

*Mr. Stoddard*

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

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In the matter of Application 7772 of Charles Faulhaber to appropriate from Sucker Run Creek in Butte County, tributary to South Fork of Feather River for Mining Purposes, and Application 7864 of J. G. Land, et al. to appropriate from Sucker Run Creek and Big Winters Creek tributary to Sucker Run Creek in Butte County for irrigation and domestic purposes.

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DECISION A. 7772, 7864 D - 378

Decided

*July 8, 1935*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, OCTOBER 31, 1934.

For Applicants

Charles Faulhaber  
J. G. Land, et al.

No appearance  
J. G. Land

For Protestants

Charles Faulhaber  
J. G. Land, et al.  
Louis O. Normandin

No appearance  
J. G. Land  
No appearance

EXAMINER: Everett M. Bryan, Supervising 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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OPINION

GENERAL DESCRIPTION OF PROJECTS

Application 7772 was filed December 1, 1933, by Charles Faulhaber.

It proposes an appropriation by direct diversion from Sucker Run Creek of 2 cubic feet per second throughout the year for hydraulic mining purposes.

It is proposed to divert the water at a point within the S $\frac{1}{2}$  of S $\frac{1}{2}$  of Section 17, T 20 N, R 7 E, M.D.B.&M. by means of an earth and rock dam 6

feet high and 40 feet long and to convey the water through the Mooretown ditch to his mining claims within Section 20, T 20 N, R 6 E, M.D.B.&M. Applicant states that construction work has been completed. The application was protested by J. G. Land, John Bean and William M. Bills jointly.

Application 7864 was filed March 6, 1934, by J. G. Land, John Bean and William M. Bills. It proposes an appropriation by direct diversion from (1) Sucker Run Creek, and (2) Big Winters Creek (from either or both sources) of 3 cubic feet per second throughout the year for irrigation and domestic purposes. It is proposed to divert the water at points within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 17, T 20 N, R 7 E, M.D.B.&M., the dam on Sucker Run Creek to be 1 foot high and 20 feet long and the dam on Big Winters Creek to be 6 feet high and 22 feet long, both dams to be constructed of earth, rock and logs. Water is to be conveyed through the Mooretown ditch to the following lands:

Feather River Pine Mills, Inc.

E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 14, T 20 N, R 6 E, M.D.B.&M.	35 acres
W $\frac{1}{2}$ NE $\frac{1}{4}$ " " " "	15 "
SW $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "	10 "
W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 24, " " " "	20 "
NW $\frac{1}{4}$ SE $\frac{1}{4}$ " " " "	10 "
Total .....	80 acres

Domestic use within E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 24, T 20 N, R 6 E, M.D.B.&M.	"
Domestic use within E $\frac{1}{2}$ NE $\frac{1}{4}$ " " " "	"
Domestic use within NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, " " " "	"

John Bean

S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 20, T 20 N, R 6 E, M.D.B.&M.	20 acres
N $\frac{1}{2}$ NE $\frac{1}{4}$ " " " "	20 "
Total .....	40 acres

F. L. Humphrey

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T 20 N, R 6 E, M.D.B.&M.	2.5 acres
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Wm. M. Bills

S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 22, T 20 N, R 6 E, M.D.B.&M.	40.0 acres
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J. Q. Mullins

Domestic use within NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 22, T 20 N, R 6 E, M.D.B.&M.	
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Salina Mullins

Domestic use within NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 22, T 20 N, R 6 E, M.D.B.&M.

Ear and Mike McCauley

NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 22, T 20 N, R 6 E, M.D.B.&M. 5 acres

Dan P. Mullins

SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 22, T 20 N, R 6 E, M.D.B.&M. 2.5 acres

F. P. Dwyer

Domestic use within SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 15, T 20 N, R 6 E, M.D.B.&M.

Lillian Whittier

Domestic use within SW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 14, T 20 N, R 6 E, M.D.B.&M.

M. F. Whittier

Domestic use within NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 14, T 20 N, R 6 E, M.D.B.&M.

Moerstown School District

Domestic use within SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 14, T 20 N, R 6 E, M.D.B.&M.

Grace Popejoy

Domestic use within NE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 14, T 20 N, R 6 E, M.D.B.&M.

Rosie Taylor

E $\frac{1}{2}$  NE $\frac{1}{4}$  Section 23, T 20 N, R 6 E, M.D.B.&M. 10 acres

Olive Ank

Domestic use within SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 13, T 20 N, R 6 E, M.D.B.&M.

G. A. Lowery

Domestic use within SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 13, T 20 N, R 6 E, M.D.B.&M.

Nellie B. Alston

Domestic use within SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 13, T 20 N, R 6 E, M.D.B.&M.

According to Application 7864 the irrigation season will begin about March 1st and end about December 1st. The total area to be irrigated is 180 acres. It is proposed to serve 22 households with water for domestic purposes throughout the year. Construction work has been completed.

While Application 7864 was filed in the names of J. G. Land, John Bean and Wm. M. Bills, it appears that these parties are not only acting for themselves but as agents for those whom they propose to serve and agreements have been filed with this office authorizing applicants to act as agents for

these owners, it being understood that whatever rights are consummated under Application 7864 upon the various properties are appurtenant to said properties and not personal to the applicants.

Application 7864 was protested by Charles Faulhaber and Louis O. Normandin.

