

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 Application 8942 by Ridge Mines, Inc. to  
Appropriate Water from Springs Creek and Branches Thereof,  
Tributary to South Yuba River, in Nevada County, for Mining  
and Domestic Purposes.

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Decision A. 8942 D. 734

Decided March 24, 1952

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Appearances at Hearings Held at Sacramento on February 28, 1939  
and October 3, 1939:

For the Applicant

Ridge Mines, Inc.

Walter M. Gleason

For the Protestants

Columbia Hill Gold Mining )  
Company )  
W. S., T. C. and C. W. )  
Bigelow and P. I. Dudley )

H. W. Sheldon

Jerome C. Coughlan

R. F. Taylor

Nevada Irrigation District

C. F. Metteer and  
William Durbrow

For an Interested Party

San Juan Gold Company

Charles W. White

Examiner - Harold Conkling, Deputy State Engineer.

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## OPINION

### General Description of the Project

The application contemplates an appropriation of 15 cubic feet per second, in all, from Spring Creek which is tributary to South Yuba River, and from two branches of a tributary to Spring Creek, from November 1 to June 30 of each season, for mining and domestic purposes. The proposed diversions are to head respectively within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T17N R9E, the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, T18N R9E, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T18N R9E, MDB&M. At each of the proposed points of diversion a log, rock and lumber dam is to be built. A conduit described as of sufficient size to carry 100 cubic feet per second is to be provided. The proposed place of use is described as a portion of Mineral Lot #49, being part of SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T17N R3E, MDB&M. According to the application the water is to be returned after use, unpolluted, to Middle Yuba River at a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, T18N R3E, MDB&M. According to the application the applicant owns the place of use, does not own the proposed diversion sites but is purchasing them.

### Protests

The Columbia Hill Gold Mining Company protests that the proposed appropriation will deprive it of its only available source of water and thereby render its property valueless. It claims to use water for domestic, irrigation and mining purposes, under both riparian and prescriptive rights. It asserts use of up to 100 miner's inches,

intermittently, for over 75 years, at all times of year when water is available in Spring Creek. It explains that in summer time Spring Creek is dry or nearly so. It states that it diverts at a point within the ~~NE1/4~~ of Section 9, T17N R9E, MEB&M.

Bigelow Brothers (W. S., T. C. and C. W. Bigelow) and P. I. Dudley protest upon the same grounds as set forth in the Columbia Hill Gold Mining Company protest. They represent themselves to be lessees of that company's property and to be working it diligently as a placer mine.

Jerome C. Coughlan protests the application, asserting that for the last 10 years (prior to filing protest) he and his predecessors have lawfully appropriated and used all of the waters of Spring Creek and its tributaries for domestic, agricultural and mining purposes and that there are no unappropriated waters in that stream at any time of year. He asserts ownership of Permit 3102 which, he states, authorizes diversions from Roberts Creek, Glenmin Ravine and Bonnie Ravine, all tributary to Spring Creek. He asserts continuous use of the entire flow, and states in effect that that flow is insufficient for his needs and that if he should be deprived of it the value of his property would be seriously lessened.

The Nevada Irrigation District protests that the proposed appropriation at certain times of year will interfere with the exercise of its prior rights. It claims rights initiated prior to December 14, 1914 and rights under Applications 1616 and 8174. It states that it diverts throughout the year for irrigation, mining and domestic purposes, at a point within the ~~NE1/4~~ of Section 27, T17N R8E, MEB&M. It states

further that its protest may be disregarded and dismissed provided that the applicant diverts only at such times as supply exceeds its (the protestant's) requirements.

#### Answers

The applicant omitted to file answer to any of the protests.

#### Hearing Held under Section 1a of the Water Commission Act

Application 8942 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources, and being protested was set for public hearing under the provisions of Section 1 a of the Water Commission Act on Tuesday, February 28, 1939 at the Public Works Building, Sacramento, California. That hearing was continued to and completed on Tuesday, October 3, 1939, at the same place. Of the hearing the applicant and the protestants were duly notified.

#### Discussion

The filing referred to in the Jerome C. Coughlan protest is Application 5880 Permit 3102 License 2172 under which that protestant is authorized to divert 1 cubic foot per second from Roberts Creek, 0.14 cubic foot per second from Glennin Ravine and 0.26 cubic foot per second from Bonnie Ravine. These diversions are authorized to extend from about April 15 to about October 15 of each season for the purpose of irrigation and throughout the year to the extent required for domestic purposes. They are described as heading within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T18N R9E, the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T17N R9E and the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 4, T17N R9E, MDE&M.

The hearing session of February 28, 1939 consisted mainly of a discussion of the general situation. No testimony was taken nor evidence introduced. In view of the expressed desire of the parties to negotiate among themselves with a view to reaching an agreement on certain collateral matters before further action by the Division of Water Resources the hearing was continued to a later, tentative date.

