

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 12473 by L. J. and E. Belle Esper to
Appropriate Water from Knickerbocker Creek tributary to the North Fork
of American River in El Dorado County for Irrigation Purposes.

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Decision A. 12473 D. 614

Decided August 26, 1949

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In attendance at investigation conducted by the Division of Water Resources at
the site of the proposed appropriation on May 3, 1949:

L. J. Esper

Representing applicants

James R. Rivett, Jr.

Representing Protestants Russell Rivett,
et al.

John F. Bonner)
Gordon V. Richards)
Mr. Kile)

Representing protestant Pacific Gas
and Electric Company

A. S. Wheeler

Associate Hydraulic Engineer, Division
of Water Resources, Department of Public
Works, representing the State Engineer.

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OPINION

General Description of the Project

The project contemplates diversion at two points on Knickerbocker Creek,
tributary to the North Fork of American River in El Dorado County, of 1.0 cubic
foot per second from either or both points combined from April 1 to November 1
of each season.

Diversion is proposed by gravity from one point and by pumping from the
other with the water so diverted to be used in the irrigation of 80 acres of alfalfa.

Protests

Pacific Gas and Electric Company claims rights of 2500 cubic feet per second of natural flow from the American River for use in the generation of hydro-electric energy at its Folsom Power house and further claims that diversion and use as proposed by applicants would tend to diminish the flow available to protestant and would be against the public interest.

Applicants in reply contend that only a small portion of the flow in Knickerbocker Creek is natural flow to which they have a riparian claim and that the balance of the flow results from run-off within the watershed from lands irrigated with foreign water to which protestant has established no right.

Applicants further contend that they purchase foreign waters from a water company and that run-off from the use of such waters plus run-off from use of the waters sought under Application 12473 on their lands will all be to Knickerbocker Creek.

Russell Rivett, et al. claim riparian rights on Knickerbocker Creek and present and past use thereunder and present use thereunder to the extent of 5/8 cubic foot per second in the irrigation of 45 acres.

Protestants further claim that if Application 12473 is approved they will be deprived of their needs during the irrigation season.

Applicants in reply contend that only about ten per cent of the flow in Knickerbocker Creek during the irrigation season is natural flow and that the balance of the flow consists of foreign waters to which riparian rights do not attach.

Applicants further contend that the use made by protestants is on non-riparian lands.

Field Investigation

The applicants and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code,

a field investigation was conducted at the site of the proposed appropriation on May 3, 1949 by an engineer of the Division. The applicants and the protestants were present, or represented, during the investigation.

Records Relied Upon

Application 12473 and all data and information on file therewith.

DISCUSSION

According to the report of the investigation there is little natural flow in Knickerbocker Creek during the irrigation season, that the flow is otherwise run-off from irrigated lands within the creek watershed which lands are irrigated by imported or foreign waters, and that at the commencement of the investigation the representatives of the Protestant Pacific Gas and Electric Company stated that if applicants would amend their application to cover diversion of return flow resulting from the use of foreign waters and would rely upon a riparian claim to natural flow, the protest would be withdrawn. To this proposal the applicants' representative agreed in writing at the time of the investigation which resulted in the application being amended as follows:

"Insofar as direct diversion is concerned, the source of this appropriation is foreign waters originally diverted from sources other than Knickerbocker Creek and imported into the watershed of Knickerbocker Creek in El Dorado County, tributary to the North Fork of American River and applied to irrigation within the watershed of Knickerbocker Creek, and augmenting the flow of said creek by return flow."

As the result of said amendment to Application 12473, Protestant Pacific Gas and Electric Company subsequently withdrew its protest and need no longer be considered.

The protest of Russell Rivett, et al. is based solely upon a riparian claim which can attach only to natural flow. Since Application 12473 has been amended to provide for diversion of foreign waters only the basis for the protest no longer exists and therefore this protest is dismissed as invalid.

The protest of Pacific Gas and Electric Company having been withdrawn

and the protest of Russell Rivett, et al. having been dismissed, no further bar is seen to approval of Application 12473 subject to the usual terms and conditions.

ORDER

Application 12473 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer having been fully informed in the premises:

IT IS HEREBY ORDERED that Application 12473 be approved 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 26th day of August, 1949.


Edward Hyatt, State Engineer

