

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

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In the matter of revocation of Permit 1997 heretofore issued on Application 3572 and in the matter of petitions to change the place of use and to correct the description of the point of diversion under Application 3572, Permit 1997 of Ira L. Schermerhorn to appropriate water from Cold Spring Creek in Eldorado County for agricultural purposes.

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DECISION No. A 3572 D 190

Decided April 10, 1928

APPEARANCES AT HEARINGS HELD FEBRUARY 3, 1928 at Sacramento.

For Permittee:

Ira L. Schermerhorn

in propria persona

For Protestants:

Estate of S. H. Rantz

Joseph W. Gross and  
Franklin M. Jerrault,  
Forum Bldg., Sacramento

S. F. Akin

Henry S. Lyon, Attorney  
and S. F. Akin in propria  
persona, Placerville

EXAMINER: Everett N. Bryan, Deputy Chief, Division of Water Rights

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O P I N I O N

On February 14, 1925, Permit 1997 was issued to Ira L. Schermerhorn under Application 3572 allowing an appropriation of twelve hundredths (0.12) cubic feet per second from Cold Spring Creek, a tributary of Weber Creek in Eldorado County, for the irrigation of 10 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 3, T 10 N, R 10 E, M.D.B. & M. The point at which diversion was to be made was

described in the application as lying 900 feet West and 120 feet South of the Northeast corner of Section 10 of the same township and range. According to the terms and conditions of the permit construction was to begin on or before June 1, 1925, to be prosecuted diligently and completed not later than June 1, 1926 and the water was to have been completely applied to beneficial use not later than June 1, 1927.

The project proposed by the applicant and permittee involved rehabilitation of an existing ditch which traversed the properties of one S. H. Rantz. It appears that upon receipt of permit some repair work was done on the ditch and water was actually diverted for a period of fifteen days prior to May 10, 1926 when permittee was forbidden by Rantz to use the ditch, and use has continuously since that time been forbidden by Rantz and his successors in interest--S. H. Rantz now being dead.

The Rantz property lies between Cold Spring Creek and the 10 acres to the north which permittee originally proposed to serve. Therefore permittee has been unable to consummate use as proposed. While he asserts a right to use the ditch he has neither entered suit to quiet title nor has he made any other serious effort to obtain possession and use thereof.

On August 31, 1927 Schermerhorn filed his petition to change the place of use under the application to include with that originally specified 10 acres in the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10 to the South of Cold Spring Creek--diversion to be made at the same point as to lands north of the creek. This petition was consistent with the Water Commission Act and answers the requirements of the Rules and Regulations of the Division of Water Rights as to sufficiency and advertisement.

Protests against this change were filed by the Estate of S. H. Rantz and by S. F. Akin and in due course the matter was set for hearing in

Room 707 Forum Building, Sacramento, California, at 10:30 o'clock A.M. on February 3, 1928. Of this hearing petitioner and protestants were duly notified and all parties at interest appeared.

The Estate of S. H. Rantz raised the point that the point of diversion was on their property and that unless all effort to cross their land north of the creek was abandoned they would deny right of access. Because of this fact and the further fact that time allowed for completion of use had expired and there being reasonable doubt if permittee could consummate the appropriation a second hearing on revocation of the permit was set to run concurrently with the hearing on petition to change place of use for the purpose of allowing permittee to show cause why the permit should not be revoked because of failure to comply with the terms thereof--i.e. complete on or before June 1, 1927. The two hearings were held together and a single opinion will cover both phases of the matter.

Both the Rantz Estate and Akin objected to the proposed change in place of use on the basis of alleged diminution of flow in the source foreseen if permittee effected a diversion. No information has been submitted by either, however, as to how the change, as such, could in any wise affect them and the matter of their protest is res adjudicata so far as the Division of Water Rights is concerned. The Division of Water Rights has approved the application and Schermerhorn was allowed until June 1, 1927 to make complete application of water to beneficial use, prior to which time construction was completed and actual diversion to beneficial use made until the date when Rantz caused him to cease conducting the water across his (Rantz) land.

No evidence was introduced nor were any allegations made by the protestants to this change in place of use that the change proposed would of and by itself result in injury to them. It is our conclusion that pro-

testants could not be injured thereby and that permittee should accordingly be allowed to include the 10 acres south of Cold Spring Creek for service under this application and permit.

It appears however that the Estate of S. H. Rantz has no intention of allowing diversion across their property to the land of permittee north of Cold Spring Creek and that the claim of right which he asserts under and by virtue of this permit is an annoyance to them and may constitute a damage to them in the value of their property. It therefore appears that while the lands of permittee south of Cold Spring Creek may be included for service under this permit and further time may be allowed in connection therewith to consummate use, further time to consummate use on the present 10 acres included for service to the north of the creek should be denied and this area should be stricken from the approved application as a part of that to be served.

It now appears that there was an error in the description of the location of the diversion works on Cold Spring Creek as given in the application as originally filed and that these were located North  $54^{\circ} 10'$  West a distance of 597.6 feet from the southeast corner of Section 3, T 10 N, R 10 E, M.D.B. & M. instead of as described above. It is at this same point that permittee would divert to the lands which he now seeks to serve south of the creek. He has therefore requested permission to correct this error in description, and on March 23, 1928 filed a plat showing the correct description. The only other interested parties (S. F. Akin and the Estate of S. H. Rantz) were advised of the error in original description at the time of the hearing on February 3, 1928. It appears that no one can be injured by correction of the description as no actual change is involved and that therefore permittee should be allowed to amend his applica-

tion to show the true facts concerning the location of his point of diversion.

O R D E R

Permit 1997 having heretofore been issued in approval of Application 3572, permittee having been unable to consummate use on the parcel of land originally proposed for irrigation service on account of inability to secure necessary rights of way across intervening lands lying between the point of diversion and the place of use, permittee having filed a petition to change place of use by the inclusion of additional lands bordering the creek at the point of diversion, protests to this change having been received, the question of lack of diligence having been raised in connection with progress on the project, hearings having been held upon the protests and in the matter of revocation on the grounds of failure to comply with the terms and conditions of the permit, the permittee having petitioned to correct an error in description of the point of diversion as given in the application and the Division of Water Rights now being fully advised in the premises:

IT IS HEREBY ORDERED with respect to Application 3572, Permit 1997--

1. That an order be entered correcting the description of the point of diversion in accordance with the petition filed by permittee and the plat received March 23, 1928; and
2. That an order be entered allowing a change in place of use under said application and permit by excluding the 10 acres now included and described as lying in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 3, T 10 N, R 10 E, M.D.B. & M. and including in lieu thereof 10 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10 of the same township and range; and
3. That a reasonable extension be allowed the permittee within which complete beneficial use under said application and permit.

Dated at Sacramento this 10<sup>th</sup> day of April, 1928.

(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS