

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

ooc

IN THE MATTER OF APPLICATION NUMBER 4768 BY THE EAST  
BAY MUNICIPAL UTILITY DISTRICT TO APPROPRIATE WATER  
FROM THE MOKELUMNE RIVER IN MENDOCINO AND CALAVERAS  
COUNTIES FOR POWER PURPOSES

DECISION NO. 4768 D 113

Decided June 15, 1926.

APPEARANCES AT HEARING HELD May 13, 1926

For Applicant:

East Bay Municipal Utility District

T. P. Wittschen

For Protestants:

Sierra Blue Lakes Water and Power Co.  
E. M. Locke, L.J. Locke, et al and  
N. H. Locke Company

Eugene J. Sullivan

L. J. Locke

For Other Interested Parties:

J. W. Preston, Jr.  
Stephen B. Kieffer  
Woodbridge Irrigation District  
Lodi protestants (Appl. 4228-4229)  
Sierra Nevada Water & Power Co.  
Federal Power Commission

Edgar T. Zook

A. J. Cleary

A. L. Cowell

A. L. Cowell

Eugene J. Sullivan

E. W. Kramer

Examiner:

Edward Hyatt, Jr.,  
Chief of Division

O P I N I O N

On April 17, 1926, after an extended hearing and argument by briefs the Division of Water Rights issued to East Bay Municipal Utility District, applicant in this matter, a permit upon its application No. 4228 allowing the appropriation of 310 cubic feet per second and 217,000 acre feet per annum for municipal purposes at Lancha Plana Dam on Mokelumne River. During the

progress of the hearing on this matter applicant filed also its application No. 4768 for power purposes which by stipulation of all parties was included for hearing at the same time.

This application (No. 4768) proposes the construction of a power plant in the base of Lancha Plana Dam. The head or fall through this power plant will be created by the difference in elevation between the backwater below the dam and the surface of the water in the reservoir, and the water used will be either (1) flood or surplus waters which are by-passed or (2) water which is by-passed to satisfy the needs of prior vested rights downstream. The flow which it is proposed to use amounts to 375 second feet, the fall to be utilized will have a maximum of 325 feet, and the total theoretical horsepower to be developed amounts to 13,849. The power generated is to be applied "to necessary pumping for the East Bay Municipal Utility District and uses within the said District for the inhabitants thereof".

The application was not completed and advertised until after the hearing upon Application No. 4228 had been concluded. Subsequent to this hearing it was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights. Protests were received and therefore it was set for hearing again on May 13, 1926, at 10 o'clock A. M. in the Council Chamber of the City Hall at Sacramento, California, because of the fact that full legal notice as prescribed by law had not been given prior to the earlier hearing. Of this later hearing applicant and protestants received due notice. No sworn testimony was presented at this time however as all parties stipulated that relevant testimony and data theretofore presented in connection with the earlier hearing should be

considered in evidence, and the matter was presented without further argument.

The application was protested by the Sierra Blue Lakes Water and Power Company; the Staten Island Land Company; the Board of Supervisors of Amador County; the Mercantile Trust Company of California; E. M. Locke, L. J. Locke, et al; N. H. Locke Company; Mossdale Farms Incorporated; F. C. Allen; C. F. Smith; the Rindge Land and Navigation Company; Delta Farms Reclamation Districts 2024, 2025, 2026, 2028, 2029, 2042, and 2044 and the California Delta Farms Incorporated. As the protests were very similar to those directed against Application Number 4228 of the East Bay Municipal Utility District and were fully discussed in the opinion contained in Decision No. 1462, 1477, 1478, 1479, 1480, 1481, 1482, 1938, 1964, 2099, 2408, 2409, 2410, 2534, 2535, 2997, 3348, 3469, 4228, 4229, 4737, 4768 D 100, decided April 17, 1926, reference is made to that opinion for information appertaining to the same.

We shall not undertake to discuss here the question of available water supply as that was considered at length in our earlier opinion to which reference is made. Conditions have not changed since that time. As was indicated in that opinion however there are pending a considerable number of prior applications to appropriate from this source. Among these are applications by J. W. Preston Jr. proposing storage for power purposes and the generation of power at power houses on the stream above, and the utilization of this water subsequently for irrigation purposes by diversion from the river both above and below Lancha Plana Dam. There are also prior applications by Stephen E. Kieffer which would divert the water into Arroyo Seco Reservoir on Dry Creek diverting it above the Lancha Plana Dam. The approval of these applications would, it appears, make the project proposed in Application No.

