

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

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In the matter of Application 7489 of W. P. Frick to appropriate from Middle Fork of Cosumnes River and Sopiago Creek in El Dorado County for Mining and Domestic Purposes, Application 7582 of W. P. Frick to appropriate from Sopiago Creek for Mining and Domestic Purposes, Application 8113 of Henry J. Garibaldi to appropriate from Sopiago Creek for Mining and Domestic Purposes, Application 8302 of Henry J. Garibaldi to appropriate from Perry Creek for Mining Purposes and Application 8503 of Henry J. Garibaldi to appropriate from Middle Fork of Cosumnes River for Mining and Domestic Purposes.

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DECISION A. 7489, 7582, 8113, 8302 and 8503 D 390

Decided *June 16, 1936*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, MAY 19, 1936.

For Applicants

W. P. Frick
Henry Garibaldi

Stanley K. Smith and T. H. Delap
Charles F. Mattee and
A. L. Pierovich

For Protestants

Mary K. Pond and C. P. Pond, Jr.
Lane Investment Company
Richard Detert, Executor of the
Estate of W. F. Detert, deceased
C. F. Costa and E. O. Anderson
Staten Island Land Company
Wm. H., Mary E., and Leslie P. Frey
Marguerita Kaestner, et al.
Slug Gulch Properties

C. P. Pond
Thomas R. White
Judeon W. Reeves
E. O. Anderson
No appearance
Leslie P. Frey
A. C. Wilson

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Under Application 7489, W. P. Frick proposes to appropriate 20 cubic feet per second from Middle Fork of Cosumnes River at a point within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 12, T 8 N, R 14 E, M.D.B.&M. and 5 cubic feet per second from Sopiago Creek (known also as Clear Creek) at a point within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 18, T 8 N, R 14 E, M.D.B.&M., diversion to be made throughout the year for mining and domestic purposes on certain lands lying within the Brownville, Indian Diggings, Fairplay, Slug Gulch and Cedarville Mining Districts lying between the South and Middle Forks of the Cosumnes River and being all of Sections 4, 5, 7, 8, 17 and 18, the S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ Section 14, T 8 N, R 13 E, all of Sections 3, 10, 15 and 16, T 8 N, R 12 E, and all of Sections 32, 33, 34 and 36, T 9 N, R 12 E, M.D.B.&M. By letters dated May 15, 1935, and May 11, 1936, which have been accepted as petitions to include other areas within the place of use the following described lands are sought to be included.

The "B. B. B. Mine" which among other lands includes the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T 8 N, R 13 E, which lies outside the place of use, and S $\frac{1}{2}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T 8 N, R 13 E, M.D.B.&M.

After use for mining purposes it is proposed to return the water to (1) Middle Fork of Cosumnes River via Perry Creek within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T 9 N, R 12 E., (2) to a tributary of South Fork Cosumnes River within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T 8 N, R 12 E, and (3) to Cedar Creek, a tributary of the South Fork of the Cosumnes River, within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, T 8 N, R 12 E, M.D.B.&M.

Under Application 7582, W. P. Frick proposes to appropriate an additional 10 cubic feet per second throughout the year from Sopiago Creek to supplement the amount of water to be appropriated under Application 7489 for mining and domestic purposes. The point of diversion and place of use are the same as those described in Application 7489. The petition filed in connection with Application 7489 to include outside lands within the place of use also applies to Application 7582, and the water after use for mining purposes will be returned (1) to Middle Fork of Cosumnes River via Perry Creek within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T 9 N, R 12 E, M.D.B.&M., (2) to South Fork of Cosumnes River within NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, T 8 N, R 12 E, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, T 8 N, R 12 E, M.D.B.&M., and (3) to South Fork Cosumnes River via Cedar Creek within NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, T 8 N, R 12 E, M.D.B.&M.

Formal protests were filed against the approval of Applications 7489 and 7582 by Mary K. and C. P. Pond, Jr., Henry J. Garibaldi, Lane Investment Company, and Richard Detert, executor of the Estate of W. F. Detert, deceased. Subsequently an agreement was reached between Mr. Frick and Mr. Detert which resulted in the withdrawal of the Detert Estate protest. The applications were informally protested at the hearing by C. T. Caste and E. O. Anderson.

