

Before the Division of Water Resources  
Department of Public Works  
State of California

oOo

In the Matter of Permits 29 and 452 Heretofore Issued in approval of Applications 18 and 915 respectively of the Compton-Delevan Irrigation District to appropriate from the Sacramento River and Trough of Colusa Basin in Colusa County for Agricultural Purposes and Application 10780 of Provident Irrigation District to appropriate from Willow Creek, tributary to Colusa Drain in Glenn County for Irrigation Purposes.

oOo

Decision A. 18, 915, 10780 D. 522

Decided March 20, 1945

oOo

APPEARANCES AT HEARING HELD AT WILLOWS, JANUARY 16, 1945

For Applicant

Provident Irrigation District

T. E. Balch

For Permittee and Protestant

Compton-Delevan Irrigation District

Jerome D. Peters

For Protestant

Glenn-Colusa Irrigation District

Wright L. Callander

For Division of Water Resources

Gordon Zander, Supervising Hydraulic Engineer for Harold Conkling, Deputy State Engineer in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

O P I N I O N

General Description of Projects

Application 18 which stands upon the records of this office in the name of Compton-Delevan Irrigation District was filed on March 3, 1915, and was approved on October 20, 1915 by the issuance of Permit 29. In its present form it provides for an appropriation of 20 cubic feet per second from the

Trough of Colusa Basin to be diverted at a point on the north line of the Compton Tract, 4,400 feet east of the one-quarter corner on the East line of Section 7, T 17 N, R 2 W, M.D.B. & M., and also an appropriation of 110 cubic feet per second from the Sacramento River to be diverted from points described as follows:

- (a) At N.E. corner of the Compton Tract within the S. E.  $\frac{1}{4}$  of projected Section 12, T 17 N, R 2 W, M.D.B. & M.
- (b) At the intake of the main canal of the Glenn-Colusa Irrigation District within Section 2, T 22 N, R 2 W, M.D.B. & M.

Application 915 which stands upon the records of this office in the name of Compton-Delevan Irrigation District was filed on February 7, 1918 and was approved on July 5, 1918 by the issuance of Permit 452. In its present form it provides for an appropriation of 20 cubic feet per second from the Trough of Colusa Basin to be diverted at the point described in Application 18 and also an appropriation of 50 cubic feet per second from the Sacramento River to be diverted from points described as follows:

- (a) At N.E. corner of the Compton Tract within the SE  $\frac{1}{4}$  of projected Section 12, T 17 N, R 2 W, M.D.B. & M.
- (b) At a point S. 6° E. 375 feet downstream from the above described point (a).

The place of use named in each application contains 12,562.48 acres within T 17 N, R 2 W, and T 17 N, R 3 W, M.D.B. & M., and lies within the District boundaries. In addition to this area, the place of use under Application 915 contains a single parcel of land covering portions of Sections 10, 11, 12, 14, and 15, T 17 N, R 2 W, M. D. B. & M., containing 1,115 acres making a total of 13,767.48 acres to be irrigated under Application 915.

Application 10780 was filed on March 8, 1944 by the Provident Irrigation District. It proposes an appropriation of 25 cubic feet per second from Willow Creek, tributary to Colusa Drain and the Sacramento River in Glenn County from about April 1 to about October 1 of each season for the irrigation of 13,227 acres within the District boundaries south of Willows - Butte City Road. The point of diversion is described as being within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 33, T 19 N, R 2 W, M. D. B. & M. Application 10780 was filed for the purpose of supplementing its use under its approved Application 8687 as it was found upon inspection of the project under Application 8687 preliminary to license action that the Provident Irrigation District had been using approximately 25 cubic feet per second in excess of the permitted amount.

#### Protests

Application 10780 was protested by the Glenn-Colusa Irrigation District and by the Compton-Delevan Irrigation District.

