

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of the Petition of Lewis F. Johnson and A. J. Sells to Change Points of Diversion Described in Application 9013 and in the Matter of Application 10104 of W. H. Pike and Andrew J. Modglin to Appropriate Water from Cedar Grove, Stahl, Greenwood and Star Ravines and from an Unnamed Tributary of Greenwood Ravine, in Sierra County, for Mining Purposes.

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Decision A. 9013 and 10104, D. 595

Decided January 12, 1949

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APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES IN THE VICINITY OF THE POINTS OF DIVERSION INVOLVED IN THE MATTERS NAMED.

Application 9013

For the Petitioners

Lewis F. Johnson )  
A. J. Sells )

Lewis F. Johnson

For the Protestants

W. H. Pike )  
Andrew J. Modglin )

Andrew J. Modglin

Application 10104

For the Applicant

W. H. Pike )  
Andrew J. Modglin )

Andrew J. Modglin

For the Protestants

Lewis F. Johnson )  
A. J. Sells )

Lewis F. Johnson

Applications 9013 and 10104

For the State Engineer

A. S. Wheeler, Assistant Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California.

Also present at the investigation was R. F. Taylor, Registered Civil Engineer, who has acted as engineer for all of the parties to the controversy.

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OPINION

General Description of Projects

Application 9013, approved by the issuance of Permit 5253, covers the diversion, for mining purposes, of 18 cubic feet per second, from January 1 to December 31 of each season. Of the total amount named, the authorization provides that 16 cubic feet per second may be diverted from Cedar Grove Ravine at a point located S 7° 08' E 3162.9 feet; 1 cubic foot per second from Horn Ravine at a point of 6° 10' E 3390.0 feet; and 1 cubic foot per second from Star Ravine at a point S 3480 feet; the point of reference being in each instance the NW corner of Section 7, T 21 N, R 10 E, M.D.B. & M. The place of use as described in the application includes portions of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, and the SE $\frac{1}{4}$  of Section 12, T 21 N, R 9 E, M.D.B. & M.

By the petition at issue, permission is sought to change the descriptions of the three points of diversion, respectively, to the following:

- (1) On Cedar Grove Ravine in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, from which the NW corner of Section 7 bears N 31° 56' W 2635.3 feet.
- (2) On Horn Ravine in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, from which the NW corner of Section 7 bears N 8° 00' W 3600.0 feet.
- (3) In Star Ravine in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, from which the NW

corner of Section 7 bears N 3° W 3700.0 feet.

The Section 7 mentioned lies within T 21 N, R 10 E, M.D.B. & M. The reason given for the proposed change is that it was originally desired to serve placer ground at the Comet and Challenge claims within the NW $\frac{1}{4}$  of Section 13, T 21 N, R 9 E, M.D.B. & M. whereas it is now desired to use the same water on different ground.

Application 10104, filed by W. H. Pike and Andrew J. Modglin on January 25, 1941, contemplates diversions aggregating 30 cubic feet per second from January 1 to December 31 of each year, for mining purposes. Comprising the foregoing are diversions of 16 cubic feet per second from Cedar Grove Ravine at a point bearing N 66° 17' E 7720 feet, 4 cubic feet per second from Stahl Ravine at a point bearing N 77° 15' E 8110 feet, 4 cubic feet per second from Greenwood (or Horn) Ravine at a point bearing N 84° 11' E 6565 feet, 4 cubic feet per second from an unnamed tributary to Greenwood Ravine at a point bearing N 82° 40' E 5950 feet, and 2 cubic feet per second from Star Ravine at a point bearing N 81° 13' E 5115 feet, bearings and distances in all instances being measured from the northwest corner of Section 13, T 21 N, R 9 E, M.D.B. & M. The several sources enumerated are tributaries of Slate Creek which in turn is tributary to Yuba River. All diversions contemplated are to be by gravity. Dams are to be provided in conjunction with the Cedar Grove Ravine and Stahl Ravine diversions only, these being log crib structures respectively 15 feet high by 34 feet in top length and 6 feet high by 10 feet in top length. The conduits include open earth ditches, supplemented by sections of chute construction, as appropriate. Excepting in the case of the diversion from Cedar Grove Ravine, which represents new construction, advantage appears to have been taken of old, existing ditches including particularly the ditch referred to in the application as "Pioneer Ditch". The place of use named

in the application lies within the W $\frac{1}{2}$  of Section 13, T 21 N, R 9 E, M.D.B. & M, the names of the mining properties to be served are the Challenge, Comet, Pioneer and Riffle placer claims, and the water muddied by the process of hydraulic mining but not otherwise polluted is to be returned to Slate Creek in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 14 of the township mentioned.