Another comprehensive mining development is that proposed by Henry J. Garibaldi under Applications 8113, 8302 and 8503.

Under Application 8503 it is proposed to appropriate 30 cubic feet per second from the Middle Fork of the Cosumnes River to be diverted from October 30th to July 20th of each season at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T 8 N, R 14 E, M.D.B.&M. which point, although described differently, is the same point of diversion from which W. P. Frick proposes to divert under Application 7489 (i.e. the intake of the Douglas ditch). Mr. Garibaldi proposes to convey the water through the Douglas ditch to Sopiago Creek where the supply

will be augmented by a proposed diversion from Sopiago Creek of 25 cubic feet per second from November 10th to May 25th under Application 8113 at a point within the $SE\frac{1}{4} NE\frac{1}{4}$ Section 18, T 8 N, R 14 E, M.D.B.&M. which point is at or in close proximity to the point of diversion on Sopiago Creek described in Applications 7489 and 7582 of W. P. Frick. Under Application 8113 it is also proposed to appropriate 6 1/4 cubic feet per second from Sopiago Creek to be diverted from November 10th to May 25th at a point within the $SE\frac{1}{4} NE\frac{1}{4}$ of Section 9, T 18 N, R 13 E, some 4 1/2 miles below the upper point of diversion. It is proposed to use the water diverted under Applications 8503 and 8113 for mining and domestic purposes at the Garibaldi Mines comprising the Telegraph, Bell, Dorsey, Mary, Studhorse, Big Claim and Cedar Grove mining claims located in Sections 5, 6, 8, 11, 16, 17, 18, 19, 20, 21, 28, 29 and 30, T 8 N, R 13 E, Sections 3, 4, 13 and 24, T 8 N, R 12 E, and Section 34, T 9 N, R 12 E, M.D.B.&M. After use for mining purposes the water is to be returned to South Fork Cosumnes River or Scott Creek within the $NE\frac{1}{4}$ Section 24, T 8 N, R 12 E, and to Perry Creek, a tributary of the Middle Fork of the Cosumnes River within the $SE\frac{1}{4}$ of Section 34, T 9 N, R 12 E, M.D.B.&M.

Applications 8503 and 8113 were protested by W. P. Frick and Staten Island Land Company. Application 8503 was also protested by Lane Investment Company.

Under Application 8302 as advertised, Henry J. Garibaldi proposed to appropriate 3 cubic feet per second of the waters of Perry Creek tributary to Middle Fork Cosumnes River to be diverted from December 1st to May 20th at a point within the $SW\frac{1}{4} SW\frac{1}{4}$ Section 36, T 9 N, R 12 E, M.D.B.&M. and to be used for mining purposes at the Cedar Grove Mines within the $N\frac{1}{2} NE\frac{1}{4} SW\frac{1}{4}$, the $SE\frac{1}{4} NE\frac{1}{4} SW\frac{1}{4}$, the $NE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$, the $S\frac{1}{2} SE\frac{1}{4} SW\frac{1}{4}$ and the $SE\frac{1}{4}$ of Section 34, T 9 N, R 12 E, and the $N\frac{1}{2} NE\frac{1}{4}$ of Section 3, T 8 N, R 12 E, M.D.B.&M. By petitions dated March 19, 1936, Mr. Garibaldi

seeks to change the point of diversion to a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T 9 N, R 12 E, M.D.B.&M. and to add to the place of use the NW $\frac{1}{4}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T 9 N, R 12 E, M.D.B.&M. After use for mining purposes it is proposed to return the water to Stony and Perry Creeks, tributaries of Middle Fork of Cosumnes River, at points within the SE $\frac{1}{4}$ of Section 34, T 9 N, R 12 E, M.D.B.&M.

Application 8302 was formally protested by (1) Staten Island Land Company, (2) William H., Mary E., and Leslie P. Frey, (3) Margarita Kaestner and F. L. Abbey administrator of the Estate of Frank E. Abbey, deceased, and informally at the hearing by (4) A. C. Wilson on behalf of the Slug Gulch properties.