4768 altogether infeasible on account of lack of unappropriated water. Officials of the East Bay Municipal Utility District, however, are fully advised of these earlier applications and still seek a permit under this application claiming that on account of the uncertainty which attends the plans of the prior applicants and the low cost of the development proposed by the District that the District can afford to assume full responsibility for any failure of water supply which may result from development under the prior applications.

Representatives of J. W. Preston Jr. present at the second hearing interposed no objection to the approval of Application No. 4768 so long as there was no claim that it in any way took preferred priority over Preston's earlier filings. Representatives of the District present at that time on the other hand while not wishing to waive all claims of preferred priority indicated their willingness to accept a permit subject to existing rights without any ruling on this point.

Stephen E. Kieffer took a similar position to that of Mr. Preston representing at the hearing merely that in view of the fact that the project he had proposed under prior applications would be damaged by the development proposed by the East Bay Utility District under its applications he should in due course be compensated.

Claimants of rights to appropriate for irrigation use at points downstream were represented at the hearing by Mr. A. E. Cowell who presented no definite objection to approval of application No. 4768. Their position as stated by him was that the regulation provided by storage might interfere somewhat with the replenishment of underground waters and the facility with which diversions and use could be made on the river below which interference could

be compensated for by requiring applicant to operate the power plant to capacity during the irrigation season. No definite provision on this point meeting with the approval of applicant was presented however and we are not ourselves convinced of the necessity or desirability of such a provision. It would appear to us that the project proposed in this application cannot do otherwise than improve the conditions as regards underground water supply and use from Mokelumne River below, and it is altogether immaterial that conditions might be further improved were the applicant to operate his power plant with a view to maximum benefit to those appropriators from underground supply and the river below.

The use which applicant proposes is a beneficial one. It appears that the applicant will require power with which to induce a more rapid and increased flow through the municipal water supply conduit leading from Lancha Plana Dam to the East Bay cities, and by such use of power will be enabled to reduce the size of its conduit lines thereby reducing the cost. As the domestic needs of applicant district increase there will therefore be also an increasing demand for power.

From data submitted by the East Bay Municipal Utility District the pumping falls into three classes:

- (1) Boosting at Walnut Creek
- (2) Pumping to storage reservoir at Lafayette
- (3) Local distribution pumping

These data indicate that the output of power estimated in Application No. 4768 will be required about 1935, after which date it will be necessary either to install more power at Lancha Plana, develop it elsewhere or purchase power for pumping purposes. No disposal of the surplus power

which might be developed between the year 1927 (which is probably the earliest date that the power could be made available) and the year 1935 has been arranged, although negotiations have already been attempted with the power companies to effect an exchange of power between the District and the Company under such terms as to make available the full amount of power required by the District for a longer period than could be furnished directly from this plant; i.e. the District would receive proper credit for power delivered during the few years when the District may have a surplus and obtain power in exchange later when not generating enough to meet its needs. In case the surplus power could not be thus marketed it is understood that the District would utilize 10,000 horsepower in 1930 and not develop the remaining power until needed.

We are therefore impelled to the conclusion that this application, although subsequent to other pending applications of considerable magnitude proposing to appropriate from the same source, should be approved.

These prior applicants are not presently in a position to proceed with any development which would interfere with that proposed under this application even were permits issued to them, and such a degree of uncertainty attends their plans that we are not convinced any development is practicable under the earlier applications in question. Under the circumstances it appears altogether just and proper that the East Bay Municipal Utility District be permitted to proceed under its application No. 4768 for power purposes pending the time when the water may be demanded by earlier priorities, providing of course it is willing and desires to so proceed.

In proceeding on this course however we do not wish to be understood as indicating that Application No. 4768 in anyway enjoys a preferred priority over other earlier applications or that such other earlier applications will

suffer as to the seniority which they enjoy while maintained in good standing.