#### Protests

Against the Petition relating to Application 9013: Messrs. Pike and Modglin, applicants under Application 10104, represent that the proposed change in the location of points of diversion under Application 9013 would result in injury to them inasmuch as those points of diversions, if changed as proposed, would coincide with or lie above the diversion points named in Application 10104. They argue that such change would necessitate either the use of the same conduit by the opposing parties or the installation of a new diversion upstream from the protestants, an objectionable eventuality in either case. The protestants acknowledge the priority of Application 9013 insofar as original diversion points are concerned but argue that any change of diversion points amounts to an abandonment of the original plans for the use of the water; and that Application 10104 should take precedence over any other diversion in the vicinity except Application 9013 as originally worded. The protestants state that their protest may be disregarded and dismissed if the petitioners adhere to the original diversion points.

Against Application 10104: Messrs. Johnson and Sells, Applicants under Application 9013 and Petitioners to change points of diversion from the locations authorized under that approved application, protest Application 10104, arguing that under Application 9013 they have prior rights on Cedar Grove, Horn and Star Ravines; that all ditches specified therein will be completed in due course and the water applied to beneficial use; that they have invested much money in preparing to

utilize the water; and that if Application 10104 is approved these expenditures will be a total loss. Protestants further state that water supplied from Cedar Grove, Horn and Star Ravines has been and is being used, under riparian rights, to wash gravels in the bed of Cedar Grove Ravine, which operation will have to be discontinued, with consequent financial loss, if Application 10104 is approved. The sluice mining just mentioned is said to be carried on in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, T 21 N, R 9 E, M.D.B. & M.

#### Field Investigation

Application 10104 and a petition to change the points of diversion under Application 9013 having been filed and protests against approval of both the application and the petition having been received, were regularly set for a field investigation of which the applicants, the petitioners and the protestants were duly notified and did agree by signed stipulations to abide by the report and subsequent findings of such investigation. The investigation was duly conducted in the vicinity of the sites in question, on August 25, 1947.

#### Records Relied Upon

Applications 9013 and 10104, and all data and information on file therewith.

#### Discussion

By letter dated August 4, 1948 signed on behalf of Johnson and Sells by Lewis F. Johnson, the cancellation of the petition filed August 4, 1942 to change the points of diversion under Application 9013, was authorized, the same letter also expressing the belief that beneficial use for the time being may be made of water by diversion at the points theretofore described. The petition in question is therefore dismissed.

As to the amounts of water flowing in the several streams, the report of

the investigation made on August 25, 1947 indicates that there is little flow therein except during storm periods and during spring thaws; that during such periods there is normally sufficient water to satisfy both Application 9013 and Application 10104; that at other times little or no water is available for use under Application 10104 if full use is made under Application 9013; and that surpluses do not normally occur after July 15.

In their answer to the protest of Johnson and Sells against Application 10104, Applicants Pike and Modglin agree in effect to permit such amounts of water to reach the points of diversion described in Application 9013 as are necessary to satisfy prior rights arising from that filing.

In view of the apparent existence, at times, of unappropriated water in amounts equal to or exceeding those named in Applications 9013 and 10104, and in view of the recognition by Applicants Pike and Modglin of the existence of a prior right under the former of those two applications and their acceptance of the necessity of bypassing sufficient water to satisfy such right no grounds are seen upon which the protest by Lewis F. Johnson and A. J. Sells against Application 10104 may need longer be maintained and that protest, therefore, is dismissed.

A discrepancy between statements by the opposing parties, during the field investigation arose, as to the ownership of the Pioneer ditch which is named as a conduit under Application 10104. That title to the Pioneer Ditch rests in the name of W. H. Pike and Andrew J. Modglin appears to have been established, according to a copy of Superior Court Decree and Judgment No. 2215 dated at Downieville, March 24, 1947 which was furnished by A. J. Just, Attorney and Counsellor at Law, as an enclosure to his letter to the Division dated October 4, 1947.


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ORDER

Application 10104 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a petition to change the points of diversion described in Application 9013 having been filed but subsequently dismissed on authorization of the petitioners, a protest against Application 10104 having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10104 be approved and that a permit be issued to the applicant thereunder 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 12th day of January , 1949.

  
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State Engineer