PROTESTS

Applications 7489 and 7582 of W. P. Frick were previously set for hearing on September 11, 1934, and the protests against these two applications were fully discussed in the opinion upon which Decision 370 was based and to which reference is hereby made. Subsequent to the date of the opinion, an agreement was entered into between Richard Detert executor of the Estate of W. P. Detert, deceased, and W. P. Frick which resulted in the withdrawal of the protest of the Detert Estate.

W. P. Frick claims that under Applications 8113 and 8503, Henry J. Garibaldi is seeking to appropriate the same water as he seeks to appropriate under his prior Applications 7489 and 7582, action upon which is now pending before this office. On the other hand, Mr. Garibaldi charges non-diligence on Mr. Frick's part in completing his applications in that he has no place of use for the water which he seeks to appropriate. Mr. Garibaldi also claims that Mr. Frick has not acquired the necessary right of access and right of way for the conveyance of the water.

Staten Island Land Company claims the ownership of Staten Island con-

taining approximately 9,000 acres of land entirely surrounded by North and South Forks of the Mokelumne River from which water is diverted under claim of riparian ownership and appropriative rights initiated prior to the effective date of the Water Commission Act. It alleges in effect that should the applications of H. J. Garibaldi be approved it would suffer injury as follows:

1. Pollution of its water supply by inflow of salt water from the ocean.
2. Diminution of the water supply for irrigation and domestic purposes.
3. Diminution of beneficial seepage from the Mokelumne River.
4. Lowering of the level of the water surrounding the island to such an extent that it would diminish the effectiveness of the siphons which are now being used, thereby increasing pumping operations.

Lane Investment Company protests the approval of Application 8503 only.

It claims a right to appropriate water from the Middle Fork of Cosumnes River based upon appropriations initiated prior to the effective date of the Water Commission Act and alleges in effect that should applicant use water during the period from October 30th to July 20th of each season it would result in so reducing the flow in the Cosumnes River during a portion of this period that the Company would be deprived of the use of 25 cubic feet per second to which it is entitled. The Company indicated that its protest may be dismissed provided the applicant will agree to recognize its prior rights and to limit the season of diversion to the period from November 20th to June 15th of each year.

In reply to the protest applicant consents to amend the season of diversion to include the period from November 15th to July 1st of each season and claims that should Application 8503 be so amended there could be no interference with protestant's prior rights.

Under claim of riparian ownership and use commenced prior to the effective date of the Water Commission Act, William H. Frey, Mary E. Frey and

Leslie P. Frey claim a right to divert water from Perry Creek at a point on their property within the SW $\frac{1}{2}$ of SW $\frac{1}{2}$ of Section 36, T 9 N, R 12 E, M.D.B.8M. This diversion point is at or near the Perry intake of the so called Slug Gulch Ditch. These protestants aver that the waters which applicant seeks to appropriate under Application 8302 have been used continuously for irrigation, stock watering and mining purposes and that applicant Garibaldi paid the protestants for use of the water through the Slug Gulch ditch system during the winter and spring months of 1931, 1932 and 1933. Protestants allege in effect that should Application 8302 be approved it would result in depriving them of water to which they are entitled. Furthermore the point of diversion as originally described in Application 8302 was located on protestants' lands and protestants refused to grant applicant right of access.

Mrs. Marguerita Kaestner and F. L. Abbey, administrator of the Estate of Frank E. Abbey, deceased, alleged owners of the Slug Gulch mining property now under lease to one A. C. Wilson claim a right to divert water from Perry Creek through the Slug Gulch ditch based upon an appropriative right initiated prior to the effective date of the Water Commission Act and allege in effect that should Application 8302 be approved it would result in depriving them of the use of their ditch and water which have been used for many years for irrigation and mining purposes. These protestants have authorized Leslie P. Frey to act as their representative and agent in the matter.

A. C. Wilson appeared at the hearing and entered a verbal protest against the approval of Application 8302 upon the grounds that he held an option upon the Slug Gulch properties and should Application 8302 be approved it would deprive him of water and render his property valueless.

