

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 15522 by Brian B. Hughes and Emma Mae Hughes to appropriate water from an unnamed stream tributary to Owl Creek and from Owl Creek tributary to North Fork American River in Placer County for irrigation and stock watering purposes.

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Decision A 15522 D 820
Decided February 1, 1955

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on March 30, 1954:

Brian B. Hughes

Applicant

S. Skeehan
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 applicants seek to appropriate 0.63 cubic foot per second from Owl Creek, tributary to North Fork American River and/or from an unnamed stream tributary to Owl Creek, year-round, at points within Lot 3 of Section 31, T 14 N R 10 E, MDB&M, for irrigation and stock watering

purposes. Diversion is to be effected by pumping. The project includes 2 earth dams, 7 feet high by 20 feet long and 4 feet high by 5 feet long, respectively, and 1,700 lineal feet of 4-inch steel pipe. The water is wanted for the irrigation, from April to October, both inclusive, of 50 acres of pasture and the year-round watering of 100 head of cattle. According to the application, the land to be irrigated has no other water right or source of water supply.

Protest

The North Fork Ditch Company protests, contending

"that the application, if granted, will decrease the low water flow of the American River; that this will result in injury to the North Fork Ditch Company and to the orchards and lands served by it and will constitute an infringement of existing rights."

The protestant bases its claim of a right to divert from North Fork American River upon use begun prior to December 19, 1914. As to the extent of its present and past use of water it states:

"Sixty (60) second feet continuous flow used continuously since 1854; first, for mining and subsequently for the irrigation of 12,000 acres of orchards, etc., in Fair Oaks Irrigation District, Citrus Heights Irrigation District, Orangevale, Cardwell Colony, Ashland Colony, Inwood Colony, San Juanita Colony, Rosedale Colony and other lands."

It describes its point of diversion as being located within the $S\frac{1}{2}$ of $NW\frac{1}{4}$ of Section 23, T 12 N, R 8 E, MDB&M. It states:

"This protest may be disregarded and dismissed if diversion is granted only for the period from January 1st to May 1st and November 1st to December 31st of each year."

The protest contains further passages as follows:

"North Fork Ditch Company serves a large and important fruit growing district which is absolutely dependent upon continuous summer irrigation for the growing and maturing of fruit. This district has been served continuously for a great many years. The right of the North Fork Ditch

Company to a 60 cubic feet per second diversion can not be questioned. The district served requires all of this diversion of 60 cubic feet per second continuously during the season each year from May 1st to October 31st, or later.

"During the years of low rainfall and runoff, there has not been a sufficient quantity of water in the North Fork of the American River at protestant's diversion dam to maintain a flow equal to 60 cubic feet per second. In the year 1924 the total flow of the river at this point was less than 40 cubic feet per second. Great damage to orchards and lands served by the protestant resulted from this shortage. In the years 1931 and 1934 the total flow of the river at this point was much less than 60 cubic feet per second. This low flow also resulted in damage."

Answer

The applicants' answer to the protest contains among others the following passages:

"Applicants ... allege ... that the flows of water in said Owl Creek and said tributary thereto do not ordinarily reach the confluence of said Owl Creek and North Fork of the American River between May 1 and October 31 of each year and any water rights of said protestant do not extend to flows in said Owl Creek and tributaries thereto.

"Applicants further aver that the smallness of the flow sought to be diverted by them, the flows to be diverted being only 0.63 cubic foot per second, preclude there being detriment to protestant if the application to appropriate is granted."

Field Investigation

The applicants and the protestant with the approval of the Department having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted on March 30, 1954, by an engineer of the Division.

Applicant Brian B. Hughes was present during the investigation.

The protestant elected not to participate.

Records Relied upon

Applications 5830, 9142 and 15522 and all data and information on file therewith; Colfax, Placerville and Auburn quadrangles, United States Geological Survey; Water Supply Papers, Part 11 - "Pacific Slope Basins in California" - United States Geological Survey.

Information Secured by Field Investigation

The report covering the field investigation of March 30, 1954, contains among other statements the following:

"Owl Creek heads on the north slope of Foresthill Divide and flows in a westerly direction to the North Fork American River. The watershed is steep, heavily wooded and including the unnamed stream is above the applicants' point of diversion, approximately 4 square miles in extent. The estimated flow of Owl Creek at the point of diversion was about 15 c.f.s. and approximately the same flow where the Creek enters the North Fork American River about one mile downstream. Estimated flow of the unnamed stream was about 3 c.f.s. The area had experienced a severe rainstorm about 12 hours previous to the investigation which undoubtedly augmented the stream flows considerably.

"Mr. Hughes stated that in May, 1953, about 5 c.f.s. was flowing at his ranch and at the same time no surface flow was entering the North Fork American River. He mentioned that S. L. Wills, ... a prospector who for many years has lived and worked near the mouth of Owl Creek, said there is usually little, if any, water for washing gravel after June 1.

