

State of California
Department of Public Works
Division of Water Resources

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In the Matter of Application 8345 by L. A. Strauss to
Appropriate from Carter Creek Tributary to Klamath
River for Irrigation and Domestic Purposes.

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Decision A. 8345 D-380

Decided *January 28, 1936*

APPEARANCES AT HEARING HELD AT YREKA, JANUARY 20, 1936.

For Applicant
L. A. Strauss

In propria persona

For Protestant
T. Burns

J. M. Allen, Attorney at Law

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer, Division of Water
Resources, Department of Public Works.

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O P I N I O N

Application 8345 is to appropriate 1 cubic foot per second from Carter
Creek, a tributary of Klamath River for irrigation and domestic purposes. Di-
version is proposed at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33, T 14 N, R 6 E,
H.B.&M. and use is proposed within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 4, T 13 N,
R 6 E, H.B.&M.

The application was protested by T. Burns of Somesbar who claims a
right to the use of the waters of Carter Creek based both upon riparian owner-
ship and use for more than fifty years upon property in the W $\frac{1}{2}$ of Section 32,
T 14 N, R 6 E, H.B.&M. and the NW $\frac{1}{4}$ of Section 5 of T 13 N, R 6 E.

The application having been completed and duly noticed, and a protest having been filed the matter was set down for hearing at Yreka, California, on January 20, 1936. Of this hearing both applicant and protestant received due notice. Applicant appeared in person and protestant was represented by James M. Allen, Attorney at Law, Yreka. Protestant advised by letter that he was too busy with his mining operations to attend, and that he desired a postponement within which to prepare his case but the request was refused. His attorney stated that protestant was in Yreka the morning of the hearing and was unable to explain his failure to attend.

It appears from the testimony of the applicant that the flow of Carter Creek at his intake is approximately 25 miners inches during the low flow period of a normal year, that there is an increment of perhaps twice this amount between that point and the diversion point of protestant, and that protestant makes some use for domestic and irrigation purposes and a desultory use for mining purposes. Applicant testified that he had been resident in this area for three years and that although he had passed on an average of once each two weeks where he could have observed any mining use by protestant, he had seen him mining only two or three times during the summer months. Applicant did not deny that protestant was riparian to the stream and admitted that the full summer flow could be used beneficially for mining on protestant's land.

CONCLUSION

It appears that there is a small flow in Carter Creek which during recent years has not been utilized to the fullest extent of which it is susceptible but that protestant probably has a riparian right under which he could divert and beneficially use all of the low flow. However, in view of

the provisions of Article XIV. Section 3 of the Constitution of the State of California, protestant cannot require that the full flow of Carter Creek be permitted to discharge continuously to and past his diversion point in order that he may, as in the past, make a dasultory use at will. As a riparian owner, and possibly as a prior appropriator as well, he is in a position to demand, as against the appropriator claiming under Application 8346, that such of the flow of Carter Creek as he is prepared to and will use beneficially be permitted to flow down to his intake. The surplus in an amount not to exceed what was applied for, towit one second foot, is available for appropriation and use under Application 8346 if Mr. Strouss desires to proceed with his application.

O R D E R

Application 8346 having been completed and duly noticed, a protest having been filed against the approval thereof, a hearing having been held after due notice, and the Division being now fully advised in the premises,

IT IS HEREBY ORDERED that Application 8346 be approved and that a permit be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *28th* day of *January*, 1936.

EDWARD HYATT, State Engineer

BY *Harold C. ...*
Deputy