HEARING HELD IN ACCORDANCE WITH SECTION 1a
OF THE WATER COMMISSION ACT

Applications 7489 and 7582 of W. P. Frick and Applications 8113, 8302 and 8503 of Henry J. Garibaldi were completed as to engineering detail in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on Tuesday, May 19, 1936, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicants and protestants were duly notified.

On September 11, 1934, at the same hour and place a hearing was previously held on Applications 7489 and 7582 of W. P. Frick (See Decision A. 7489, 7582 D. 370 dated January 31, 1935).

GENERAL DISCUSSION

In Decision A. 7489, 7582 D 370 the protests of Mary K. Pond, C. P. Pond, Jr., Henry J. Garibaldi, Lane Investment Company, Richard Detert (subsequently withdrawn) and C. T. Csste were given due consideration with the result that it was concluded there was unappropriated water in the Middle Fork of the Cosumnes River during the period from about December 1st to about June 30th of each season and in Sopiago Creek during the period from about December 1st to about May 15th of each season and the only obstacle in the way of the approval of Applications 7489 and 7582 was the uncertainty with respect to right of access and the failure on the part of Mr. Frick to show legal relationship to the lands which he proposed to serve.

Subsequently, however, Mr. Frick entered into an agreement with the Detert Estate whereby rights of way are to be acquired through its property subject to confirmation by the Superior Court and an agreement has been entered into

with Baughman Bros., et al. for delivery of water to them for use at the "B.B.B. Mine" located within Sections 5, 6, 7, and 8, T 8 N, R 13 E, M.D.B.&M. Also a lease and option agreement has been made with Clarence W. and George Flick under which Frick may operate the following described property:

Lot 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T 8 N, R 13 E, M.D.B.&M. and that portion of NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5, T 8 N, R 13 E, M.D.B.&M. lying east of a road.

Frick also has a lease and option agreement with J. F. Frey, et ux under which he may operate the following described property:

S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T 8 N, R 13 E, M.D.B.&M.

Mr. Frick has petitioned to include such portions of these lands in the place of use under Applications 7489 and 7582 which are not already included and he has been given to understand that if and when these applications are approved they will be approved only for the service of lands with which legal relationship has been established. With these limitations as to season of diversion and lands to be served there is apparently no reason why these applications may not be approved.

As stated in Decision A 7489, 7582 D 370, Applications 7489 and 7582 are more or less in conflict with Application 5646 of the State of California, Department of Finance but in view of the fact that they are to appropriate for purely local uses in areas naturally dependent upon these streams for a water supply, it is believed that a determination of the relation of these priorities may wait upon the future.

The runoff records of the Water Resources Branch of the United States Geological Survey indicate that during the winter and spring months of a year of normal runoff there is an abundance of water in the Cosumnes River and its tributaries and that unappropriated water would be available for both Mr. Frick

and Mr. Garibaldi. Applications 8113 and 8503 of Henry J. Garibaldi are, however, in direct conflict with the prior Applications 7489 and 7582 of W. P. Frick in that they propose diversion from the same sources by the same diversion works, the record clearly indicating that the Douglas ditch is essential to the success of both projects and that it would not be feasible to construct a parallel conduit system. (Transcript p. 16)

Mr. Frick claims the ownership of the Douglas ditch by virtue of his succession in interest from one Charley Edner to whom the ditch and water right (if any) were sold by the tax collector of El Dorado County in 1927. Mr. Frick acquired the property (according to Exhibits 1, 2 and 3 filed at the hearing held on September 11, 1934) in 1931 and claims to have paid taxes on the property since that date. His claim to that portion of the ditch which passes through the Detert Estate property was challenged and in order to obtain the withdrawal of the protest filed by Richard Detert, Executor of the Estate of W. F. Detert, deceased, Mr. Frick has entered into an agreement with him, subject to the approval of the Superior Court of San Francisco County, whereby in return for right of way privileges, Detert agreed to quitclaim all rights to the ditch insofar as it extended over the lands of the Estate. Moreover it appears that the Douglas Ditch between Sopiago Creek and the property of the Baughman Bros. which Mr. Frick proposes to serve has been reconditioned by the Baughman Bros. with the understanding that Mr. Frick would serve them with a certain amount of water gratis in return for their labor in repairing the conduit. It appears further that water was actually conveyed through the ditch during the latter part of 1933 and the early part of 1934 by the Baughman Brothers by arrangement with Mr. Frick.

