was agreeable to "let the matter stand." Her protest may therefore be dismissed.

RIGHT OF WAY THROUGH FEDERAL POWER SITE WITHDRAWAL

As the proposed project under Application 6913 lay within a Federal Power Site Withdrawal and the project under Application 6914 lay partly within a Federal Power Site Withdrawal and as applicant's mining claims were apparently filed subsequent to said Withdrawals, action upon the applications was withheld subsequent to the hearing in order to afford applicant an opportunity to acquire the necessary easements.

The matter was brought before the Federal Power Commission and at its meeting of March 28, 1932, it voted to determine that the value of the lands in question would not be injured or destroyed for purposes of power development by location, entry or selection under the provisions of the Federal Power Act. The Commissioner of the General Land Office was advised of this action and notified applicant that location notices should be posted for mining claims on May 21, 1932, after which date the land af-

ected by Applications 6913 and 6914 would be restored to its original status as open, unentered public domain.

On June 15, 1932, this office was advised by applicant that he had relocated his claim in accordance with the instructions of the General Land Office.

SUMMARY

The use of water proposed under Applications 6913 and 6914 is a non-consumptive use; the purpose for which the water is to be diverted is beneficial and the applicant has obtained the necessary easements on Federal lands. It is therefore our opinion that Applications 6913 and 6914 should be approved.

O R D E R

Applications 6913 and 6914 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 6913 and 6914 be approved and that permits 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 13th day of July, 1932.

EDWARD HYATT, State Engineer

BY Harold C. Cushing
Deputy

