

BEFORE THE DIVISION OF WATER RESOURCES

DEPARTMENT OF PUBLIC WORKS

STATE OF CALIFORNIA

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In the Matter of Application 12086 of Charles J. Scanlan to appropriate from the East Fork of the South Fork of the North Fork of Indian Creek tributary to North Fork of Yuba River in Sierra County for mining purposes.

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Decision A. 12086 D 585

Decided August 13, 1948

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APPEARANCES AT INVESTIGATION CONDUCTED UNDER THE PROVISIONS OF ARTICLE 13, SECTION 733b OF THE CALIFORNIA ADMINISTRATIVE CODE.

For the Applicant

Charles J. Scanlan

Arthur Lampen

For the Protestants

F. J. Joubert

In propria persona

C. A. Hermanson

In propria persona

EXAMINER - A. S. Wheeler, Assistant Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer.

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OPINION

General Description of Project

Application 12086 was filed by Charles J. Scanlan on September 15, 1947, for a permit to appropriate three cubic feet per second from the

East Fork of the South Fork of the North Fork of Indian Creek in Sierra County to be diverted at a point within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 21, T 19 N, R 9 E, M.D.B. & M. from January 1 to December 31 of each season for mining use.

PROTESTS

F. J. Joubert claims a riparian right to the use of water from the source proposed in Application 12086. Protestant states that water has been used since about 1860 and that he uses the entire supply for hydraulic mining. He further states that he would not be able to operate his mine if the application were approved.

C. A. Hermanson, lessee of the Indian Hill mine, claims a right to the use of water from the proposed source based upon a riparian right and deed from the Pacific Gas and Electric Company. Protestant states that the water has been used since about 1860 and that the entire flow of the creek is necessary for his hydraulic mining, irrigation and domestic needs. Protestant further asserts that if this application should be approved it would completely ruin his property and the mine could no longer operate.

Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733(b) of the California Administrative Code having been entered into by the applicant and the protestants and the stipulations having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on June 23, 1948. Accompanying the engineer were the protestants, F. J. Joubert and C. A. Hermanson, and Arthur Lampen, representative of the applicant.

General Discussion

At the commencement of the field investigation it was found that the rights claimed by protestant Hermanson were on a different branch of Indian Creek than that filed on by the applicant, and that no injury would result to him by approval of this application. Mr. Hermanson did, therefore, withdraw his protest.

Mr. Joubert stated his use was about 3.0 cubic feet per second until July 1 of each year, at which time he ceased operating his mine. He also stated that the mine had not been operating since 1943 but that he expected to resume operations about December 1, 1948. Mr. Joubert depends mainly upon water from another source for the operation of his mine and uses water from the source in question only after the main supply fails to meet his needs which is normally about April 1.

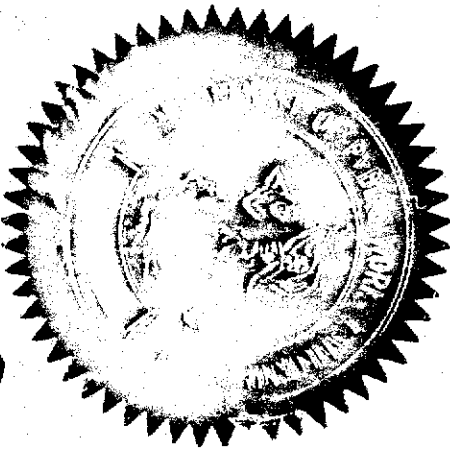
Mr. Lampen stated he would respect the prior rights of Mr. Joubert during April, May and June, the normal period of possible conflict and that he would stop his use whenever Mr. Joubert notified him that all the flow was required. In view of the short period of possible conflict and that, if approved, Application 12086 would be subject to vested rights, Mr. Joubert then signed a written withdrawal of his protest.

ORDER

Application 12086 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held in accordance with the provisions of Section 733(b) of the California Administrative Code, and the protests having been withdrawn:

IT IS HEREBY ORDERED that Application 12086 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 13th day of August, 1948.




Edward Hyatt, State Engineer