There is one matter in connection with this project which has heretofore received our consideration in other connections and which we feel constrained to bring to the attention of applicant and require shall be taken into account as applicant proceeds with this project. The Division views with concern the development of low head large flow power projects on the lower reaches of large streams. If allowed to proceed unrestricted such plants will establish rights to stream flow which will grossly hamper the fullest economic development of the streams. Little if any feasible storage is available below such plants, and the result is that releases during the winter season escape to the sea unused. On the other hand storage for such a plant as that at Lancha Plana occurs at an elevation so low on the stream that the regulated flow is available for the generation of power through only a very low head as contrasted with mountain storage which may be passed through a succession of high head power plants on its way to the valley below. We feel it but reasonable therefore that future development on Mokelumne River should be protected by a clause in the permit on Application No. 4768 which provides no right to the use of water shall be acquired under this application which may in any way interfere with future appropriations for agricultural or municipal purposes.

We feel also that in compensation to the San Joaquin Valley for the water which applicant will divert out of the valley for municipal uses under its Application No. 4228 a condition similar to that inserted in Permit No. 2459 issued upon Application No. 4228 should be inserted in this permit reserving the right to any lawful appropriator having the specific authorization of the Division of Water Rights to use Lancha Plana Dam without cost as

a diverting dam to the northward or southward, and that applicant and permittee should coordinate the development at Lancha Plana Dam insofar as practicable with such plans of coordinated development for flood control and water conservation as may be formulated by the State of California.

O R D E R

Application Number 4768 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the said application Number 4768 be approved and permit issued thereon subject to such of the usual terms and conditions as may be appropriate and the following special terms and conditions, to wit: -

(1) The permittee shall construct the Lancha Plana Dam and spillways so that water in excess of the maximum amounts stated in the permit issued on Application No. 4228 may be directed northward to the Jackson Creek watershed and said permittee shall permit without charge any lawful appropriator having specific authorization from the Division of Water Rights of the State of California to so divert such surplus water as may lawfully be diverted, provided, however, that the permittee need not so permit such diversion unless the primary purpose of the same be for a beneficial use other than the generation of power. Provided further that the use of said dam and appurtenances by the permittee for its municipal and domestic supply shall be paramount and superior to such diversion and use thereof, and provided also that any one so diverting shall save the permittee harmless from any damage resulting therefrom.

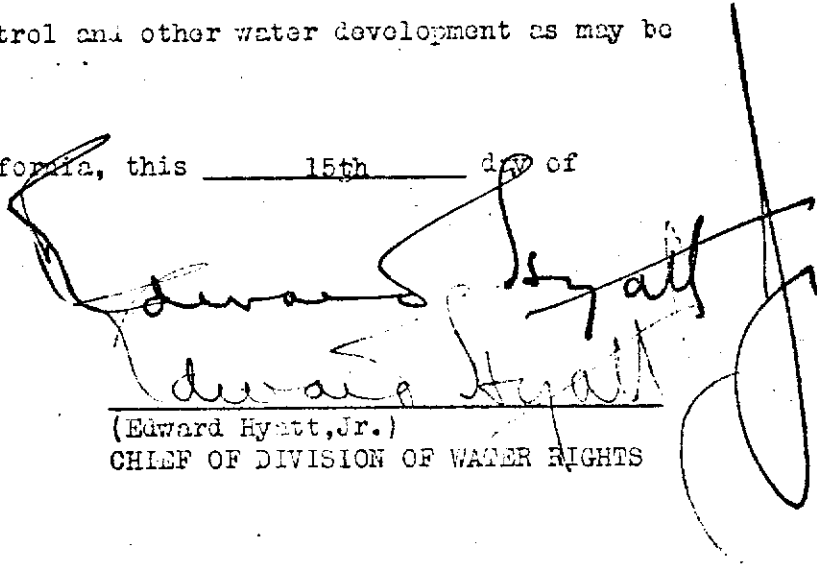


(2) It is expressly recognized by all parties hereto that the right to store and use water for power purposes acquired under this permit shall not interfere with future appropriations of said water for agricultural or municipal purposes, provided however that nothing herein contained shall in any way affect any rights acquired by permittee under other permit for municipal purposes.

(3) Permittee agrees to negotiate with the proper state agencies regarding modification of the plan or operation of the Lancha Plana Project to the end that the project may conform as near as practicable with such coordinated general plan of flood control and other water development as may be formulated by the State.

Dated at Sacramento, California, this \_\_\_\_\_ 15th \_\_\_\_\_ day of

June \_\_\_\_\_ 1926.



(Edward Hyatt, Jr.)  
CHIEF OF DIVISION OF WATER RIGHTS

ENB:GG