

Stoddard

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

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In the matter of Applications 8303 and 8304 of W. H. Weccatt to appropriate from Evening Star Creek in Siskiyou County for Mining and Power Purposes, respectively.

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DECISION A. 8303, 8304 D # 387

Decided 4/21/36

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APPEARANCES AT HEARING HELD AT SACRAMENTO, MARCH 24, 1936

For Applicant

W. H. Weccatt

No appearance

For Protestants

A. J. Ball

No appearance

John Teukert

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.

O P I N I O N

GENERAL DESCRIPTION OF PROJECTS

Applications 8303 and 8304 were filed by W. H. Weccatt on April 1, 1935.

Under Application 8303 it is proposed to appropriate 3 cubic feet per second throughout the year from Evening Star Creek, tributary to North Fork of Salmon River via Edly's Gulch in Siskiyou County for mining and domestic purposes. Diversion is proposed at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16, T 39 N. R 11 W, M.D.B.&M. for use within SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T 39 N, R 11 W, M.D.B.&M.

After use for mining purposes it is proposed to return the water to Evening Star Creek within the $SE\frac{1}{4}$ $SE\frac{1}{4}$ Section 9, T 39 N, R 11 W, M.D.B.&M.

Application 8304 is identical with Application 8303 except that the water is to be used for power purposes.

Both applications were protested by A. J. Ball and by John Teukert.

PROTESTS

A. J. Ball claims an appropriative right to divert from Evening Star Creek based upon notice posted November 6, 1902, and recorded November 10, 1902. He claims that water is diverted within the $NW\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 16, T 39 N, R 11 W, M.D.B.&M. which point is below the applicant's proposed point of diversion and above the proposed point of return, and alleges in effect that should Applications 8303 and 8304 be approved it would result in depriving him of water to which he is entitled and would depreciate the value of his mining properties in Lime Kiln Gulch.

John Teukert, under Application 8165, Permit 4612 may appropriate, subject to vested rights, an amount of water not to exceed 3 cubic feet per second throughout the year from Evening Star Creek for mining and domestic purposes. The point of diversion is within the $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 9, T 39 N, R 11 W, M.D.B.&M. between applicant's proposed point of diversion and point of return. He alleges in effect that inasmuch as the water which applicant seeks to appropriate will not be returned to the stream above him he will be deprived of water to which he is entitled under the earlier filing.

No formal answers to the protests were filed although the advisability of such action was directed to applicant's attention.

HEARING HELD IN ACCORDANCE WITH
SECTION 14 OF THE WATER COMMISSION ACT

Applications 8303 and 8304 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 14 of the Water Commission Act on Tuesday, March 24, 1936, at 10:00 o'clock A.M. in the Council Chamber, City Hall, Yreka, California. Of this hearing applicant and protestants were duly notified.

As no notice of intended appearance was given by the applicant as required by the notice of hearing the hearing was transferred to Sacramento in order to best serve the interests of this office, the protestants being advised that since applicant had failed to answer the protests and filed no notice of intended appearance it would not be necessary for them to be present at the hearing.

GENERAL DISCUSSION

Prior to the date of the hearing, applicant advised this office by telephone that he did not wish to appear at the hearing and indicated that he had transferred or leased the property involved in Applications 8303 and 8304 to other parties. The message however was not clear and under date of March 26, 1936, applicant was advised that although at the expiration of five days following the date of the hearing, (or on March 30th) Applications 8303 and 8304 would technically be subject to cancellation unless there was a showing made by the owner of good cause for failure to appear at the hearing, action in the matter would be suspended for a reasonable time thereafter because of the confusion surrounding the case in order to afford the true parties at interest an opportunity to make themselves known and to show good cause for fail-

ure to appear. Applicant was further advised that in the event that the uncertainties were cleared up and good cause was shown for failure to appear at the hearing the matter would be re-scheduled for hearing in the event that applicant indicated his intention to appear.

Although copies of this letter were sent to all known interested parties no reply has been received or cause shown for failure to appear and as Regulation 12 of the Rules and Regulations of the Division prescribes, in connection with hearings, that any party in interest who fails to appear at the appointed hour and place will not be entitled to a further hearing unless good cause for such failure has been shown within five days thereafter, and as applicant failed to file any answer to the protests when requested, it may be considered that the allegations of the protests are deemed admitted by applicant.

CONCLUSION

The failure of the applicant to comply with the rules and regulations of the Division with respect to filing answers to the protests, his failure to appear at the hearing and his failure to show good cause for his non-appearance would appear to indicate either an admission on his part of the allegations made by the protestants, or an abandonment of the project such that issuance of permits in approval of the applications is not justified. It is therefore the opinion of the Division that Applications 8303 and 8304 should be rejected and cancelled upon the records of this office.

ORDER

Applications 8303 and 8304 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests hav-

ing 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 said Applications 8303 and 8304 be rejected and cancelled upon the records of the Division of Water Resources without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *21st* day of *April*, 1936.

EDWARD HYATT, State Engineer

Harold Conkling

BY _____

Deputy

WES:MP