

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 9838 of Fred A. Ramsey to
Appropriate from Two Unnamed Springs in Coal Pit Canyon,
Tributary to Cuddy Creek in Kern County,
for Domestic and Irrigation Purposes

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Decision A. 9838 D. 479
Decided *July 1, 1941*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED
APPROPRIATION ON AUGUST 22, 1940

For Applicant

Fred A. Ramsey

Fred A. Ramsey and Son

For Protestants

A. L. Ellis

In propria persona

L. M. Eaken

In propria persona

R. C. Cuddy, Sr.

In propria persona

R. F. Tubbs

No appearance

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer, for Harold Conkling,
Deputy State Engineer in Charge of Water Rights, Division of Water
Resources, Department of Public Works, State of California.

APPEARANCES AT HEARING HELD AT SACRAMENTO ON NOVEMBER 14, 1940

For Applicant

Fred A. Ramsey

No appearance

For Protestants

A. L. Ellis, et al

No appearances

EXAMINER:

Harold Conkling, Deputy State Engineer in Charge of Water Rights, Divi-
sion of Water Resources, Department of Public Works, State of
California.

O P I N I O N

General Description of Project

Application 9838 was filed by Fred A. Ramsey on February 26, 1940

for the appropriation of an amount of water not to exceed 0.012 of a cubic foot per second to be diverted throughout the entire year from two unnamed springs in Coal Pit Canyon tributary to Cuddy Creek in Kern County for domestic and irrigation purposes on one acre of land within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 25, T 9 N, R 21 W, S.B.B.& M. The irrigation season is described as being from about June 1 to about September 30 of each season. It is proposed to divert the 0.012 cubic foot per second when available from the lower spring (A) located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T 9 N, R 21 W, S.B.B.M. but when the entire amount is not available at the lower spring it is proposed to make up the deficiency from the upper spring (B) which is located within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 25.

Protests

A joint protest was filed by A. L. Ellis, L. M. Eaken, R.C. Cuddy, Sr. and R. F. Tubbs against the approval of Application 9838. These protestants derive their water supply from wells and springs which are fed by the waters of Coal Pit Canyon and allege in effect that should water be appropriated by Mr. Ramsey as proposed it would result in drying up their sources of supply.

Field Investigation

On August 22, 1940 the scene of the proposed development was visited by an engineer of the Division accompanied by Protestants Ellis, Eaken and Cuddy and by Applicant Ramsey and as a result of the investigation a report was prepared to which reference is made (filed in Main Correspondence Folder, Application 9838).

It was the conclusion of the engineer who investigated the proposed development that the surface showings indicated that the water which applicant proposes to appropriate did, in fact, contribute to the water supply of the protestants; that the summer flow at the springs was actually less than the amount which applicant seeks to appropriate; that the protestants with the possible exception of Mr. Eaken were entirely dependent

upon this water for household, garden irrigation and stock watering purposes and that any diversion of the waters from Coal Pit Canyon would deplete the underground supply and deprive the protestants of water largely to the extent of such diversion.

Mr. Ramsey who was informed of the findings of our engineer disagreed with his conclusions but did stipulate to the effect that he would agree to abide by a decision of this office based upon the information before us provided, however, that his application would be approved for an amount of water not less than 0.002 of a cubic foot per second. Protestants were informed of the conditions under which applicant would accept permit but with the exception of Mr. Eaken, who withdrew his protest, were not willing to concede anything to the applicant and it was therefore necessary to set the matter for public hearing.

Hearing Set in Accordance With
Section 1a of the Water Commission Act

Application 9838 was 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 was set for public hearing in accordance with Section 1a of the Water Commission Act on Thursday, November 14, 1940 at 10:00 o'clock A.M. in Supervisors Room, Court House, Bakersfield, California. Of this hearing applicant and protestants were duly notified.