"At the point of diversion on the unnamed stream the applicants have constructed an earth dam about 100 feet long by 8 feet high with a 4-foot wide wooden spillway. The dam serves as a regulatory reservoir for stockwater. Construction has not yet commenced at the Owl Creek point of diversion but if application is approved the applicants intend to install a pump in the creek with possibly a small sump during low water.

"The land to be served consists of about 20 acres adjacent to the unnamed stream plus 30 acres in a saddle which may or may not drain back into the stream. The first 20 acres mentioned will be served from both sources with the remaining 30 acres to be served from Owl Creek alone. The applicants have some springs and a well serving the saddle area."

Information From Other Sources

A memorandum by an engineer of the Division, dated March 5, 1954, filed with Application 15522, reads as follows:

"On March 4 the writer telephoned Mr. L. K. Jordan, Engineer and Manager of North Fork Ditch Company and discussed the protest of that Company against Application 15522.

"Mr. Jordan restated the position of the Company as outlined in the protest to the effect that while in normal years there is generally sufficient water at the Company's dam, shortages were observed in 1920, 1924, 1931 and 1934. He stated that while the amount of water applied for under the application is small, over a period of time a number of such applications would aggregate a considerable amount and for that reason it has been the Company's policy to protest practically all applications upstream from its diversion. Mr. Jordan indicated, however, that once Folsom reservoir is in operation the Company will obtain its water from the reservoir, that a preliminary agreement has already been reached with the United States as to quantities and rates of diversions and that possibly within the next year or two the Company will no longer be concerned over any upstream filings.

"The writer also inquired as to whether Mr. Jordan was acquainted with the U.S.G.S. gages on the Middle Fork near Auburn on the North Fork at North Fork Dam and at Rattlesnake Bridge. Mr. Jordan replied in the affirmative and stated that the Middle Fork normally produces the most water of the two streams, to his knowledge there are no accretions to the river below the two upper gages and the Company's dam and that the combined flow at those points should be a fairly good measure of the quantity of water available to the Company.

"Mr. Jordan stated that he could see no purpose for him to participate in any investigation made by the Division in connection with the application but desired that the protest be maintained."

The two upper gages referred to in the memorandum of March 5, 1954, (above quoted) are the gages at the United States Geological Survey

gaging stations "North Fork American River at North Fork Dam" and "Middle Fork American River near Auburn". These stations are located respectively 2 miles upstream and 1.9 miles upstream from the junction of North and Middle Forks American River. The North Fork Ditch Company intake is located about 3.8 miles below that stream junction. The station on the North Fork has been in operation since October 1941, the station on the Middle Fork several years longer. According to the Water Supply Papers, United States Geological Survey, discharges of the North Fork, discharges of the Middle Fork and the summation of the discharges of those streams within the most recent 10 years of published record have been as tabulated on following pages.

NORTH FORK AMERICAN RIVER AT NORTH FORK DAM

Mean Discharges in Cubic Feet per Second

Water- year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Water- year
1941-42	70.3	160	1425	2309	2479	952	2280	2389	1596	333	100	66.9	1171
42-43	58.1	500	986	2708	1526	3042	1984	1201	590	160	71.5	54.1	1075
43-44	53.7	63.9	89.4	198	523	976	908	1603	583	111	54.3	23.2	432
44-45	38.4	389	491	345	2403	943	1436	1714	706	138	58.1	37.9	712
45-46	115	476	2099	1083	564	1206	1893	1740	546	119	55.4	48.1	832
46-47	53.1	327	320	164	822	1165	1028	678	272	62.8	33.2	27.2	409
47-48	131	136	89.9	715	269	569	2370	2116	1254	216	62.0	37.8	663
48-49	38.6	89.1	184	152	344	1314	1967	1699	445	76.0	42.5	34.0	533
49-50	131	391	450	3441	4238	3754	6569	6077	3013	615	142	214	2403
1950-51	139	3307	3709	2156	1717	1498	1484	1402	301	119	62.9	52.4	1333

MIDDLE FORK AMERICAN RIVER NEAR AUBURN

Mean Discharges in Cubic Feet per Second

Water- year :	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Water- : year
1941-42	94.2	292	2146	3562	3521	2032	4226	4692	3527	883	179	112	2095
42-43	98.6	1076	1851	4205	2539	5375	4066	2687	1572	446	152	93.7	2008
43-44	96.1	121	155	292	579	1272	1589	3290	1321	265	86.7	58.5	761
44-45	59.1	756	828	557	3851	1488	3025	3771	1767	379	104	70.9	1368
45-46	251	848	3071	1723	875	2137	3710	3668	1321	287	97.2	80.5	1511
46-47	103	634	593	295	1306	1965	2029	1595	605	120	58.3	43.5	774
47-48	296	239	154	1194	451	801	3667	4214	2861	522	122	71.5	1215
48-49	70.2	211	255	227	417	1432	3733	3734	1056	186	81.0	56.0	956
49-50	55.2	130	126	1811	2177	2232	4277	4096	2125	499	103	71.2	1467
1950-51	285	6013	5863	3459	2560	2509	2813	2952	951	290	112	76.7	2320