On the other hand, Mr. Garibaldi maintains that all rights to the ditch lapsed years ago by virtue of non user and that the lands occupied by the Douglas

Ditch system have reverted to the owners of the property through which it passes. He has therefore obtained agreements with the owners of the properties along the course of the ditch from its intake to his place of use by which he claims the necessary rights of way have been acquired by him. The agreement with Detert is verbal only and apparently is subject to the prior agreement between Detert and Frick.

While this office cannot appropriately pass upon the question of ditch ownership or right of way, the fact remains that apparently Mr. Frick is in possession of and has been using at least a portion of the ditch, and since the hearing held on September 11, 1934, Mr. Garibaldi has repeatedly urged the Division to withhold action upon Mr. Frick's application in order to afford him an opportunity to negotiate with Mr. Frick to the end that he might acquire his holdings.

In a letter to this office dated September 14, 1935, Mr. Garibaldi's attorney, Senator Pierovich stated as follows:

"..... We are prepared to offer him (Frick) a reasonable price for his holdings but as yet we have not agreed on the figure
..... Frankly, if we come to terms with Mr. Frick, we will want his claim to be favorably acted upon because we will take it by assignment, but it is very important to me that matters be held in abeyance until I have closed the deal with him, therefore I would ask you to please give us another thirty days before you finally dispose of the claim.

I would also like to get, if this is possible, a copy of the agreement that Frick has with Baughmans as we will probably have to assume this obligation when we do take over Frick's interest.

I am sorry to be continually bothering you with this matter but I believe that I can avoid a lot of litigation for these parties if I had a chance to work this out between the two. It will also clear up the matter for your Department in that there will not be two conflicting claims to those water rights."

It would appear that Mr. Garibaldi in a measure himself recognized Mr. Frick's claim to the ditch and was endeavoring to acquire it by purchase. While the delay in action upon Applications 7489 and 7582 was originally caused by Mr. Frick himself through his failure to establish legal relationship of appre-

priator and user, the major cause of delay has been occasioned by repeated requests on the part of Garibaldi that action be withheld until his negotiations with Mr. Frick had been completed. In fairness to Mr. Frick it is our opinion therefore that action on the conflicting later applications of Mr. Garibaldi should now be temporarily withheld pending developments in connection with the earlier applications of Mr. Frick. If Mr. Frick does not own and cannot obtain possession of the Douglas Ditch he will be unable to proceed, and his permits will be revoked which will clear the way for approval of Mr. Garibaldi's applications and the development which he proposes. The matter can be expedited if Mr. Garibaldi chooses, by bringing suit to quiet title to this ditch, as was suggested to him more than a year ago. If this suit terminates unfavorably to Mr. Frick the way will then be open to revoke his permits thereby clearing the way for approval of Mr. Garibaldi's applications.

Relative to Application 8302 of Henry J. Garibaldi to appropriate from Perry Creek, Mr. Garibaldi has filed a petition to change the point of diversion therein to a point located on his own property, below the lands of protestants Wm. H., Mary E. and Leslie P. Frey and below ^{the point of diversion to} the Slug Gulch properties. Such being the case, the protests of Wm. H., Mary E. and Leslie P. Frey, the protest of Margaret Kaestner and F. L. Abbey, administrator of the Estate of Frank E. Abbey, deceased purported owners of the so-called Slug Gulch properties, and the protest of A. G. Wilson optionee of the Slug Gulch properties may be dismissed.

