

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

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In the matter of Application 8984 of Ruby Mine to appropriate  
from Rock Creek, tributary to North Fork of Yuba River  
in Sierra County for mining purposes.

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DECISION A. 8984 D - 418

Decided *April 25, 1938*

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APPEARANCE AT HEARING HELD AT SACRAMENTO MARCH 31, 1938.

For Applicant

Ruby Mine

A.J. Just and R. F. Taylor

For Protestant

W. S. Coffin

No appearance

EXAMINER: Everett N. Bryan, Acting 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 PROJECT

Under Application 8984, filed with the Division of Water Resources  
on June 2, 1937, Ruby Mine proposes an appropriation of one-third of a cubic  
foot per second throughout the year from Rock Creek, tributary to the North  
Fork of Yuba River in Sierra County for mining purposes at the Ruby Mine within  
the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 15, T 19 N, R 10 E, M.D.B. & M. The point of diver-  
sion is within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 11, T 19 N, R 10 E, M.D.B. & M.  
After use for mining purposes the water is to be returned to Rock Creek within  
the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 9, T 19 N, R 10 E, M.D.B. & M.

### PROTEST

Application 8984 was protested by W. S. Coffin who has Application 6966, Permit 3771 before this office allowing an appropriation of not to exceed 3.0 cubic feet per second throughout the year for mining purposes at the Kennedy Quartz Mine located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T 19 N, R 10 E, M.D.B. & M. The point of diversion is within the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of said Section 10 about one mile below the applicants' proposed point of diversion and about one-half mile above the applicants' proposed point of return. Protestant alleges in effect that except during periods of flood flow the amount of water which he may appropriate under Application 6966, Permit 3771 is in excess of the flow in Rock Creek and therefore a diversion as proposed under Application 8984 would result in depriving him of water to which he is entitled.

### HEARING SET

Application 8984 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing on Thursday, March 31, 1938 at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

### GENERAL DISCUSSION

Prior to the hearing, protestant advised this office that he did not intend to appear but would rely upon the Division to protect his interest in the matter. Consequently no appearance was made by the protestant.

Progress reports filed in connection with Application 6966, Permit 3771 indicate that due to financial and legal difficulties very little actual construction work has been accomplished and no use of water has been made. Protestant states, however, in his protest that he will use the water this year and under date of January 13, 1938, informed this office that last year

he had expended approximately \$3,000 on development work and had completed his assessment work for this year thereby enabling him to devote his energy to the development of his project as soon as snow conditions will permit. The time heretofore allowed within which to complete construction work and to apply the water to full beneficial use will not expire until December 1, 1938 and therefore the existence of this permit must be considered in acting upon Application 8984.

No testimony was taken at the hearing. However, Mr. Just and Mr. Taylor, attorney and engineer respectively for the applicant stated that all the flow in Rock Creek during the months of low flow is diverted above the proposed intake of Ruby Mine, conveyed around its proposed point of diversion and returned to Rock Creek above protestant's proposed point of diversion.

Subsequent to the hearing applicant's engineer submitted a water supply study of the flow in Rock Creek which is based upon sound engineering practice which indicates that during the period from about December 1 to about June 15 there is normally sufficient water available for both applicant and protestant, assuming that protestant completes his development and that during the remainder of the year there would normally be insufficient water to supply the amount to which protestant may be entitled irrespective of whether or not diversion is made by applicant.

It appears that applicant had already completed its proposed pipe line and had for some months been using the water. The protestant on the other hand is not now in a position to utilize the water which he has applied for although over 6½ years have elapsed since the approval of his application and there is no certainty that his project will be completed within the extended time. The annual progress reports filed in connection with Application

8966 indicate that little if any actual construction work has been accomplished and protestant has informed this office that he now proposes to utilize water for power purposes in connection with his mining development, although no application has been filed for the use of water for this purpose.

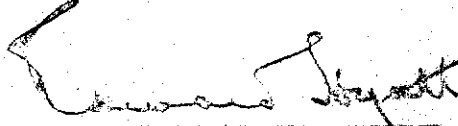
In view of the apparent lack of diligence on the part of the protestant and uncertainty that he will ever complete his appropriation and in view of the further fact that applicant is now in a position to use the water applied for, it is felt that Application 8984 should be approved without restriction as to the season of use and that a permit should be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

O R D E R

Application 8984 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 Application 8984 be approved and that a permit be issued 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 25 day of April 1938.

  
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State Engineer.

(Seal)  
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