

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

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In the Matter of Application 7248 of Geo. W. Hallock
To appropriate from Jim Crow Canyon
In Sierra County for
Mining Purposes.

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DECISION A 7248, D - 343

Decided *June 30, 1933*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, CALIFORNIA, JUNE 12, 1933.

For Applicant

Geo. W. Hallock

No appearance

For Protestant

Sovereign Comet Gold Mining Company

No appearance

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer, for Harold Conkling, 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

Application 7248 was filed on April 29, 1932, by Geo. W. Hallock for an appropriation of 12.50 cubic feet per second during the period October 1st to July 1st of each season from Jim Crow Canyon, a tributary of North Fork of Yuba River, for mining purposes. It is proposed to divert in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T 19 N, R 11 E, M.D.B.&M. and to return the water after use for hydraulic mining purposes to Wolf Creek, a tributary of Middle Fork of Yuba River in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 of the same township and range.

The application was duly completed in accordance with the Water Commission Act and the rules and regulations of the Division of Water Resources, and thereupon advertised, and a protest was filed against approval thereof by Sovereign Comet Gold Mining Company which company holds Permit 1825 of this office issued in approval of its Application 3827.

The Sovereign Comet Gold Mining Company is entitled to divert 3 second feet for power purposes under its permit, subject to prior and existing rights, from Jim Crow Canyon at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T 19 N, R 11 E, M.D.B.&M., or approximately 2 $\frac{1}{2}$ miles downstream from the point of diversion proposed by Mr. Hallock. On September 24, 1927, the project was inspected by an engineer of this office who reported that Sovereign Comet Gold Mining Company had constructed diversion works on Jim Crow Creek at the point described above, also a ditch of some 2.0 second feet capacity 3 miles in length leading therefrom to the place of use, and a power house with an installed capacity of some 200 H.P. Approximately \$15,000 had then been expended on the appropriation. Water was being diverted to the full capacity of the ditch and was in beneficial use. Since then Sovereign Comet Gold Mining Company has reported annually and it appears the diversion works have been maintained and water diverted to beneficial use.

The Company protested Mr. Hallock's application in August, 1932, upon the ground that the branch of Jim Crow Canyon from which he sought to appropriate was the main source of its supply and that the flow available under its own earlier appropriation was insufficient in 1931 and that there was but a small surplus at the time of filing the protest.

By protestant's own admission therefore there was some surplus in 1932 when the flow was near the low stage of the year, and the report of the engineer of the Division who visited the project in September, 1927, indi-

cates at that time, when the stream was likewise at lowest stage, the protestant was appropriating only 2 second feet out of the total of $3\frac{1}{2}$ second feet available. The year 1931 was one of abnormally low flow and water supplies were generally short throughout the State. That year should not be used as a criterion. From the information which is before the Division it would appear that during the winter and spring of any normal year which is the time when applicant seeks to appropriate there should be surplus water in Jim Crow Canyon over and above what is needed to satisfy the requirements of Sovereign Comet Gold Mining Company under its prior application and permit.

Applicant by letter received by the Division December 3, 1932, recognized the prior rights of Sovereign Comet Gold Mining Company and attempted to arrange some understanding by which the protest would be withdrawn but was unsuccessful. Mr. F. O. Richardson, representing the protestant, refused to withdraw the protest but simultaneously indicated his company would bear no portion of the cost of the hearing which had been scheduled, although this was required by the Division of any party in interest who participated. The Division accordingly on May 31, 1933, communicated with the applicant with copy to protestant, indicating the evidence which was before the Division as described above leading to the tentative conclusion that under normal conditions there is water available for appropriation under Application 7248, and advising that

"It is perhaps fair to state that if Mr. Richardson makes no appearance our inclination will be to approve Mr. Hallock's application whether or not an appearance is made on his behalf," etc.

Protestant thereupon definitely advised it would not be represented at the hearing which had been called and the knowledge of that fact explains the lack of appearance by applicant. It is our opinion that under the circumstances described above protestant has failed to support the burden of

proof appropriate to a moving party and that the protest should therefore be dismissed and Application 7248 approved.

O R D E R

Application 7248 to appropriate water having been filed with the Division, said application having been duly completed and advertised and a protest against the same having been filed, the protestant having refused to appear at the hearing upon said protest as duly noticed and having failed to support the burden of proof appropriate to a moving party, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 7248 be approved 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 *30th* day of *June*, 1933.

EDWARD HYATT
STATE ENGINEER

BY *Harold Conkling* Deputy

ENB:MP

