

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

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In the Matter of Applications Nos. 2580 and 2642 of Stephen E. Kieffer to appropriate water from the American River, a Tributary of the Sacramento River in Sacramento County for Agricultural Purposes; Application No. 3014 of Stephen E. Kieffer to appropriate water from the South Fork of the American River for Agricultural and Domestic Purposes, Application No. 4069 of the City of Sacramento to appropriate water from the American River for Municipal and Flood Control Purposes and Application No. 4070 of the City of Sacramento to appropriate water from the American River for Agricultural and Flood Control Purposes.

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DECISION NO. 2580, 2642, 3014, 4069, 4070 D. 130

Decided Nov. 10, 1926

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APPEARANCES AT HEARING HELD AT SACRAMENTO, CALIFORNIA, November 30, 1925

For Applicants:

Stephen E. Kieffer
City of Sacramento

A. L. Cowell
R. L. Shinn
A. G. Wagner

For Protestants:

Matemas Mutual Water Company No. 1
North Fork Ditch Company

C. F. Metteer
C. F. Metteer
Geo. S. Nickerson

Eldorado Power Company and
Western States Gas & Electric Company
R. P. Declan
Victor T. Matthews

W. C. Fox
In propria persona
No appearance

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights,
assisted by Everett N. Bryan, Deputy Chief of Division.

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O P I N I O N

The essential features of the several applications are shown in the following table:

Ap.No.:	Applicant	Use	Date Filed	Source	Amount		Season of Diversion
					direct	storage	
2580	S. E. Kieffer	Agricultural	10-10-21	American R.	250	15,000	Mar. 1-Oct. 31 Jan. 1-July 1
2642	S. E. Kieffer	Agricultural	11-18-21	American R.	1,000	75,000	Mar. 1-Nov. 1 Jan. 1-June 1
3014	S. E. Kieffer	Agr. & Dom.	8-30-22	S. Pk. Amer. R.		72,000	Oct. 1-July 15
4069	City of Sacramento	Municipal & Flood Control	7-3-24	American R.	1,000	400,000	April 1-Oct. 1 Mar. 1-July 15
4070	City of Sacramento	Agric. & Flood Control	7-3-24	American R.	1,000	400,000	April 1-Oct. 1 Mar. 1-July 15

Under Applications Numbers 2580, 2642 and 3014 Mr. Kieffer proposes to supply an agricultural area of 80,000 acres included within the present organized Fair Oaks, Citrus Heights and Carmichael Irrigation Districts, Orangevale and Cardwell Colonies, Sacramento Municipal Utility District and the intermediate and adjacent unincorporated territories extending northerly therefrom to the line of Pleasant Grove Creek.

Under Applications 2580 and 2642 Mr. Kieffer proposes to store water in the reservoir behind the present Folsom Dam of the Pacific Gas and Electric Company which he proposes to enlarge to a capacity of 100,000 acre feet.

Under Application Number 3014 Mr. Kieffer proposes to store water as follows:

Medley Lake	4,000	acre	feet
Twin Lakes	17,000	"	"
Silver Lake	20,000	"	"
Alder Creek Reservoir	25,000	"	"
Plum Creek Reservoir	6,000	"	"
Total	72,000	acre	feet

The applications of Mr. Kieffer were protested by the following parties:

Natomas Mutual Water Company No. 1
Elderado Power Company and
Western States Gas & Electric Company
City of Sacramento
North Fork Ditch Company
Victor F. Matthews
Richard F. Doonan

Under Application No. 4069 the City of Sacramento proposes to supply the city and lands adjacent thereto with a municipal water supply and protection from floods. Under Application No. 4070 the City proposes to obtain a supply for the irrigation of approximately 100,000 acres of land lying on the north and south sides of the American River between the 200 foot contour and the river as well as incidental flood protection. Under both applications storage is proposed in a reservoir, the site of which is on the American River a short distance upstream from the Folsom dam. The capacity of this proposed reservoir is 400,000 acre feet.

As the applications of the City of Sacramento are not in form and consequently unadvertised no protests against them have been received.

Applications 2580, 2642 and 3014 by Stephen E. Kieffer were completed sufficiently for advertising, were advertised and being protested were set for public hearing at Room 707 Forum Building, Sacramento, at 11:00 o'clock a.m. on November 30, 1925. Applications 4069 and 4070 by the City of Sacramento were included for hearing because of apparent conflict between the two projects, although they were incomplete and unadvertised.

The Natomas Mutual Water Company No. 1 claims a prior vested right initiated in 1912 by the erection of a pumping plant below the applicant's point of diversion at the Folsom dam, with a capacity of 100 cubic feet per second and the subsequent construction of an irrigation canal system covering 16,000 acres of land, of which at the present time 2,100 acres are capable of

being irrigated and alleges in effect that the entire low water flow of the American River is now used for irrigation purposes and any additional diversion during the low water season would not only prevent the future development of the Company but render its present system valueless.

