

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

oOo

In the Matter of Application 9142 by North Fork Ditch Company to Appropriate Water from North Fork of American River Tributary to Sacramento River in Placer County for Irrigation Purposes.

oOo

Decision A. 9142 D. 645

Decided January 19, 1950

oOo

APPEARANCES AT HEARING HELD AT SACRAMENTO, MAY 26, 1949:

For the Applicant

North Fork Ditch Company

(Harry Seymour, Attorney  
(L. K. Jordan, Manager

For the Protestant

Pacific Gas and Electric Company

(W. R. Dunn, Attorney  
(Gordon V. Richards, Engineer

County of Placer

Francis Lindsay, Assemblyman

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer

Also present at the hearing was Mr. Fred Ervast of the Sacramento District, Corps of Engineers, U. S. Army.

oOo

OPINION

General Description of the Proposed Development

The application contemplates a diversion from North Fork of American River of 6500 acre-feet per annum, the water to be collected between January 1 and June 1 of each season, stored temporarily and later used for irrigation. The proposed

point of diversion lies within the  $W\frac{1}{2}$  of Section 31, T 13 N, R 9 E, MDB&M, this being the location of the storage dam (sometimes referred to as "North Fork Debris Dam"), a concrete structure 134 feet high and 620 feet long, which creates a reservoir 275 acres in extent and 13,000 acre-feet in capacity. The application provides that water from the reservoir will first follow the channel of the North Fork of American River as far as a rediversion dam, located within the  $SE\frac{1}{4}$   $NW\frac{1}{4}$  of Section 23, of the adjoining T 12 N, R 8 E. From this structure, described as being 25 feet high and 310 feet long and built of masonry and concrete, water will be conducted by canal and flume a total distance of some 26 miles to the place of use. The latter includes some 13,542 acres within the boundaries of Fair Oaks, Citrus Heights and Carmichael Irrigation Districts and Orangevale Mutual Water Company and, in addition, some 10,788 acres lying below elevation 390, north of American River, South of Miner's Ravine and easterly of the just mentioned irrigation districts. These lands lie within Placer and Sacramento Counties. According to the application the applicant sells water wholesale to the districts and retails it as a public utility to some 8706 acres outside of the districts; and the purpose in filing is to secure a partial and supplemental supply for the areas now under irrigation and as new supply for additional lands which may be brought under irrigation.

#### Protest

The Pacific Gas and Electric Company while disclaiming any desire to oppose the appropriation by the applicant of flood waters provided such appropriation is accomplished without depriving it of waters to which it is entitled, nevertheless filed and desires to maintain a protest until such time as a stipulation has been entered into which it feels will fully protect its rights. The protestant asserts that it is using the entire flow of the American River at Folsom Dam up to 1000 cubic feet per second and that it and its predecessors have used such flow continuously since July, 1895. It asserts further that the water in question is used

for generating power at Folsom Power Plant which is located within the NE $\frac{1}{4}$  of Section 35, T 10 N, R 7 E, MDB&M, and that all water so used is returned to the natural channel at that plant and thus becomes available for other uses downstream. The protestant contends that the diversion of any of the flow of the North Fork of American River at any time that there is less than 1000 cubic feet per second of natural flow in the American River at Folsom Dam would to that extent deprive it of water to which it is entitled.

In answer to the protest the applicant denies that the protestant is entitled to use the first 1000 cubic feet per second of the natural flow of the American River at Folsom Dam. It alleges on the contrary that in accordance with Action 7815, Judgment 5353 in the Superior Court in and for the County of Sacramento the applicant's predecessors became entitled to the first 3000 miners inches (60 cubic feet per second) and that that judgment is still in full force and effect. It concedes that with the exception of the 3000 miners inches just mentioned the protestant has a right to divert and use the next 1000 cubic feet per second of the natural flow of American River at Folsom Dam and consents that any permit or license issued in the matter may so provide. It alleges that the water which it seeks will consist, in addition to its prior rights under the judgment cited, of excess waters of American River to be impounded when the natural flow in the American River at the protestant's intake equals or exceeds the amount to which the protestant is entitled. The applicant disclaims any purpose to interfere with any of protestant's rights to use of the natural flow of American River at Folsom Dam and denies that any permit or license issued to it in the matter would so interfere.

