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

In the Matter of Application 9867 of Fresno Banner Mining Company to Appropriate from Kingsman Creek in Madera County for Mining and Domestic Purposes

Decision No. A. 9867 D. 462
DECIDED: October 2, 1940

APPEARANCES AT INVESTIGATION CONDUCTED AT SOURCE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 4, 1940.

For Applicant
Fresno Banner Mining Company
C.L. Clark & G. W. Berry

For Protestant
Grace N. Grammer
Mr. Grammer

For Interested Parties
Polly Wa. Muhly
H. E. Welch
Mrs. Muhly
Richard J. Lambert

For Division of Water Resources
Biscoe Kibby, Associate Hydraulic Engineer

OPINION

Application 9867 was filed by the Fresno Banner Mining Company on March 20, 1940. It proposes an appropriation of 0.15 cubic foot per second from Kingsman Creek tributary to San Joaquin River via Pine Gold Creek, to be diverted throughout the year for mining and domestic purposes. The point of diversion is described as being within the SE\(^{1}\) NW\(^{2}\), Section 5, T 9 S, R 22 E, N.D. B. & M. and the place of use as being within the NE\(^{1}\) of NW\(^{1}\) of Section 6, T 9 S, R 22 E, N.D. B. & M. After use for mining purposes the water is to be returned to Pine Gold Creek within the SE\(^{2}\) of SE\(^{2}\) of Section 56, T 9 S, R 21 E, N.D. B. & M.
Protest

Grace M. Grammer owns lands on Pine Gold Creek which are riparian to said Creek. She also claims an appropriative right initiated prior to the effective date of the Water Commission Act and diverts water at points within the SE_2 NE_2 and the NE_2 SW_2 of Section 36, T 8 S, R 21 E, M.D.B. & M. for stock watering, irrigation and mining purposes, using at times the entire summer flow. She alleges in effect that should Application 9887 be approved it would result in depriving her of water to which she is entitled. She also objects to the return of any water containing mill tailings on her property.

Although not a record protestant, Mr. J. E. Carpenter by letter dated September 5, 1940, offered certain facts which he requested be given consideration by the Division before action was taken on the application.

Investigation

On March 4, 1940, an investigation of Application 9887 was conducted in the field by an engineer of this office. Of this investigation applicant and protestant were duly notified and urged to have representatives present to submit their side of the case.

Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations were signed by the applicant and protestant at the time of the investigation and have been approved and accepted by the Division of Water Resources. The records relied upon in the determination of the matter are as follows:

- Amended Application and accompanying map filed Mar. 21, 1940
- Amended protest of Grace M. Grammer filed June 10, 1940
- Office report by R. E. Stoddard dated July 16, 1940
- Letter from John F. Carpenter filed Sept. 6, 1940
- Stipulation signed by protestant filed Sept. 10, 1940
- Stipulation signed by applicant filed Sept. 10, 1940
- Memorandum of Investigation by E. Kibbey dated Sept. 11, 1940
- Supplementary memorandum by E. Kibbey dated Sept. 13, 1940
The results of the field investigation are set forth in Mr. Kibbey's report of September 11, 1940 to which reference is made.

It is apparently agreeable to all interested parties that Application 9857 be approved provided that a special clause be incorporated in the permit to the effect that applicant would divert only when the flow in Little Fine Gold Creek where it crosses the north and south center line of Section 31, T. S. R. 22 E., M.D., E.M., exceeds 5 g.p.m. and with this understanding, stipulations under Regulation 128 were signed by the applicant and protestant. The stipulation signed by Mrs. Gremmer was also signed by D.D. Church, executor of the Estate of John Walker, deceased, although he was not a record protestant. Mr. Carpenter informed this office by telephone that the proposed clause was satisfactory to him.

ORDER

Application 9857 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation by the Division of Water Resources having been made and a stipulated hearing having been held in accordance with Regulation 128 of the Rules and Regulations of the Division of Water Resources pertaining to Appropriation of Water in California;

IT IS HEREBY ORDERED that Application 9857 be approved subject to such of the usual terms and conditions as may be appropriate and to the following special term and condition, to wit:

"Diversion of water under this permit shall be made only when the flow of water in Fine Gold Creek where it crosses the north and south center line of Section 31, Township 6 South, Range 22 East, Mt. Diablo Base and Meridian, is in excess of five gallons per minute."

-3-
WITNESS my hand and the seal of the Department of Public Works of the State of California, this 2 day of October, 1940.

EDWARD HYATT, State Engineer

By HAROLD CONKLING, Deputy