The Eldorado Power Company claims prior vested rights to the waters of the South Fork of the American River by virtue of riparian ownership and appropriative rights which are at the present time under lease to the Western States Gas and Electric Company and in a joint protest filed by the two companies these protestants allege in effect that the safe annual yield from each of their reservoir sites does not exceed the amount of storage heretofore provided for, that any enlargement of the reservoirs would render the dams unsafe, that the storage of water under Mr. Kieffer's applications for irrigation for domestic purposes is inconsistent with the use for hydro-electric purposes, that the protestants would be deprived of their property without due process of law and that the applicant has no right of access or means of obtaining such to the diversion sites.

The City of Sacramento claims riparian and appropriative rights to the waters of the American River and alleges in effect that the proposed diversion of Mr. Kieffer would so deplete the source of the city's supply that it would cause the backing up of the polluted waters of the Sacramento River to the intake of the City's domestic supply; that Mr. Kieffer's applications are fictitious only, as there has been no apparent arrangement made for the use of the waters which he seeks to appropriate and that his applications are in direct conflict with the protestant's proposed appropriation.

The North Fork Ditch Company claims a right to 60 cubic feet per second of the waters of the North Fork of the American River based upon continuous use since 1864 and alleges in effect that the approval of Mr. Kieffer's applications would render inoperative its present irrigation system.

Victor T. Matthews claims a prior right to the waters of the North Fork of the American River by virtue of appropriation and use of the water since the early 50's and alleges in effect that the proposed appropriations of Mr. Kieffer insofar as they may influence the flow in the North Fork of the American River would result in interference with his mining, industrial, power and agricultural developments.

Richard P. Doolan alleges in effect that the title to Applications 2580 and 2642 should be vested in him as he had furnished funds to Mr. Cleary to proceed with the project as trustee for the Roseville Irrigation District (to be formed) and therefore the transfer of the applications to Mr. Kieffer by Mr. Cleary has no legal value.

The action of the Division of Water Rights in this matter will be governed by other considerations than the matters involved in the protests and therefore no analysis of the protests will be undertaken except to remark in the case of the protest of Mr. Doolan that it relates to a matter over which this office has no jurisdiction. Mr. Doolan appears to have known for over two years that Applications 2580 and 2642 stood upon our records in the name of Stephen B. Kieffer and that until title thereto was adjudicated by some other competent authority the Division of Water Rights could recognize no other claimant thereto and so far as we are advised he has made no effort to have his claim so adjudicated nor has he proceeded to complete the applications themselves. If he is in fact the rightful claimant of these two filings then we can reach no other conclusion than that they should be cancelled for failure to complete.

At the hearing Mr. Kieffer admitted that the project under these applications is economically infeasible and could only be financed in connection with an enlarged project involving coordination of other features such as power development and flood and salinity control.

In order to initiate steps toward the formation of such an enlarged project Mr. Kieffer on September 13, 1926, filed Applications 5206 and 5207 in the name of the American River Hydro Electric Company to appropriate water from the American River for power development and agricultural purposes and has informed this office that he no longer wishes to maintain Applications 2580, 2640 and 3014. These applications therefore should be cancelled.

Relative to Applications 4069 and 4070 of the City of Sacramento, it may be said that these applications have not been completed nor does there appear to be any intent on the part of the applicant to complete them.

At the hearing a representative of the city stated that he did not intend to offer any evidence in support of these applications because no steps had been taken toward development of the proposed project--the idea being to maintain the applications before this office until some practicable plan for the utilization of the waters in question, and satisfactory to the City, was submitted by others. It was the desire of the City to thus place the development of this reservoir site in its own custody thereby to prevent exploitation harmful to the public interest by private enterprise, and to insure the inclusion of certain flood control features necessary to protect the City of Sacramento and environs.

The applications of the City include flood control as a companion purpose to irrigation and municipal purposes and this feature of the project is one over which the Division of Water Rights has no jurisdiction. Applications to the Division are for the purpose of 'appropriating' water and 'appropriate' we take to mean the application of the water itself to a beneficial use. The storage of water for flood control purposes would not appear to be such application of the water to beneficial use but rather the placing of restraint upon floods in order to prevent damage. We can not see that the exercise of such a function could ever develop into a right of use and if such is the case this office could not well entertain an application to store for such a purpose.

Insofar as these applications have for their purpose the protection of the public from undesirable projects presented by private individuals or corporations, we believe that this also is not the purpose of an application contemplated in the Water Commission Act.

In view of the above and of the further fact that the City has failed to proceed with due diligence in the completion of Applications 4069 and 4070 it would appear in order that these two applications be cancelled.

O R D E R

Applications 2580, 2642, 3014 of Stephen E. Kieffer and Applications 4069 and 4070 of the City of Sacramento for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests against Applications 2580, 2642 and 3014 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 said Applications 2580, 2642, 3014, 4069 and 4070 be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this 10th day of Nov. , 1926.

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

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