

*M. Stoddard*

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

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In the matter of Application 5433, Permit 3091 of C. P. and Daisy Terwilliger, to appropriate from Coon Creek and Craigs Creek for mining purposes, and Application 8412 of T. N. McDaniel to appropriate from Craigs Creek for mining and domestic purposes.

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Decision A 5433, 8412 - *D 395*  
Decided *November 25, 1936*

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APPEARANCES AT HEARING HELD MARCH 23, 1936, AT CRESCENT CITY, CALIFORNIA

For Permittee and Protestant to Application 8412  
Clark P. Terwilliger

in propria persona  
Paul A. Brunk, Atty.  
Clark and Clark

For Applicant  
T. N. McDaniel

in propria persona  
T. F. Peterson, Atty.

EXAMINER: Everett N. 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 5433 in the name of C. P. and Daisy V. Terwilliger was approved for 25 cubic feet per second from January 1st to December 31st of each season, 12.5 cubic feet per second of which is to be taken from Coon

Creek and 12.5 cubic feet per second from Craigs Creek for placer mining purposes. The place of use is given as various mining claims in Sections 31, 32 and 33, T 17 N, R 2 E, H.B.&M. Time was set for beginning construction, completing construction and completing beneficial use of water, and on November 5, 1934, a further extension was allowed to terminate December 1, 1936, to complete beneficial use.

On August 5, 1935, T. N. McDaniel filed Application 8412 for 25 cubic feet per second from January 1st to December 31st of each season for mining and incidental domestic purposes from Craigs Creek. The point of diversion and conduit were identical to those specified in the Terwilliger application and permit, and the place of use overlapped the place of use specified in the Terwilliger application to some extent. The attorneys for both Mr. Terwilliger and Mr. McDaniel were advised of this overlap in the place of use.

Shortly after the filing of Application 8412, Mr. McDaniel questioned the diligence exercised under Application 5433, Permit 3091 and filed affidavits in support of his contentions that permittee had not shown sufficient diligence to warrant continuance of the permit and shortly thereafter permittees filed protest against Mr. McDaniel's application. The issues having been squarely joined the application and permit of the Terwilligers and Mr. McDaniel's application were set for hearing on March 23, 1936.

#### HEARING SET

The evidence submitted at the hearing indicated that in all Mr. Terwilliger had spent some \$16,000 in building the conduit and placing his project in shape to use water; that in 1931 he had apparently operated the

property himself, and in the working season of 1931-32 he had an informal working agreement with Avis and Linn by which they were to operate the property on a percentage basis; that the year 1932 was wasted in an unsuccessful effort to sell the property to T. N. McDaniel and the property was not operated during the succeeding winter. Early in 1933 a flume washed out which was not repaired until July, 1934. Late in 1934 permittee made an informal working agreement with Avis and McBride; late in 1935 this working agreement or lease was assigned to Mr. McDaniel but according to Mr. McDaniel's testimony the water was used largely if not entirely in the development of other property.

On November 17, 1936, Mr. Clark P. Terwilliger visited this office with Mr. W. J. Bickford of Crescent City. He stated that Mr. Bickford had entered into a lease and option with him for operation and purchase of the property and on November 19th a copy of this lease and agreement was received which covers a period of one year.

There was some discussion at the hearing relative to the overlap in place of use but nothing was done about it. Inasmuch as both parties have been placed on record in this respect, however, and further, inasmuch as the Division has no authority to adjudicate the matter, this phase may be dismissed.

It was indicated that should Mr. McDaniel amend his application to provide for a point of diversion below that of Mr. Terwilliger and secure a special use permit for a parallel conduit, the Division might approve his application irrespective of any action taken upon the Terwilliger filing.

Accordingly on July 22, 1936, Mr. McDaniel filed a petition in the form of an amended application to move his point of diversion on Craige Creek downstream fifty feet below Mr. Terwilliger's intake, and inasmuch as Mr. Terwilliger will therefore be in a position to take any water to which he may be rightfully entitled before the same reaches Mr. McDaniel's intake, the protest of the former was dismissed on August 20, 1936.

#### CONCLUSION

At the time Mr. Terwilliger and Mr. Bickford visited the office on November 17, 1936, it was stated that Mr. Bickford would immediately undertake the necessary work to have the diversion system in condition to operate by December 1st and that he would file with this office an affidavit that the work had been completed and would also file a copy of the lease and option agreement. As stated above, the lease and option agreement has been received and it may be reasonably supposed that the new lessee intends to prosecute the matter with reasonable diligence else he would not have entered into the agreement with Mr. Terwilliger. It is therefore concluded that action upon Application 5433, Permit 3091 should be deferred pending performance of the agreement entered into between Mr. Terwilliger and Mr. Bickford.

Inasmuch as Application 8412 is now unprotested and any diversions thereunder cannot interfere with diversions under the prior filing of Mr. Terwilliger, it is concluded that this application should be approved.

#### ORDER

Application 5433, Permit 3091 for the appropriation of water from

Coon and Craigs Creeks, and Application 8412 for appropriation of water from Craigs Creek having been heard and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that action be deferred on Application 5433, Permit 3091 until further order is entered; and

IT IS FURTHER ORDERED that Application 8412 for the appropriation of water from Craigs Creek be approved subject to the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works, State of California, this *25th* day of *November* 1936.

EDWARD HYATT, State Engineer

(Seal)

MSE:MF

BY HAROLD CONKLIN

Deputy