The hearing session of October 3, 1939 again consisted mainly of discussion between the parties. The discussion indicated among other things that the applicant's right to use the ditch described in its application had been challenged and was currently in litigation. In this connection the Examiner commented, in effect (pages 9, 15 and 24 of transcript), that in a case in which unappropriated water exists but essential rights of way are in dispute it would be appropriate for the Division to defer permit action temporarily, allow a reasonable time for the litigation to be concluded, to consider whether or not the suit was being actively prosecuted, and to deny the application in the event of remissness by the applicant in said prosecution. The hearing ended with a tacit agreement by all present that stipulations are unnecessary until the matter of ditch rights is decided in court.

From the hearing session of October 3, 1939 until June 7, 1949 Application 8942 was held in abeyance and no communications in connection therewith were received from or on behalf of the applicant. On the latter date this office addressed the applicant's attorney, requesting information as to the present status of litigation involving Application 8942 and certain other applications. No reply to that inquiry appears

to have been received and on September 21, 1951 another letter was addressed to the applicant's attorney, that letter reading in part as follows:

"Action on these applications was originally withheld pending the settlement of litigation - - - -. It is our understanding that this litigation has not been actively pressed. If such is the case, it is the opinion of our legal staff that the litigation can no longer be considered as good cause for further deferment of action - - - -.

"It does not appear that other reasons for deferment can be urged; therefore it is suggested that the applicants request cancellation and revocation of the applications without prejudice, and that they refile at such time as they may be in a position to proceed - - - -.

"In the event such request is not received in the near future, it is proposed to take steps toward the cancellation of the applications - - - -."

The applicant's attorney answered our letter of September 21, 1951, his letter, dated September 28, 1951, reading in part as follows:

"I would like an opportunity to review my file on this rather old matter and ascertain our present position. I hope to be able to do this during the coming week and after doing so will communicate further with you."

On October 23, 1951 this office addressed the applicant's attorney as follows:

"Reference is made to our letter of September 21, 1951 and to your reply of September 28.

"Inasmuch as this office has received no further reply, your early attention in the matter will be appreciated."

No reply having been received to the letter just quoted, this office addressed the applicant's attorney, on November 23, 1951, as follows:

"Reference is made to our letter of September 21, 1951, and to your reply of September 28 wherein you state that you will communicate further with this office in connection with this matter.

"Unless request for cancellation and revocation of these filings is made within 30 days from today's date, immediate steps will be taken toward cancellation of the applications and revocation of the permits.

"Your cooperation in the matter will be appreciated."

Our letter of November 23, 1951 elicited no reply.

Some 15 years have elapsed since Application 8942 was filed, more than 12 years since the hearing session in which it became apparent that litigation centering upon ditch rights should be carried to a conclusion before other aspects of the controversy warrants action by the Department, and that the Department would allow a reasonable time for the litigation to be concluded, but would deny the application if the litigation was not diligently pressed by the applicant. During those 12 years the applicant has omitted to keep this office informed as to progress made, if any, in solving its legal difficulties, and has been unresponsive to the Department letters mentioned in the preceding paragraph.

With reference to diligence, Section 778, Article 18 of the California Administrative Code, Title 23, Waters, states:

"It is not the purpose of the Water Code to provide a means whereby a reservation of water may be made by one who has no immediate plan or purpose to proceed promptly and diligently with construction of the necessary diversion works and beneficial use of the water. The Department is disposed to be liberal in its allowances of time both for completing an application and for making full beneficial use of the water where progress is made, or where a serious effort is being made to overcome obstacles which prevent progress,

but the Water Code does not allow the Department to countenance any attempt to place rights in cold storage where there is no intent to proceed promptly with development."

The long silence of the applicant since the hearing session of October 28, 1939 and the applicant's unresponsiveness to recent communications are deemed to indicate that the applicant has no immediate plan or purpose to proceed promptly with its project. This office is disposed to be liberal in its allowances of time and it has been liberal thusfar in such allowances in connection with Application 8942. However, in the absence of any indication that progress is being made in connection with that application or that any serious effort is being made to overcome obstacles which prevent progress, it does not appear that further deferment of action in connection with that application is warranted.

In view of the applicant's lack of diligence in connection with Application 8942 and in view of the indications that the applicant has no immediate plan or purpose to proceed with the project contemplated thereunder it is the opinion of this office that further deferment of action upon Application 8942 is unwarranted and that the application should be now denied.

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ORDER

Application 8942 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:



IT IS HEREBY ORDERED that Application 8942 be rejected  
and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public  
Works of the State of California this 24th day of March 1952.

*A. D. Edmonston*  
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A. D. Edmonston  
State Engineer