The Glenn-Colusa Irrigation District claims that the water which applicant is seeking to appropriate is water which protestant pumps from the Sacramento River for use within its boundaries; that any water escaping into Willow Creek is the direct result of the protestants irrigation operations; that were it not for the water draining into Willow Creek from its irrigated lands this creek would have no surface flow during the summer months; that so long as the water remains within its boundaries it has the right to recapture and to resell it and proposes to construct the necessary diversion works above applicants intake for this purpose. Protestant alleges in effect that should Application 10780 be approved it might lose the right to recapture the waste waters, thereby depriving it of additional revenue.

The Compton-Delevan Irrigation District claims that as an agency of the State of California, its use of water from Willow Slough on lands within its boundaries has been dedicated to the public; that such use has been made for a long period of time under a claim of right openly and adversely to applicant and all others and that all of the waters of Willow Slough are necessary for the proper irrigation of its lands. It claims that the water is diverted at different points within the District. No mention in the protest is made of its Applications 18 and 915.

Hearing Set in Accordance with the Water Code

Application 10780 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 on Tuesday, January 16, 1945 at 10:00 o'clock A. M. in the Council Chamber, City Hall, Willows, California.

It appearing to the State Engineer that the right approved under Application 18 to divert from the Trough of Colusa Basin and from the Sacramento River at the northeast corner of the Compton Tract and also the right approved under Application 915 to appropriate from the Trough of Colusa Basin and from the Sacramento River at the northeast corner of the Compton Tract and a point on the Sacramento River 375 feet downstream from the above described point had not been exercised since 1926, (the only diversion made by the Compton-Delevan Irrigation District since 1926 being through the Glenn-Colusa Irrigation System under its Application 18), the hearing was also set for the purpose of allowing the Compton-Delevan Irrigation District to show cause, if any there was, wherefore that part of approved Application 18 for the diversion of water from the Trough of Colusa Basin and the point on the Sacramento River at the northeast corner of the Compton Tract and approved Application 915 in its entirety should be revoked for failure to conform to the terms and conditions thereof.

Of this hearing applicant, protestants and permittees were duly notified.

#### General Discussion

That the water which applicant is seeking to appropriate is waste and seepage water which is returned to Willow Creek after use for irrigation purposes on the lands of the Glenn-Colusa Irrigation District is admitted by the applicant. The record clearly indicates that the applicant is fully aware that under its Application 10780 no right of continuance or regularity of the flow of these waters of the Glenn-Colusa Irrigation District can be acquired except by agreement or contract with the protestant District. The District's position is safeguarded by the action of the Supreme Court in the case of Stevens v. Oakdale Irrigation District, 13 Cal. (2nd) 343. Furthermore the point at which the Glenn-Colusa Irrigation District proposes to eventually take these waters under control is above the proposed point of diversion of the applicant and it would therefore appear that the Glenn-Colusa Irrigation District is in a position both legally and physically to recapture its waste water before it reaches applicant's intake on Willow Creek.

It is the opinion of the Division that the rights of the protestant Glenn-Colusa Irrigation District will not be jeopardized in any way by the approval of Application 10780 and its protest is therefore dismissed.

The records of this office indicate that since the year 1926 no water has been diverted under Application 915 from either the Sacramento River or the Trough of Colusa Basin and no water has been diverted under Application 18 except from the Sacramento River at the intake of the Glenn-Colusa Irrigation District. Furthermore upon investigation on August 31, 1944 by an engineer of the Division, it was found that all machinery of any description had been removed from the north line of the Compton Tract both at the proposed point of diversion from the Trough of Colusa Basin and at the proposed point of diversion

on the Sacramento River. There were indications of water having been diverted from Willow Slough but the pump had been removed and no diversions were being made. No attempt was made by protestant Compton-Delevan Irrigation District to establish use from Willow Creek and applicant's attorney stated that the protestant District had no objection to Application 10780 being approved subject to vested rights. (Transcript of hearing p. 5.) The protest of the Compton-Delevan Irrigation District may therefore be dismissed.

