

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

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In the Matter of Application 10856 of W. R. Ellsworth
to Appropriate Water from Fiddle Creek Tributary
to North Fork of Yuba River in Sierra
County for Domestic, Irrigation
and Mining Purposes

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Decision A. 10856 D. 534

Decided May 15, 1946

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APPEARANCES AT FIELD INVESTIGATION CONDUCTED ON OCTOBER 26, 1945
UNDER THE PROVISIONS OF ARTICLE 13, SECTION 733B OF THE CALIFORNIA
ADMINISTRATIVE CODE.

For Applicant

W. R. Ellsworth

In propria persona
Ross F. Taylor

For Protestants

Pacific Gas & Electric Co.
Division of Fish & Game

Henry V. Lutge
Harry Cole

Investigator:

A. S. Wheeler, Assistant Hydraulic Engineer, for Edward Hyatt,
State Engineer, 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

Applicant originally proposed diversion of 3.0 cubic feet per second from January 1 to December 31 for domestic, irrigation and mining uses but at the time of the investigation requested that Application 10856 be amended to provide for the same uses the diversion of 3.0 cubic feet per second from November 1 to May 31 and for 0.5 cubic foot per second from June 1 to October 31.

Diversion is proposed through an old conduit the reconstruction of which has already been completed by the applicant.

Protests

The Pacific Gas and Electric Company claims rights under its Applications 2197, 3026, 5004, 8794 and 10282 to store for power purposes 20,335 acre feet per annum of the waters of North Fork Yuba River in its Bullards Bar Reservoir and 67,000 acre feet per annum of the waters of Yuba River in its Narrows Reservoir. In addition to these storage rights it claims appropriative rights initiated prior to the effective date of the water commission act and under its Applications 2197, 9516 and 8794 to appropriate for power purposes 700 cubic feet per second at Bullards Bar Dam, 700 cubic feet per second at the Narrows dam and 410 cubic feet per second at its Colgate Headdam. It also claims an appropriative right initiated prior to the effective date of the water commission act to divert 2.0 cubic feet per second from Fiddle Creek at a point approximately 700 feet below the proposed point of diversion of applicant. This Fiddle Creek right is under lease to the protestant Division of Fish and Game for fish hatchery purposes.

Division of Fish and Game claims riparian and/or rights by virtue of an agreement with the protestant Pacific Gas and Electric Company to the extent of 2.0 cubic feet per second for domestic and fish hatchery uses.

Discussion

Application 10856 having been filed and protests against approval thereof having been received, was regularly set for a field investigation of which applicant and protestants were duly notified and did agree, by signed stipulations, to abide by the report and subsequent findings of such investigation.

The report of the investigation indicates that during the winter and spring months there is normally sufficient flow in Fiddle Creek for applicant to divert 3.0 cubic feet per second without any interference with the rights of protestants and with the applicant having agreed to a reduction of the amount sought to 0.5 cubic foot per second from June 1 to October 31 a similar condition now exists during the normal low flow period.

In view of the foregoing, the fact that any permit issued applicant would be issued subject to vested rights and the fact that applicant signed a stipulation and agreement relative to the rights claimed by protestant Pacific Gas and Electric Company, the company on February 9, 1946, withdrew its protest against approval of Application 10856.

Since the stipulation and agreement entered into by applicant and the Pacific Gas and Electric Company specifically mentions the rights claimed by that company to the waters of Fiddle Creek and since, at least in part, those rights, by an agreement, are used by protestant Division of Fish and Game, the withdrawal of the protest by the company may also be considered as a withdrawal of the protest of the Division of Fish and Game insofar as use by that protestant of rights claimed by the company is concerned.

Protestant Division of Fish and Game also claims riparian rights to the waters of Fiddle Creek. In this connection it should be noted that the information secured at the time of the investigation was that protestant uses 1.0 cubic foot per second from December 1 to August 31, with an ultimate

use of 2.0 cubic feet per second for the same period, and use of a small amount for domestic and fire protection purposes during all other months.

The rights claimed by the Pacific Gas and Electric Company for direct use from Fiddle Creek are to the extent of the capacity of the Massa Ditch which is claimed to be 2.0 cubic feet per second and since such claimed rights and ditch are used by protestant under an agreement it would appear that protestant was not now exercising nor would in the future exercise its riparian claim. Assuming, however, that such rights are and will continue to be exercised the information before the Division of Water Resources indicates that normally there is ample water for all interested parties without conflict during the winter and early spring months and that the normal low flow in Fiddle Creek is around 3.5 cubic feet per second. With applicant having reduced the amount sought by him during the low flow period to 0.5 cubic foot per second there would, therefore, normally be 3.0 cubic feet per second available for protestant Division of Fish and Game or 1.0 cubic foot per second in excess of the proposed maximum use by that protestant.

It would accordingly appear that applicant could, under normal conditions, divert the amounts sought by him without interference with any rights protestant may possess.

The uses to which the applicant proposes to put the waters sought are beneficial ones and there appearing to be no bar to approval of Application 10856, it is the opinion of this office that said application should be approved subject to the usual terms and conditions.

Records Relied Upon

Application 10856 and all data and information filed in connection therewith.

ORDER

Application 10856 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733b of the Administrative Code and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10856 be approved for 3.0 cubic feet per second from about November 1 to about May 31 and 0.5 cubic foot per second from about June 1 to about October 31 and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 15th day of May, 1946.




Edward Hyatt, State Engineer