Hearing Held in Accordance with the Water Code

Application 9142 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, May 26, 1949, at 10:00 o'clock A.M. at the Board Room, Public Works Building, Sacramento, California. Of the hearing the applicant and the protestant were duly notified.

#### General Discussion

The applicant is a public utility, operating subject to the jurisdiction of the California Public Utilities Commission. The proposed point of storage is the North Fork Debris Dam which was constructed by the Corps of Engineers, United States Army, in 1939 and is controlled and operated by that agency. The applicant on July 1, 1947, entered into a contract with the United States providing in brief that whereas the Federal Government has constructed the dam in question for the control of hydraulic mining debris and at times has surplus storage space therein, the United States in consideration of a certain sum to be paid per acre foot will release on the applicant's request, supply and reservoir outlet capacity permitting, such quantities as the applicant may desire to divert at its headgate. The contract further provides for its continuance in force for 15 years and thereafter except that after 15 years from date of execution it may be terminated by either party on 90 days notice.

That flood waters far in excess of the protestant's rights flow on North Fork of American River past the proposed point of diversion was conceded by the protestant company's representative at the hearing. Apprehension was expressed however that under the project outlined in the application water occasionally would be impounded

which under existing rights should be allowed to continue down channel to Folsom power house and that water so impounded and later released would never reach the power house but on the contrary would be intercepted at the applicant's point of redirection and claimed under its contract with the Federal Government, as stored water. The impounding mentioned, it was argued, might result from faulty reservoir operation but would occur sometimes in any event because of limited reservoir outlet capacity. If a provision can be made by stipulation or otherwise which will ensure protection against such losses the protestant is disposed to withdraw its objection.

The protestant's apprehension that water which should be allowed to pass the applicant's point of redirection will occasionally be wrongfully impounded does not appear well founded. It may be assumed that operators at the federally operated dam will be competent and that deviations from ideal operation will be in the main compensating. It is assumed that both applicant and protestant will of necessity be attentive to the division of waters at the applicant's point of redirection. Where it is evident that unappropriated water exists in the source (in this case far in excess of the amount applied for) an application can not be disapproved upon the assumption that faulty operation or failure of the applicant's diversion or other works will result in injury to downstream vested rights.

For the reasons above set forth the protest by Pacific Gas and Electric Company is deemed insufficient.

A protest was introduced orally at the hearing by Mr. Francis Lindsay who appeared on behalf of the Board of Supervisors of Placer

County. That protest in substance was an objection to the granting of the permit sought under Application 9142 until extensive problems of the American River have been settled. Mr. Lindsay explained that the Supervisors of Placer County do not object to the use of the water in question at the present time, under the Federal contract now in effect, but that they do object to the formality of the issuance of a permit because of uncertainties as to action that will in future be taken in connection with certain other applications that are now pending. The applicant's counsel answered to the general effect that the purpose of Application 9142 is to meet the necessities of the present, and that the facing of such necessities cannot be indefinitely postponed.

The objection voiced by Mr. Lindsay bears upon the principle that the public welfare sometimes warrants deferment of permit issuance until mature consideration has been given as to whether the particular application or applications are in harmony with the optimum plan for the future development of the locality. The protection apparently desired by Mr. Lindsay would seem already to exist by virtue of the filing by the (State) Department of Finance of Applications 5635, 5636, 7936, 7937 and 7940. These applications provide for the appropriation of some 10,000 cubic feet per second of direct flow and storage of the order of 1,200,000 acre feet per annum from the American River stream system. They were filed under provisions of the Water Code providing for reservations of supplies of water commensurate with planned future development and utilization of water resources. They are all prior in time to Application 9142. They are all in good standing before this office and have not been released or assigned by their initiator to any other party or agency.

