

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

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In the Matter of Application 8661 by William A. Hedges to
Appropriate Water from Big Creek in Siskiyou
County for Mining Purposes.

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DECISION A 8661 - D 407

Decided - September 25, 1937

APPEARANCES AT HEARING HELD AUGUST 9, 1937, AT YREKA, CALIFORNIA.

For Applicant

William A. Hedges

In propria persona

For Protestant

Lucy May Bendl

R. F. Bendl

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for
Harold Conkling, Deputy in Charge of Water Rights.

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O P I N I O N

DESCRIPTION OF PROJECT

Under Application 8661 Wm. A. Hedges of Forks of Salmon seeks to appropriate 3 cubic feet per second from Big Creek, a tributary of North Fork of Salmon River for mining purposes, diversion to be made within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, Township 40 North, Range 12 West, M.D. B. & M., and use to be made within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 6, Township 59 North, Range 12 West, M.D.B. & M. on the Old Diggins gold placer claim. As filed and advertised the application is to divert throughout the year, and the water would be returned to North

Fork of Salmon River below the confluence of that stream and Big Creek.

DESCRIPTION OF PROTEST

The application is protested by one Lucy May Bendl whose prior Application 8282 was approved on August 10, 1936, allowing an appropriation of 1 second foot from Big Creek at a point approximately one mile downstream and above where Mr. Hedges would return the water to the stream under Application 8661. Protestant maintains that the flow in Big Creek is spasmodic in character and that only intermittently during a period of some three months in a normal year is it of sufficient quantity to satisfy the two appropriations. Protestant further alleges that the ditch originally proposed by applicant crosses her land, and she refuses to grant a right of way.

COMPLIANCE WITH LAW AND THE RULES

Application 8661 was completed and duly advertised in accordance with the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources. It was protested and the matter came on for hearing on Monday, August 9, 1937, at 2:00 o'clock P. M. in the Court House at Treka after due notice to the parties.

DISCUSSION

It would appear from the testimony introduced at the hearing that Big Creek is a stream of irregular and uncertain flow during the months from about December 1st to about June 1st and that during the months from about June 1st to about December 1st the flow is generally so low as to provide no surplus over and above prior and existing rights which it would be practicable for this applicant to undertake to divert even if he were not enjoined by the provisions of Section 482 of the Fish and Game Code (Stats. 1927 Chap. 306) which makes it unlawful to pollute, muddy, contaminate or soil the waters of Trinity and Klamath Rivers Fish and Game District between July 1st and November 30th.

There are no available records of the flow in Big Creek and the ideas of the various witnesses called by applicant and protestant were hazy and indefinite as to the available surplus. Testimony was conflicting but it would appear doubtful that there is any regular or continuously available surplus except possibly during the months of March, April and May and the evidence that there was in a normal year a continuously available surplus even during these months was far from conclusive. However applicant admits the prior right of protestant, promises to use every precaution against infringement thereof if his application is approved, and asserts he is thoroughly experienced in hydraulic mining operations and the construction of such diversion facilities as would be required to operate his property, that he has a proven valuable placer property and that he would be thoroughly justified in proceeding with this development if his application were approved.

Mr. Hedges testified that if unable to secure the use of the existing ditch which he had hoped for he will construct a ditch on a higher level avoiding the Bendl property.

The testimony shows that Mrs. Bendl after completion of her diversion facilities has not operated continuously under her permit when water was available. She may not in the future undertake to operate at all times when water is available. Indeed it is not uncommon for mining operators in similar circumstances to operate only intermittently, and if the venture is unsuccessful she may even abandon her diversion entirely.

The testimony with respect to lack of unappropriated water from about December 1st to about June 1st was inconclusive and this fact together with the uncertain status of the Bendl project and its possibility of abandonment are such as to justify approval of Application 8661 for a limited season.

permit should be issued for the season from about December 1st to about
e 1st.

ORDER

Application 8661 having been filed to appropriate three second feet from
Creek; it having been completed and noticed as prescribed by the Water
mission Act and the rules and regulations of the Division of Water Resources,
having been protested and a hearing having been held upon said protest
ter due notice to the parties; and the Division being now fully advised in
e premises,

IT IS HEREBY ORDERED that Application 8661 be approved subject to the
usual terms and conditions, with the season of diversion limited to the period
from about December 1st to about June 1st of each year.

WITNESS my hand and the seal of the Department of Public Works of the State
of California this 25 day of *September*, 1937.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy.

EBB:CG

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