SUMMATION OF MEAN DISCHARGES OF NORTH FORK AMERICAN RIVER AT NORTH FORK
DAM AND MIDDLE FORK AMERICAN RIVER NEAR AUBURN IN CUBIC FEET PER SECOND

Water- year :	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Water- : year
1941-42	164.5	452	3571	5871	6000	2984	6506	7081	5123	1216	279	178.9	3266
42-43	156.7	1576	2797	6913	4065	8417	6050	3888	2162	606	223.5	147.8	3083
43-44	149.8	184.9	244.4	490	1102	2248	2597	4893	1904	376	141.0	81.7	1193
44-45	97.5	1145	1319	902	6254	2431	4461	5485	2473	517	162.1	108.9	2080
45-46	366	1324	5170	2806	1439	3343	5603	5408	1867	406	152.6	128.6	2343
46-47	156.1	961	913	459	2128	3130	3057	2273	877	182.8	91.5	70.7	1183
47-48	427	375	243.9	1909	720	1370	6037	6330	4115	738	184	109.3	1878
48-49	108.8	300.1	439	379	761	2746	5700	5433	1501	262	123.5	90	1489
49-50	186.2	521	576	5252	6415	5986	10846	10173	5138	1114	245	285.2	3870
1950-51	424	9320	9572	5615	4277	4007	4297	4354	1332	409	174.9	129.1	3653

The flow of the North Fork at the North Fork Dam, according to the Water Supply Papers, has averaged 793 cubic feet per second over a 10-year period; an average of 1376 cubic feet per second has passed the gage on Middle Fork during the 36 years of operation of that station. A comparison of the average flow passing the gage on Middle Fork during the 10-year period ending September 30, 1951, with the average flow passing the same station during the latter's 36 years of operation indicates that runoff during the 10-year period mentioned has been some 5.2% above normal.

The applicants' proposed point of diversion on Owl Creek scales about 1.0 mile above the junction of that stream with North Fork American River, about 9.6 miles above the North Fork Dam, about 15.4 miles above the North Fork Ditch Company intake.

In addition to the right asserted in the protest to divert 60 cubic feet per second, continuously, insofar as said right may be valid, the North Fork Ditch Company is on record as holding Application 5830 Permit 4009 and Application 9142 Permit 7728. Under the former of these filings the protestant company may divert 35 cubic feet per second from April 1 to November 1 of each year, at a point within Section 23, T12N R8E, for domestic purposes and irrigation and under the latter filing 6,500 acre-feet per annum, collected between January 1 and June 1 of each year at North Fork Dam (Section 31, T13N R9E), for later use for irrigation. These filings are

under current extension until December 1, 1956, for completion of construction and application of water to beneficial use.

Discussion

In view of the steepness of the channel of Owl Creek between the proposed point of diversion on that stream and its junction with the North Fork -- a fall of some 1,200 feet in about a mile -- it may be presumed in the absence of conclusive evidence to the contrary that flow passing the applicants' proposed point of diversion on Owl Creek contributes to the flow of the North Fork. If that is the case the diversion that the applicants propose would reduce to some extent, although to a very small extent relatively, the flows that occur in the North Fork.

The tabulated data indicate that flow during the 10 years considered was usually more than enough to satisfy the rights that the protestant actually claimed, as well as the rights that the protestant might claim under Applications 5830 and 9142. Between January 1 and June 1, the period within which the protestant may accumulate 6,500 acre-feet in storage, the North Fork alone discharged more than that amount, every month. No part of the flow of the Middle Fork past the gage on that stream would have been required on account of any of the protestant's rights, claimed or prospective, during any of those five months. Superabundant supply appears in fact to have lasted through July. Between June 1 and November 1 the protestant's rights might aggregate as much as 60 plus 35 or 95 cubic

feet per second. The only months during the 10 years considered when the summation of the flows of the North Fork and the Middle Fork dropped below this figure were August of 1947, September of 1944, September of 1947 and September of 1949, when mean flows (North Fork plus Middle Fork) were respectively 91.5, 81.7, 70.7 and 90.0 cubic feet per second. The data in short indicate that the flow of the North Fork American River is not needed in its entirety to satisfy the asserted or prospective rights of the protestant North Fork Ditch Company except, on average, during about 1 August out of 10 and during about 3 Septembers.