As the water sought to be appropriated from Perry Creek under Application 8302 for mining purposes, a non consumptive use, is to be returned to the Middle Fork of the Cosumnes River, via Stony and Perry Creeks at the junction of Perry Creek and the Middle Fork of the Cosumnes River, and as there are apparently no other diverters or users of water from Perry Creek, no reason has

been shown why Application 8302 should not be approved except possibly upon the grounds of pollution of the water supply. Applicant however expressly states in Application 8302 that the water diverted thereunder will be returned to the stream, unpolluted and according to the testimony presented at the hearing (See pages 58 and 59 of transcript) he proposes to clarify the water by means of a debris dam to be constructed above the intakes of the lower protestants. There is therefore apparently no reason why Application 8302 may not be approved for the appropriation of water at the proposed point of diversion described in applicant's petition.

SUMMARY AND CONCLUSION

The uses to which applicants propose to put the water are useful and beneficial and it is the opinion of the Division that Applications 7489 and 7582 should be approved for the amounts of water applied for. The season of diversion from the Middle Fork of the Cosumnes River however should be limited to the period from about December 1st to about June 30th of each season and that from Sopiago Creek to the period from about December 1st to about May 15th of each season in view of the fact that a portion of the waters diverted will not be returned to the stream and therefore will not be available for use by certain of the downstream claimants. Also special terms or conditions should be incorporated in each permit to the effect that use is restricted to the properties designated above with which it has been shown that applicant has established legal relationship.

As the waters which applicant Garibaldi seeks to appropriate under Application 8302 are to be returned to the Middle Fork of the Cosumnes River above the points of diversion of the lower protestants and his proposed new point of diversion is below those of the upper protestants it is the opinion of this office that

Application 8302 should be approved subject to the usual terms and conditions.

Inasmuch as Applications 8113 and 8503 are apparently in direct conflict with the appropriations proposed by W. P. Frick under his prior Applications 7489 and 7582 to appropriate from the same sources, action upon these two applications should be withheld until further order is entered.

Q R D E E

Applications 7489, 7582, 8113, 8302 and 8503 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, public hearings having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7489 be approved for an amount of water not to exceed 20 cubic feet per second to be diverted from the Middle Fork of the Cosumnes River from about December 1st to about June 30th of each season and for an amount of water not to exceed 5 cubic feet per second to be diverted from Sopiago Creek from about December 1st to about May 15th of each season and that a permit be granted to the applicant subject to each of the usual terms and conditions as may be appropriate and subject also to the following special term or condition, to wit:

Use under this permit is restricted to the following described properties:

- (1) The "E. B. B. Mine" located within portions of Sections 5, 6, 7 and 8, T 8 N, R 13 E, M.D.B.&M.
- (2) The $S\frac{1}{2}$ NW $\frac{1}{4}$ and $S\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T 8 N, R 13 E, M.D.B.&M.
- (3) Lot 4, $S\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 4, T 8 N, R 13 E, and that portion of NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, T 8 N, R 13 E, M.D.B.&M. lying east of the highway.

and

IT IS HEREBY FURTHER ORDERED that Application 7582 be approved for an amount of water not to exceed 10 cubic feet per second to be diverted from Sopiago Creek from about December 1st to about May 15th of each season and that a permit be granted to applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term or condition, to-wit:

Use under this permit is restricted to the following described properties:

- (1) The "B.B.B. Mine" located within portions of Sections 5, 6, 7 and 8, T 8 N, R 13 E, M.D.B.&M.
- (2) The $\frac{1}{2}$ NW $\frac{1}{2}$ and $\frac{1}{2}$ NW $\frac{1}{2}$ NW $\frac{1}{2}$ Section 9, T 8 N, R 13 E, M.D.B.&M.
- (3) Lot 4, $\frac{1}{2}$ NW $\frac{1}{2}$, NW $\frac{1}{2}$ SW $\frac{1}{2}$ Section 4, T 8 N, R 13 E, and that portion of NW $\frac{1}{2}$ SE $\frac{1}{2}$ Section 5, T 8 N, R 13 E, M.D.B.&M. lying east of the highway.

and

IT IS HEREBY FURTHER ORDERED that Application 8302 be approved for an amount of water not to exceed 3 cubic feet per second to be diverted from Ferry Creek at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, T 9 N, R 12 E, M.D.B.&M. and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS HEREBY FURTHER ORDERED that action upon Applications 8113 and 8503 be withheld until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 16th day of June, 1936.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

(Seal)
WES:MP