

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

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In the Matter of Application 2908 of Charles E. Atkinson,  
Application 2935 of George M. Warrens, Application  
3033 of William P. and Hattie M. Hatfield, Appli-  
cation 3097 of Enoch Reynolds, Application  
3185 of Norman W. Jones and Application  
3214 of Emery E. Cole to Appropriate  
from Soldier Creek and Tributaries  
in Modoc County for Agricultural  
Purposes.

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DECISION A. 2908-2935-3033-3097-3185-3214 D 226

Decided - *April 22, 1929.*

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APPEARANCES AT HEARING HELD March 20, 1929.

For Applicants:

Charles E. Atkinson  
George M. Warrens  
William P. and Hattie M. Hatfield  
Enoch Reynolds  
Norman W. Jones  
Emery E. Cole

In propria persona  
In propria persona  
No appearance  
J. T. Sharp  
No appearance  
No appearance

For Protestants:

O. M. Crampton, Celia Daniels, and F. E.)  
Daniels, successor to interest of )  
Cyrus Daniels )

J. T. Sharp

G. S. Stiner, G. W. and Mary J. Toney, )  
Simon Bennett, successor to interests of )  
J. Brown and S. B. Strief, Marvin Toney, )  
successor to interests of the Estate of )  
E. P. Strief, San Francisco Cattle Loan )  
Company, G. K. and Minnie Heard, F. S. )  
Heard, G. K. Heard, successor to inter- )  
ests of Mrs. Allie Heard. )

A. K. Wylie

EXAMINER: Gordon Zander for Harold Conkling, Chief of the Division of  
Water Rights, Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

<u>App.No.</u>	<u>Name</u>	<u>Use</u>	<u>Source</u>	<u>Amount c.f.s.</u>	<u>Season</u>	<u>Point of Diversion</u>
2908	Charles E. Atkinson	Agric.	Soldier Creek	1.25	Mar.1-May 31	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.13 T43N R15E MDM
2935	George M. Warrens	Agric.	Soldier Creek	1.75	Mar.1-May 25	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.13 T43N R15E MDM
3033	Wm. P. and Hattie M. Hatfield	Irrig.	Soldier Creek	0.87	Mar.1-June 1	NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.13 T43N R15E MDM
3097	Enoch Reynolds	Irrig.	East Fork Soldier Creek	1.00	Mar.1-May 15	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec.7 T43N R16E MDM
3185	Norman W. Jones	Irrig.	East Fork Soldier Creek	0.50	Mar.1-June 1	NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.7 T43N R16E MDM
3214	Emery E. Cole	Irrig.	East Fork Soldier Creek	1.00	Feb.1-June 1	NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.6 T43N R16E MDM

PROTESTS

Applications 2908, 2935 and 3033 were protested by O. M. Crampton, Cyrus and Celia Daniels, George Stiner, George W. and Mary J. Toney, Jeduthan Brown, El P. Strief Estate and S. B. Strief, San Francisco Cattle Loan Company, George K. Heard, Minnie and Alice Heard and F. S. Heard.

Application 3097 was protested by George Stiner and the San Francisco Cattle Loan Company.

Applications 3185 and 3214 were protested by the San Francisco Cattle Loan Company.

All of the protests were upon the grounds that there is no unappropriated water available.

APPLICATION 3097 CANCELLED

For several years the Division of Water Rights has conducted an investigation of rights to use water from Soldier Creek and its tributaries and the results of this investigation have been incorporated in a court decree dated November 28, 1928, in the case of San Francisco Cattle Loan Company, a corporation, et al, v. C. M. Crampton, et al, which decree was designed to adjudicate the rights to use the entire yield of the source except for periods of flash runoff which are infrequent and of short duration. As a result of our conclusions derived from this study it was suggested to the applicants that they withdraw their applications as it was thought that no practical purpose could be served by the holding of a hearing.

The only applicant who accepted this suggestion was Enoch Reynolds and upon his request an order was entered on December 17, 1928, rejecting and cancelling Application 3097 upon the records of this office. The other applicants however insisted that the flash flows of Soldier Creek and its tributaries which otherwise would flow into Upper Lake, could be used beneficially by them.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE  
WATER COMMISSION ACT

The applications were completed as required by the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on March 20, 1929, at 10:00 o'clock A.M. in Community Hall, Cedarville, California. Of this hearing applicants and protestants were duly notified.

On request of applicant Reynolds and there being no objection on the part of the protestants, his application was included in the hearing on the assumption that it had been reinstated.

PROTESTS WITHDRAWN CONDITIONALLY

In view of the fact that water master service was assured for the future on Soldier Creek, the several protestants at the hearing agreed to withdraw their protests against all of the applications provided that permits were issued expressly subject to the decree in the matter of the San Francisco Cattle Loan Company, a corporation, et al, v. C. M. Crampton, et al, above referred to.

APPLICATION 3097 SHOULD BE REINSTATED

As it was at the suggestion of this office that applicant Reynolds requested the cancellation of Application 3097 prior to the hearing, and had it not been for this suggestion, the application would now have the same status as the other of said applications noted above upon which hearing was held, it appears appropriate that Application 3097 be reinstated to the status which it maintained prior to said suggestion.

CONCLUSION

With the restoration of Application 3097 and the withdrawal of the protests, all of the applications should be approved and permits issued, each permit to contain a special clause to the effect that the use of water thereunder is expressly subject to all rights established by the decree entered on November 28, 1928, in the case of San Francisco Cattle Loan Company, a corporation, et al v. C. M. Crampton, et al.

Under the decree the court has ordered the Division of Water Rights to act as water master during the season of general irrigation whenever necessity of such water master service is found to exist by said Division. It would therefore appear that a clause should also be inserted in each permit to the effect that use thereunder may be regulated by the Division of Water

Rights during periods of water scarcity to the end that such use will not interfere with prior vested rights.

O R D E R

Applications <sup>2908</sup> ~~2998~~, 2935, 3033, 3097, 3185 and 3214 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been received, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that our order of December 17, 1926, rejecting and cancelling said Application 3097 be vacated and set aside and that said Application 3097 be reinstated and restored to the status of a pending application before the Division of Water Rights, and

IT IS FURTHER ORDERED that Applications <sup>2908</sup> ~~2998~~, 2935, 3033, 3097, 3185 and 3214 be approved and that permits be granted to the several applicants subject to such of the usual terms and conditions as may be appropriate and in each case subject also to the following special terms and conditions to wit:

"All rights herein granted are subject to those rights established by the decree entered by the Superior Court of the State of California, in and for the County of Modoc, on November 28, 1926, in the case of San Francisco Cattle Loan Company, a corporation, et al, v. C. M. Crampton, et al."

and

"This permit is issued subject to the express condition that the use hereunder may be regulated by the Division of Water Rights during periods of water scarcity to the end that such use will not interfere with prior vested rights."

Dated at Sacramento, California, this 22 day of April, 1929.

Harold Conkling  
(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS

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