Subsequent to the filing of Application 9142 the Department of Finance also filed Applications 9363 and 9364 which contemplate diversions heading on Sacramento River at unspecified points from Shasta Dam to the Sacramento-San Joaquin delta and on the delta channels. The first of these contemplates the diversion of 1,000 cubic feet per second and 310,000 acre feet per annum for municipal and industrial purposes and the other the diversion of 9,000 cubic feet per second and 3,000,000 acre feet per annum for irrigation, domestic, saline, flood control and navigation purposes. These two applications complete the list of filings by the Department of Finance on North Fork of American River or on the reaches of the rivers to which that stream in turn is tributary.

In connection with action upon applications to appropriate water from streams upon which the Department of Finance has filed, certain policies have been formulated, one of which is as follows:

"Applications to appropriate for purely local uses within the watershed or adjacent thereto in areas naturally dependent thereon for water supply and which will not interfere seriously with consummation of the development proposed under the State filings shall be deemed not in conflict."

In view of the quantities of water that the North Fork of American River is commonly known to discharge, the amount applied for under Application 9142, the purpose for which it is sought and the location and extent of the place of use it proposes, especially in comparison with the corresponding elements of the several Department of Finance filings, Application 9142 does not appear in conflict with the State Department of Finance filings, nor does it appear inimical to the interests of Placer County. Under the circumstances it is not in the public interest to hold Application 9142 in abeyance merely because

the scheme of future stream development is not yet fully known, and Mr. Lindsay's protest on behalf of the Board of Supervisors of Placer County is considered insufficient.

To insure against misunderstanding in regard to relative priorities such permit as may be issued in connection with Application 9142 should contain the following special clause:

"Issuance of this permit shall not operate to the prejudice of any prior rights, including rights acquired by the State Department of Finance under Applications 5635, 5636, 7936, 7937 and 7940."

Inasmuch as the applicant does not own or operate the reservoir in which storage is proposed, but is dependent for the use of storage facilities upon a contract with the owner of that reservoir - the Federal Government - and inasmuch as the current contract is subject to termination by either party thereto after 15 years from the date of its execution (July 1, 1947) it is deemed advisable that any permit issued in connection with Application 9142 contain the following special clause also:

"This permit is conditioned upon the permittee maintaining in effect a contract with the owner of the specified reservoir providing for use of storage space therein. Should the existing contract between permittee and the United States of America, dated July 1, 1947, be terminated and a new contract providing for use of storage space not be executed with reasonable promptness all rights under this permit shall terminate and the permit shall be revoked."

#### Summary and Conclusions

Unappropriated water ordinarily exists in the source from which appropriation is sought under Application 9142 throughout the diversion period set forth in said application. Such water may be



taken and used as proposed in that application without injury to present lower users and without jeopardy to future developments in the stream system. The application should be approved subject to the usual terms and conditions and subject also to special conditions relating to its subordination to State filings and to continuity of contract for storage space.

oOo

O R D E R

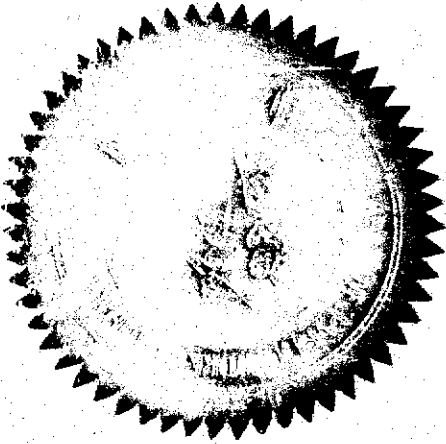
Application 9142 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9142 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special clauses, to wit:

"Issuance of this permit shall not operate to the prejudice of any prior rights, including rights acquired by the State Department of Finance under Applications 5635, 5636, 7936, 7937 and 7940."

"This permit is conditioned upon the permittee maintaining in effect a contract with the owner of the specified reservoir providing for use of storage space therein. Should the existing contract between permittee and the United States of America, dated July 1, 1947, be terminated and a new contract providing for use of storage space not be executed with reasonable promptness all rights under this permit shall terminate and the permit shall be revoked."

WITNESS my hand and the seal of the Department of Public  
Works of the State of California this 19th day of January , 1950.



  
Edward Hyatt, State Engineer