Inasmuch as the protests are dismissed it is the opinion of the Division that Application 10780 should be approved subject to the usual terms and conditions.

According to the terms of the permit issued in approval of Application 18 the water was to have been applied to full beneficial use on or before July 1, 1916. Several extensions of time have been granted, the last one expiring on December 1, 1941. Although the records of this office indicate that during the year 1944 the entire 110 c.f.s. which applicant District proposed to appropriate from the Sacramento River has been diverted and used, no diversion has been made by the District from the Trough of Colusa Basin since the year 1925 when, according to our records the average diversion during the month of maximum use was 6.6 c.f.s. The pumping plant was allowed to remain until 1931 when it was removed indicating abandonment on the part of the permittee particularly since there has been no attempt to re-establish the diversion and use from this source and the District has no definite plans for proceeding with this use.

According to the terms of the permit issued in approval of Application 915, the water was to be applied to beneficial use on or before May 1, 1920. As in the case of Application 18 the Division has been most liberal in granting extensions of time, the last one expiring on December 1, 1941. It appears from the

records of the Division that not since the year 1926 has any water been diverted by the Compton-Delevan Irrigation District under permits from the Division except at the intake of the Glenn-Colusa Irrigation District which is one of the points of diversion specified in Application 18 but which is not named in Application 915. Therefore no use of water has been made by the Compton-Delevan Irrigation District under its Application 915 since 1926.

The State Water Code, under which this office functions, provides that if the terms and conditions of a permit are not complied with, the department shall, after due notice and hearing, revoke the permit and declare the water subject to further appropriation; that a permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purposes in conformity with the Water Code, but no longer, and that when the person entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated for a period of 3 years such unused water reverts to the public and shall be regarded as unappropriated public water.

No exception to the above provisions appear in the Water Code and therefore we cannot concur with the opinion of the attorney for the Compton-Delevan Irrigation District expressed at the hearing to the effect that as a political subdivision of the State, the rights of the District could not be taken away unless through formal abandonment.

In view of the above it is the opinion of the Division that any rights which the District may have acquired years ago to appropriate water from the Trough of Colusa Basin under its Applications 18 and 915 and to appropriate water from the Sacramento River under its Application 915 have been forfeited by non-user; also that the District has not complied with the terms and conditions of the permits with respect to these appropriations. Therefore the permit issued in approval of Application 18 should be amended by striking therefrom all

reference to the proposed appropriation of 20 cubic feet per second from the Trough of Colusa Basin and the permit issued in approval of Application 915 should be revoked in its entirety.

Although it appears that no water has been diverted from the lower point of diversion on the Sacramento River since 1926, the fact remains that the District has complied with the terms and conditions of the permit issued in approval of its Application 18 insofar as they relate to the proposed appropriation from the Sacramento River at its upper point of diversion and the District has requested that the lower point be retained as an alternative point of diversion in the event that for any reason it may be denied the privilege of diversion through the intake of the Glenn-Colusa Irrigation District. This request does not appear to be unreasonable and therefore no action need be taken by the Division in this connection and the lower point on the river should be retained.

O R D E R

Application 10780 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, and it appearing to the Division that due diligence had not been exercised in the prosecution of the use of water under permits heretofore issued in approval of Applications 18 and 915 and that whatever rights permittee once had under Application 18 to appropriate from the Trough of the Colusa Basin and under Application 915 to appropriate from the Sacramento River and the Trough of the Colusa Basin had been lost by non-user, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10780 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

IT IS FURTHER ORDERED that Permit 29 heretofore issued in approval of

Application 18 be amended by striking therefrom all reference to the proposed appropriation of 20 cubic feet per second from the Trough of Colusa Basin; and

IT IS FURTHER ORDERED that Permit 452 heretofore issued in approval of Application 915 be revoked in its entirety.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 20th day of March, 1945

EDWARD HYATT, STATE ENGINEER

By Harold C. Conkling  
Deputy State Engineer

