

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

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In the Matter of Application 9270 of Elert A. Hill to Appropriate Water
From South Webber Creek a Tributary of South American River
In El Dorado County for Mining and Domestic Purposes

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DECISION A. 9270 D 423

Decided

Aug. 9, 1938

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APPEARANCE AT HEARING HELD AT SACRAMENTO, July 14, 1938.

For Applicant

Elert A. Hill

In propria persona

For Protestants

Pioneer Hardware Store, a corp.,

P. C. Alderson

D. S. Potter and Edward R. Dathe

In propria persona

EXAMINER: 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

GENERAL DESCRIPTION OF PROJECT

Under Application 9270 Elert A. Hill seeks to appropriate three cubic feet per second from South Webber Creek, a tributary of South Fork of American River, during the period from about October 1 to about August 31 of each year for mining and domestic purposes. The point of diversion named is in the owned NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T 10 N, R 12 E, M.D.B. & M. on land / by one Campini. Applicant's property adjoins the property of Mr. Campini immediately on the west and he proposes to use an existing ditch known as the "Steadman Ditch".

PROTESTS

The Pioneer Hardware Store, a corporation, claims the right to appropriate from South Webber Creek under the G. P. Steadman right initiated in 1875. This protestant claims that Steadman deeded the right on June 6, 1890, to one Thomas Alderson and that the right was acquired by protestant from the Alderson Estate on April 19, 1915, together with the physical properties of the ditch itself. It is the claim of this protestant that water has been used continuously through the ditch since that time either by the protestant directly or by someone for them. It is claimed there is no water subject to appropriation and that use of the ditch will be refused.

Protestants D. S. Potter and Edward R. Dathe, claim to have a lease which entitles them to use the water right and ditch of the Pioneer Hardware Store and they claim to have been using the water in the amount of 60 miner's inches under this right and that approval of the appropriation proposed under Application 9270 would prevent them from continuing the use of water under this lease.

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

Application 9270 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 hearing in accordance with the provisions of Section 1a of the Water Commission Act on Thursday, July 14, 1938, at 10:00 o'clock A.M. in Room 401 of Public Works Building, Sacramento. Of this hearing applicant and protestants were duly notified.

NO EVIDENCE OF VALID RIGHT IN PROTESTANTS

It appears from the evidence that it was generally recognized in the vicinity of this project that the Pioneer Hardware Store or P. C. Alderson, its President, had succeeded to whatever right remained in the so-called Steadman

Ditch which was an old ditch diverting upon the land of one Campini and used many years ago. Campini himself apparently recognized this right and looked to Mr. Alderson for permission to use the ditch. When applicant Elert A. Hill came into this area in 1931 or 1932 he was led to believe that Mr. Alderson controlled the ditch and accordingly went to Mr. Alderson for authority to use the ditch and water right. Believing in this ownership and control by Mr. Alderson he obtained his permission to clean out the ditch and rehabilitate it. This he did, constructing the necessary flumes, etc., and it would appear there may have been some oral understanding between them whereby Mr. Hill might have permission to buy the ditch at a cost of \$1,000 if and when he found himself in a position to purchase it or it may have been that the understanding was Mr. Hill would receive a commission if he could sell the ditch. There is, however, no definite evidence that Mr. Alderson was to receive any compensation for the use of the ditch and the water right which he claims.

Before Mr. Hill did this work upon the ditch it would appear that one Ferrari had the permission of Mr. Alderson to use the ditch and perhaps did so but there is no evidence that there was any consideration asked for this use. Also it appears that Mr. Campini on whose property the ditch diverts from South Webber Creek had the permission of Mr. Alderson to use it and the evidence is that one Mason, a lessee of Mr. Campini, actually did divert from the Creek through the Steadman ditch and used some water for irrigation. The amount used, however, is not clear and it would appear that for a considerable time the water was really allowed to enter the ditch and flow for a short distance down the ditch upon the Campini land, then was returned again to the creek from which it had been diverted. Again there was no evidence introduced that any consideration had been asked for the use of the ditch and water right in this connection.

In March 1936 protestants Potter and Dathe shut the wateroff in the ditch when Mr. Hill was using it. They claimed to have a lease from Mr. Allerson but again there is no evidence that any consideration passed between them and the Pioneer Hardware Store which claims to own the ditch and water right.

This caused Mr. Hill to make some further investigation of the matter which apparently led him to the conclusion that whatever right the Pioneer Hardware Store or its predecessors in interest may have had at one time, the right in the ditch and to the water used through the ditch had been forfeited by non-use. Mr. Hill accordingly filed Application 9270 in order to initiate a right in accordance with the Water Commission Act.

The evidence introduced at the hearing would appear to support Mr. Hill's conclusion. It is a common belief among residents in the mining sections of California that rights in these old mining ditches can be maintained indefinitely if the owner continues to pay taxes upon them and that the water rights therein are not lost if the owner loans the water or makes some show of leasing it, even though without consideration. This is directly contrary to the provisions of Section 20a of the Water Commission Act which provides that an appropriative right will be lost by three consecutive years of non-use. The evidence does not support the claim of either of the protestants that they have any valid right in and to either the physical property of the ditch, or the water right which was at one time held by the predecessors in interest of the Pioneer Hardware Store. Under the circumstances, it is in order that Application 9270 be approved.

ORDER

Application 9270 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been received, a public hearing having been held, and the Division of Water Resources now being fully advised in the premises:

IT IS HEREBY ORDERED that said Application 9270 be approved and that a permit be granted to 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 9 day of Aug, 1938.

EDWARD HYATT, STATE ENGINEER

By HAROLD COERLING
Deputy

(Seal)

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