

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

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In the Matter of Application 11281 of Hammond Bros. to Appropriate  
Water from the North Fork of Sacramento River in Siskiyou County for Irrigation  
Purposes.

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Decision A. 11281 D. 592

Decided December 15, 1948

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APPEARANCES AT CONFERENCE HELD AT MOUNT SHASTA FISH HATCHERY ON  
JUNE 22, 1948.

For the Applicants:

Hammond Bros.

Charles Hammond

Dwight Hammond

Stuart Hammond

Samuel R. Freidman, Attorney

For the Protestants:

Joe Spini

Joe Spini

Mark M. Brawman, Attorney

California State Fish and  
Game Commission

J. H. Wales

For the State Engineer:

P. E. Stephenson, Associate Hydraulic Engineer, Division of Water Resources,  
Department of Public Works, State of California.

Also in attendance was P. E. Boehm, representing the United States Forest Service.

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### OPINION

#### General Description of Project

Application 11281 was filed by Hammond Bros. on February 11, 1946, for a permit to appropriate 15 cubic feet per second from the North Fork of Sacramento River, to be diverted at a point located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, T 41 N, R 5 W, M.D.B. & M., in the County of Siskiyou. It is proposed that diversion will be by gravity, the diverting dam to be 35 feet in top length and constructed of brush, rock, earth and timber, and the conduit an open ditch of 15 cubic feet per second capacity, some 5 $\frac{1}{2}$  miles long. The use to which the water is to be applied is irrigation and the place of use described comprises a total of 1086 acres, located in Sections 15, 21, 22, 23, 27, 28, 33 and 34 of T 41 N, R 5 W, M.D.B. & M. The application designates this land as "pasture", states that it has no other water right or source of water supply and indicates that the irrigation season will extend from about April 1 to about November 1.

#### Protests

The California State Fish and Game Commission contends that the proposed appropriation will result in the destruction of trout, the amount of water remaining in the stream after the abstraction of 15 cubic feet per second applied for being insufficient, in summer, to maintain fish life. It bases its objection upon Section 525 of the Fish and Game Code. It asserts that trout are naturally spawned in North Fork of Sacramento River and have been planted therein in recent years, in large numbers. It agrees that its protest may be disregarded and dismissed if such permit as may be issued contains a clause to the effect that the

permittees shall at all times release into the natural stream channel immediately below the point of diversion a minimum of 3 cubic feet per second.

To this protest the applicants reply by denying that the proposed appropriation will result in the destruction of trout. They allege that during the summer months the flow of the stream in question is less than 3 cubic feet per second and that trout therein have been maintained without destruction and can be maintained with less than 3 cubic feet per second. They assert that there are several springs below the proposed point of diversion which contribute enough water to maintain trout. They agree to leave such amount of water in the stream as may be necessary for that purpose and request a hearing in order that that amount be properly determined.

Joe Spini represents that the proposed appropriation will diminish the flow of Sacramento River as it passes his lands and in consequence that his use of water for domestic and irrigation purposes and for the generation of electricity will suffer. He claims a riparian right and also an early appropriative right. He states further that first use was made prior to 1897, gives the amount used as 4 cubic feet per second which he remarks, represents about 30% of the present (August 18, 1947) flow at his point of diversion. He indicates that irrigation use extends from April to October and that use for power generation is continuous. His point of diversion is described as lying within the NE $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 25, T 40 N, R 5 W, M.D.B. & M. Protestant Spini states that his protest may be disregarded and dismissed if the applicants will use the water within its present watershed.

The applicants, in answer to the Spini protest, deny that this protestant's uses of water will be substantially or seriously impaired by the appropriation sought, assert that there is more than sufficient water flowing at the points in question to satisfy the needs of all of the parties; argue that

this protestant is not entitled to have the flow of Sacramento River run past his lands in its natural state nor to have it run past his lands in order to have water for any future prospective use, and allege that Protestant Spini is unable to use 4 cubic feet per second beneficially on the property mentioned in his protest.

#### Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733(b) of the California Administrative Code having been entered into by the applicants and protestants, the stipulations having been approved by the State Engineer, <sup>and</sup> the site of the proposed appropriation having been investigated by an engineer of the Division, a conference was held by that engineer with the interested parties at Mount Shasta Fish Hatchery on June 22, 1948. Present at that conference were Charles Hammond, Dwight Hammond, Stuart Hammond, Samuel R. Freidman, Attorney for Hammond Bros., Protestant Joe Spini and his attorney, Mark Brawman, J. H. Wales, representing the State Division of Fish and Game, and P. E. Boehm, representing the United States Forest Service.