#### PROTESTS

J. G. Land, Wm. M. Bills and John Bean applicants under Application 7864 have filed a protest against the approval of the earlier Application 7772 of Charles Faulhaber. These protestants claim an appropriative right to the waters of Sucker Run Creek based upon a notice of appropriation posted prior to the effective date of the Water Commission Act and fifty years prior use. They also claim that the present owner of the Mooretown ditch and its predecessors in interest have used or designated the use whenever necessary of the entire flow of Sucker Run Creek at all times. These protestants allege in effect that during the irrigation season at low flow the water is entirely used for domestic and irrigation purposes and that there is not enough water in the proposed source to meet the requirements under both applications.

Charles Faulhaber claims priority under Application 7772 and rehabilitation of a portion of the Mooretown ditch which was abandoned, at an expense of some \$2500. He alleges in effect that should Application 7864 be approved there would be insufficient water in Sucker Run Creek to satisfy his demands under the earlier application.

Louis O. Normandin claims a right to the use of water from Sucker Run Creek through the Mooretown ditch which right is based upon

use extending over a period of more than fifty years. He alleges in effect that should Application 7864 be approved there would be insufficient water for his domestic and irrigation use upon lands within Section 20, T 20 N, R 6 E, M.D.B.&M.

Although not listed as record protestants several Indians entered objections to the approval of Application 7864 through the Sacramento Indian agency.

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

Applications 7772 and 7864 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing in accordance with Section 1a of the Water Commission Act on October 31, 1934, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicants and protestants were duly notified.

GENERAL DISCUSSION

The record indicates that the Mooretown ditch through which both applicants propose to divert water was constructed during the year 1854 for the purpose of delivering water to the mines and was owned and operated by the Oregon Gulch Colony until about 1880. Rights to the ditch were then acquired by one George B. Rogers and then by one H. T. Forsyth together with a ten inch water right. On May 9, 1921, H. T. Forsyth, et ux. conveyed to Hutchinson Lumber Company with certain exceptions the S $\frac{1}{2}$  of NW $\frac{1}{4}$ ; NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and W $\frac{1}{2}$  of NE $\frac{1}{4}$  of Section 14, T 20 N, R 6 E, M.D.B.&M. together with a 10 inch water right from Sucker Run and

the ditch used in connection therewith. Subsequently the Hutchinson Lumber Company failed, defaulted on its bonds and reorganized under the name of Hutchinson Lumber Company of California. This Company also defaulted on its bonds and went under receivership. Its properties were then purchased by Land's father and associates and were operated under the name of Feather River Pine Mills until October 6, 1927, when the mill at Orville burned down. J. Golden Land was then sent to the mountains to take care of the physical properties of the company in 1928.

During 1929 snow slides destroyed a number of flumes and portions of the ditch. Land obtained the assistance of a number of the water users in repairing the conduit and in return for the work done they were supplied with water. Many of the property owners along the ditch apparently have old appropriative rights to the water, others have not, and in order to systematize the use, Land conceived the idea of filing an application to serve these property owners and has entered into agreements with a number of them, copies of which are on file with this office.

Among those who refused to be served by Land are the two protestants Charles Faulhaber and Louis O. Normandin. Charles Faulhaber filed Application 7772 to appropriate from Sucker Run Creek which application is prior in time to that of J. O. Land, et al. and proposes to divert from Sucker Run Creek through the Mooretown ditch. He claims to have done considerable work in maintaining the ditch and that he has a right to divert the water applied for through the Mooretown ditch. Normandin also claims a right to divert water through the Mooretown ditch. Neither one of these protestants appeared at the hearing, however, and no testimony was introduced in support of their contentions.

Testimony introduced at the hearing indicated that no water had been used on Hermandin's property since 1922 and no one has occupied his premises for some time.

Faulhaber has been declared incompetent and is confined to the Napa State Hospital. Mrs. J. C. Gordon of Sausalito has been appointed as his guardian. Faulhaber as stated above, was not represented at the hearing although Mrs. Gordon acknowledged receipt of the notice of hearing. Letters addressed to her subsequent to the hearing were apparently turned over to Faulhaber for reply.

Mrs. Gordon was requested to advise this office whether she as his guardian was prepared to proceed with the development should permit be issued and was informed that unless some successor in interest or some authorized agent who is competent to represent Mr. Faulhaber indicates that he is prepared to proceed with the development proposed under Application 7772 the Division would be obliged to deny the application. No reply has been received from Mrs. Gordon and therefore Application 7772 should be cancelled upon the grounds that applicant is not in a position to proceed with development if he were issued a permit.

As to Application 7864 of J. G. Land, et al., the applicants are ready to proceed under the application should it be approved and are apparently in a position to utilize the Meoretown ditch. Agreements have already been entered into between the record applicants and the parties to be served. It has not been shown that the proposed diversion will interfere with prior vested rights and the purposes to which applicants intend to put the water are useful and beneficial ones. It is therefore the opinion of this office that Application 7864 should be approved subject to the usual terms and conditions.

O R D E R

Applications 7772 and 7864 for permits to appropriate water having been filed with the Division of Water Resources as above stated, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7772 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that Application 7864 be approved and that a permit be granted thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *8th* day of *July*, 1935.

EDWARD HIATT, State Engineer

BY HAROLD CONSLING

Deputy

WES:MP