On November 7, 1940 a telegram was sent "collect" to the applicant and protestants asking them if they were to be represented at the hearing at Bakersfield. Neither telegram was received, the telegram sent to A. L. Ellis et al not being delivered on account of inadequacy of address and the telegram sent to Mr. Ramsey being refused by him as he was not willing to pay the charges thereon.

On November 8, 1940, five days before the date set for hearing, a letter was addressed to the interested parties stating that as there had been no evidence of intention of the parties to appear at the hearing at Bakersfield, the hearing had been postponed to December 10, 1940 and had been transferred to Sacramento. They were informed however that should any of the parties indicate their intention to appear, the hearing would be transferred to Los Angeles even should it be necessary to take a further continuance in the matter. Special attention was directed to the requirement of a five days notice of intended appearance in the event that any of the parties desired to be heard.

Under date of November 26, 1940 protestants were informed that if no word was received from the applicant prior to December 5, indicating an appearance on his part, it would not be necessary for them to appear at Sacramento but if Mr. Ramsey indicated his intention to appear the hearing would be transferred to Bakersfield or to Los Angeles in order to better accommodate the interested parties.

No word was received from Mr. Ramsey prior to the date set for the hearing but on December 11, 1940 the day following the hearing an undated letter was received from him stating that it would be impossible for him to attend the hearing at Sacramento and requested that he be informed as to the date and place of the Los Angeles hearing. No reason was given for his non-appearance at the hearing set for December 10 nor was any reason given for not informing the Division prior to the hearing as to whether or not he would be present.

Interest of U.S. Forest Service
in the Proposed Sources of Appropriation

The record indicates that prior to the investigation in the field by an engineer of the Division, the U.S. Santa Barbara National Forest proposed to establish a camp ground in Coal Pit Canyon which would be dependent upon the waters of the two springs named as the sources of appropriation in Application 9838 for its water supply and correspondence between the Forest Service and the Division indicated that the Forest Service was of the opinion that there was not only sufficient unappropriated water in the springs for the use of the applicant but also for a prospective supply for its proposed recreational area.

Subsequent to the investigation, the Forest Service was informed under date of January 2, 1941 of the conclusions of our engineer and attention was directed to the fact that should Application 9838 be cancelled upon the grounds of lack of unappropriated water the Division could not consistently approve any application which might in the future be filed by the Forest Service to appropriate from these springs and therefore we would be pleased to delay action upon Application 9838 in order to afford the Forest Service an opportunity to make any showing which it might care to make in support of its apparent opinion that there was unappropriated water available at the springs.

In reply to our letter of January 2, 1941 the Forest Service informed this office that the matter would be taken up with the District Ranger in whose district the springs were located and that an effort would be made to make arrangements whereby the interested parties could all share the use of the water.

No further information having been received from the Forest Service, on June 12, 1941, the engineer who investigated the project discussed the situation with Acting Forest Supervisor K. W. Huestis and Forest Service Engineer Edwin C. Waite with the result that Mr. Waite who was familiar with the situation concurred in the conclusion arrived at as a result of the field investigation and Mr. Waite admitted that there was no prospect of opening up the area for special use lessees in the near future. Both Mr. Huestis and Mr. Waite agreed that the Forest Service would have no objection to any action which the Division might take in connection with Application 9838.

Conclusion

Section 1a of the Water Commission Act provides that upon the failure of any party in interest to appear at a hearing, or to show good cause within five days thereafter for said failure, final action may be taken by the Division without further hearing and as good cause has not been shown by Mr. Ramsey for failure to attend the hearing of December 10, the matter may be considered closed.

As stated above the report of our engineer who investigated the proposed appropriation in the field indicates that there is no water available for appropriation by the applicant and therefore Application 9838 should be cancelled upon the records of this office.

ORDER

Application 9838 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation having been made, 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 Application 9838 be denied and the said application be cancelled upon the records of the Division.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *1st* day of *July* 1941.

EDWARD HYATT, State Engineer

By HAROLD CONKLING
Deputy

(Seal)
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