#### General Discussion

The watershed tributary to the applicants' proposed point of diversion on North Fork of Sacramento River is some 6 square miles in extent, rugged in character, ranging from about 5300 to about 9000 feet in elevation and covered in large part with brush and timber. Precipitation is of the order of 30 inches and runoff may be supposed to be relatively high. Runoffs as great as the amount (15 cubic feet per second) named in Application 11281 however cannot be supposed to occur throughout the summer months, although they may occur occasionally. According to figures submitted by the applicant, on September 6, 1947, the flow of the North Fork of Sacramento River measured 1.64 cubic feet per second at the applicants' proposed point of diversion, 2.65 cubic feet per second 300 feet

downstream therefrom, 9.80 cubic feet per second at Protestant Spini's point of diversion and 6.07 cubic feet per second 1000 feet below the Spini intake. Also, on September 30, 1947, observations by the State Division of Fish and Game indicated a flow of 1.00 cubic foot per second at the applicants' proposed point of diversion. It is a matter of common knowledge that streams such as the one under consideration may yield double or treble the runoff during spring and early summer than they do in late summer or early fall and for briefer periods, even more.

It is proposed under Application 11281 to export water from the Sacramento River watershed to a place of use within the Klamath River watershed, although both the point of diversion and the place of use lie within Siskiyou County, the county of origin of the water. Shasta Reservoir is located below the proposed point of diversion and the rights to storage therein are held by the Bureau of Reclamation under State Water Applications 5625, 5626, 9364 and 9365, which were assigned to the Bureau on September 3, 1938. Although the Bureau was notified of Application 11281 and did not protest, policy and legal questions are raised as to the exportation of water from the Sacramento River watershed, as against the above mentioned rights of the Bureau. A study of this subject was made by the legal staff of the Division and as set forth in a memorandum thereon dated August 2, 1948, it was concluded that "the Shasta Dam State Water Plan filings which have been assigned to the Bureau of Reclamation were made expressly subordinate to such a utilization of Siskiyou County water of origin within Siskiyou County, as is proposed under Application 11281".

As to the protest by the California State Fish and Game Commission, the representative of that protestant agreed to stipulate to a flow passing the applicants' point of diversion of all times equal to the low flow at that point in

1947, which, it was agreed by both parties, was 1.00 cubic foot per second. In this connection the applicants agreed to construct their diversion structure so as to provide for the passing of one cubic foot per second at all times without manual regulation. The protest by the California State Fish and Game Commission is therefore dismissed, subject to the inclusion in such permit as may be issued of a provision to the effect that the permittees shall at all times bypass a minimum of 1 cubic foot per second or the natural flow of the stream whenever it is less than 1 cubic foot per second at the point of diversion to maintain fish life.

With reference to the protest by Joe Spini it is significant that his intake is some 5 miles downstream from that proposed by the applicant, receives water from a watershed of which that above the applicants' proposed point of diversion is but a small part and that, consistently therewith, substantial accretions are available to him which are not available to the applicant, these accretions being reflected in the measurements on September 6, 1947 when the amount flowing at the Spini point of diversion is reported to have been 9.80 cubic feet per second as against 1.64 cubic feet per second on the same date at the applicants' proposed diversion site. Protestant Spini lays claim to a right to divert 4 cubic feet per second and the applicants recognized this claim and stated their willingness to stipulate to such amount, plus such amount as necessary to maintain fish life below the Spini diversion. In view of the gagings mentioned which indicate that Protestant Spini's supply is but partially dependent on runoff from the watershed above the applicants' proposed point of diversion, and in view of the applicants' expressed recognition of this protestant's claimed right it is concluded that Protestant Spini will not be injured by the proposed appropriation and his protest is accordingly dismissed.

Summary and Conclusions

There are at times unappropriated waters in the North Fork of Sacramento River at the location at which the applicants propose to appropriate which may be taken and used without injury to the protestants or to other vested rights. The fact that the project involves the diversion of waters from one watershed to another does not bar approval of the application. The application should be approved subject to the usual terms and conditions, and subject also to a special provision to the effect that the permittees shall at all times allow the natural flow of the stream up to and including one cubic foot per second to pass their point of diversion, to maintain fish life.

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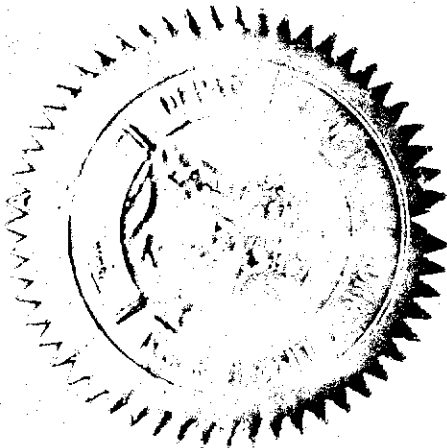
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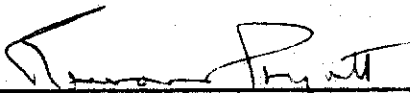
Application 11281 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held in accordance with the provisions of Section 733(b) of the California Administrative Code, and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11281 be approved and that a permit be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate, and subject also to the following special clause, to-wit:

"Permittees shall at all times by-pass a minimum of one cubic foot per second or the natural flow of the stream whenever it is less than one cubic foot per second at the point of diversion to maintain fish life."

WITNESS my hand and the seal of the Department of Public Works of the  
State of California this 15th day of December, 1948.



  
Edward Hyatt, State Engineer