Summary and Conclusion

The applicants seek to appropriate 0.63 cubic foot per second, year-round, from Owl Creek, in Placer County, tributary to North Fork American River and/or from an unnamed tributary of Owl Creek. The water is wanted for the irrigation from April to October, both inclusive, of 50 acres of pasture and the year-round watering of 100 head of cattle.

The application is protested by the North Fork Ditch Company, which contends that the proposed diversion will at times interfere with the exercise of that company's asserted right (from 1854) to divert 60 cubic feet per second from North Fork American River. It states that its protest may be disregarded if diversions under the application are limited to periods from November to April, both

inclusive. The applicants allege in answer to the protest that the flow of Owl Creek between May 1 and October 31 does not ordinarily reach the North Fork.

In addition to any rights antedating the Water Commission Act -- such as the right to divert 60 cubic feet per second, asserted in the protest -- the protestant holds a right under Application 5830 Permit 4009 to divert 35 cubic feet per second from April 1 to November 1 of each season at a point within Section 23, T12N R8E, as well as a right under Application 9142 Permit 7728 to collect 6,500 acre-feet per annum, between January 1 and June 1, in storage, behind North Fork Dam.

The parties stipulated to proceedings in lieu of hearing and a field investigation was conducted on March 30, 1954. According to the report of that investigation the watershed above the applicants' project is steep and heavily wooded and is about 4 square miles in extent, the flow of Owl Creek at the time of the investigation was an estimated 15 cubic feet per second, both at the proposed point of diversion thereon and just above its junction with North Fork American River about 1 mile downstream, the unnamed tributary was carrying about 3 cubic feet per second, the streams were probably swollen by a heavy rain that had occurred 12 hours earlier. According to the same report one of the applicants stated the flow of Owl Creek to have been about 5 cubic feet per second at his ranch at a certain time in May, 1953,

that the surface flow was not then reaching the North Fork, that according to a local prospector very little if any of the flow of Owl Creek reaches the North Fork after June 1.

According to a memorandum covering a telephone conversation on March 4, 1954, with the protestant company's engineer and manager, supply at the company's dam is usually sufficient but shortages occurred in 1920, 1924, 1931 and 1934, the sum of the flows passing the upper gage on North Fork and the gage on Middle Fork is a "fairly good measure" of the supply available to the company, he (the engineer-manager) saw no purpose in participating in a field investigation.

A United States Geological Survey gaging station has been operated on North Fork American River since 1941, another such station on Middle Fork American River since 1911. These stations are about 2 miles and 1.9 miles respectively above the junction of those forks. The North Fork Ditch Company intake is about 3.8 miles below that junction. The river distance from the Ditch Company's intake to the applicants' project scales about 15.4 miles.

Flow passing the gage on the North Fork has averaged 793 cubic feet per second over the 10 years of published record, flow passing the gage on Middle Fork 1376 cubic feet per second over a 36-year period. According to the record of the flow of the Middle Fork, flow averaged about 5.2% more during the 10-year period when both stations were operating than during the longer period during

which the flow of the Middle Fork was recorded. Monthly mean flows of the North Fork in the reach between the North Fork -- Middle Fork junction and the North Fork Ditch Company intake, obtained by adding each monthly mean flow at the gage on North Fork (above the junction) to the corresponding mean flow at the gage on Middle Fork, were in excess, throughout the 10-year period, of the 60 cubic feet per second that the North Fork Ditch Company claims a right to divert. Those monthly mean flows would have satisfied both the right to divert 60 cubic feet per second, asserted in the protest, and the right under Application 5830 to divert 35 cubic feet per second, in every month of the same 10-year period except one of the months of August and three of the months of September.

In view of the circumstances summarized it is concluded that unappropriated water ordinarily exists in the sources from which appropriation is sought under Application 15522 and that such water, when it exists, may be taken and used in the manner proposed without injury to holders of prior rights. It is the opinion of this office therefore that Application 15522 should be approved and permit issued, subject to the usual terms and conditions.

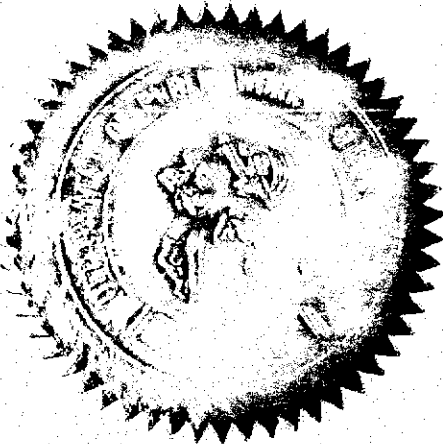
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ORDER

Application 15522 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15522 be approved and that a permit be issued to the applicants 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 1st day of February, 1955.



A. D. Edmonston
A. D. Edmonston
State Engineer