

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 12793 by Francis J. Lucid, Jr., to
Appropriate Water from West Branch of East Branch of Mud Creek
Tributary via Mud Creek to Sacramento River in Butte County for
Domestic and Fire Protection Purposes.

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Decision A. 12793 D. 637

Decided November 9, 1949

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APPEARANCES AT HEARING HELD AT SACRAMENTO, SEPTEMBER 20, 1949:

For the Applicant

Francis J. Lucid, Jr.

No appearance

For the Protestants

William H. and Esther O. Hutchinson

William H. Hutchinson

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer.

Also in attendance: William R. Gianelli, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works.

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OPINION

General Description of the Proposed Development

Application 12793 contemplates the diversion of 1.25 cubic feet per second, year round, from West Branch of East Branch of Mud

Creek in Butte County for domestic purposes and fire protection. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T 24 N, R 2 E, MDB & M. The proposed diversion involves the construction of a concrete and earth dam 8.5 feet high and 25 feet long, a pumping plant of 1.25 cubic feet per second capacity and a 3-inch pipe line 1270 feet long. The overall static head is given as 220 feet. The place of use is to be a tract of some 100 acres lying within the same Section 12. Here it is contemplated that there will be 50 homes, each with a half-acre garden. Some stock watering is contemplated, also fire protection. In addition to the appropriation applied for the applicant also claims a riparian right.

Protest

William H. and Esther O. Hutchinson protest the application, stating that according to their observation and belief the flow of the source is insufficient to supply the proposed development without infringing upon their appropriative right. They assert that they divert at a point within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T 24 N, R 2 E, MDB & M. They claim an appropriative right initiated in 1908 and perfected by continuous beneficial use ever since, and a supplemental appropriative right initiated by the filing of Application 11579. They assert use of water for agricultural, domestic, stock watering and fire protection purposes, their present conduit being a 1 $\frac{1}{2}$ -inch pipe under a 28 pound static head.

No answer to the above mentioned protest was submitted by the applicant.

Hearing Held in Accordance with the Water Code

Application 12793 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Tuesday, September 20, 1949 at 10:00 o'clock A.M. at Room 401, Public Works Building, Sacramento, California. Of the hearing, the applicant and the protestants were duly notified.

General Discussion

According to the folder in which documents relating to Application 12793 are filed in the office of the Division, no communication or document bearing Applicant Lucid's signature has been received except the application itself. In response to Division letter (Form 8B) of November 12, 1948, relating to the posting of notices, an "Afficavit of Posting" (Form 8D) was submitted on behalf of the applicant by one Glenn H. Millage on December 13, 1948. Since the date last mentioned no communication has been received from or on behalf of the applicant. Communications addressed to him have elicited no reply, although such communications have been addressed in the same manner as was the Division letter of November 12, 1948 which a representative of the applicant acted upon. This apparent disregard by the applicant of communications relating to the application, coupled with his non-attendance and non-representation at the duly advertised hearing of September 20, 1949 and his lack of showing within five days thereafter of good cause for such non-appearance warrant an interpretation under Section 733(a) of the California

Administrative Code that he has abandoned interest in the subject matter of the application.

Conclusion

The failure of the applicant to comply with the rules and regulations of the Division with respect to filing an answer to the protest, his failure to appear at the hearing and his failure to show good cause for his non-appearance are taken as indicating an abandonment of interest in the application such that the issuance of a permit in approval thereof is not justified. It is therefore the opinion of the Division that Application 12793 should be rejected and cancelled upon the records of this office.

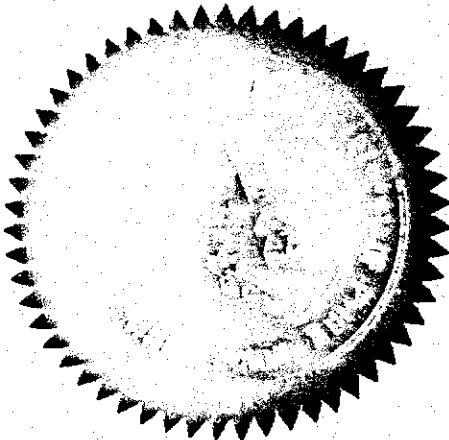
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ORDER

Application 12793 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 12793 be rejected and cancelled upon the records of the Division of Water Resources without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 9th day of November, 1949.




Edward Hyatt, State Engineer