

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

oOo

In the Matter of Application 5214 of William N. and
Nellie Taylor to Appropriate from Canyon Creek,
Tributary of North Fork of American River
in Placer County for Domestic and
Agricultural Purposes.

oOo

DECISION A. 5214 D 150

Decided April 14, 1927

APPEARANCES AT HEARING HELD February 15, 1927

For Applicants:

Wm. N. and Nellie Taylor

Charles L. Gilmore

For Protestants:

North Fork Ditch Company

L. K. Jordan

Pacific Gas & Electric Company

No appearance

Nicholls Estate Company

No appearance

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

oOo

O P I N I O N

Application 5214 was filed September 17, 1926. It proposes an appropriation of 0.5 cubic foot per second from the waters of Canyon Creek, tributary of the North Fork of the American River to be directly applied to beneficial use without storage. The water is to be used throughout the entire year for domestic and agricultural purposes on 50 acres located in Lot 7, Section 1 and Lots 6 and 7, Section 2, T 15 N, R 10 E, M.D.B. & M. It was protested by the North Fork Ditch Company, the Pacific Gas and Electric Company and the Nicholls Estate Company.

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing at Room 707 Forum Building, Sacramento, at 10:30 o'clock A.M. on February 15, 1927. Of this hearing the applicants and the protestants North Fork Ditch Company and the Pacific Gas and Electric Company were duly notified. The protest of the Nicholls Estate Company was filed on the day set for the hearing.

The protest of the North Fork Ditch Company was filed October 22, 1926. Protestant claims a right to divert 60 second feet from the waters of the North Fork of the American River, which right is based upon continuous use since 1854; that the water is now being used for irrigation purposes on 12,000 acres of land in the Fair Oaks Irrigation District, the Citrus Heights Irrigation District, Orangevale Cardwell Colony, American River Colony and other lands; that the entire 60 second feet is required continuously from May 15th to October 1st or later and contends that the approval of the application would result in decreasing the low water flow of the North Fork of the American River to the injury of the Company and the lands which it serves and would therefore constitute an infringement of existing rights. Protestant states that the protest may be dismissed if the period of diversion under the application be limited from January 1st to May 15th and from October 15th to December 31st of each year.

The protest of the Pacific Gas and Electric Company was filed October 27, 1926. The Company claims a right to all of the water flowing in the American River at its diversion dam which is located about one mile above the town of Folsom up to the first 1,000 cubic feet per second by virtue of riparian rights and rights initiated prior to the passage of the Water Commission Act and alleges in effect that the proposed diversion would constitute a direct infringement upon its water rights during approximately 5 months of each season when

there is ordinarily not to exceed 1,000 second feet of water flowing in the American River at protestant's diversion dam. The Company states that the protest may be dismissed if the applicant will acknowledge the prior vested rights of the Pacific Gas and Electric Company as described above and if the applicant will develop sufficient storage facilities to supply the 0.5 second foot from July 1st to October 31st of each season without interference with the natural flow of the stream during that period.

The protest of the Nicholls Estate Company was filed February 15, 1927. Protestant Company claims a right to the use of all of the water from the source from which applicant proposes to divert, which right is based upon riparian ownership and appropriations dating from 1854 and alleges in effect that the diversion of any water therefrom would constitute a direct infringement upon its rights when there is but a small amount of water in said stream. Protestant states that the protest may be dismissed if the applicant will acknowledge the prior vested right of Nicholls Estate Company as described hereinabove.

From the testimony presented at the hearing, there appears to be at all times a surface connection between the flow in Canyon Creek at the applicant's proposed point of diversion and the flow in the river at the intakes of the protestants and consequently any water which the applicant might divert under this application would diminish the flow in the American River by just the amount diverted less an amount of possible return flow.

In a proceeding of this character, this office does not attempt nor has it the authority to adjudicate the prior rights of either the applicant or the protestants. It does however attempt to ascertain with a reasonable degree of accuracy the amount of water available in the stream in question during a normal season of runoff together with the approximate amount of water which has been put to beneficial use under prior vested rights. With this informa-

tion this office then determines whether or not there is sufficient unappropriated water in the source from which the applicant seeks to appropriate to justify the approval of the application.

In this particular instance the North Fork Ditch Company claims a prior vested right to 60 second feet of the North Fork of the American River and the Pacific Gas and Electric Company, a prior vested right to 1,000 second feet of the waters of the American River.

Although this office is not in a position to either affirm or deny these claims, the fact remains that no evidence was presented at the hearing to controvert them and therefore they will be accepted for the present purposes as being substantially correct.

It would appear from testimony presented at the hearing and information on file with this office that during a year of normal runoff the North Fork Ditch Company is able to divert the full amount of water to which it claims it is entitled. Even during the year 1926--a year in which the runoff of the American River was about fifty percent of normal--it appears that this protestant was able to divert this amount and therefore this protest may be dismissed.

Assuming that the Pacific Gas and Electric Company's claim is valid it would appear that when the flow of the American River at the Folsom dam was less than 1,000 second feet there would be no unappropriated water in its tributary Canyon Creek.

The Water Resources Branch of the United States Geological Survey has established a gaging station on the American River at the Fair Oaks Bridge which is about 6 or 7 miles below the intake of the Pacific Gas and Electric Company at the Folsom dam and has kept records of the runoff of the American River at this point since November 1904.

From a study of these records which may be considered applicable

to the stream flow at the Folsom dam, the following table has been prepared:

Periods during which, with the exception of occasional freshets, the flow in the American River at Fair Oaks is 1000 cubic feet per second or less.

-----	to	December 29, 1904
July 5, 1905	to	January 12, 1906
August 14, 1906	to	December 8, 1906
September 2, 1907	to	December 26, 1907
July 14, 1908	to	January 3, 1909
July 27, 1909	to	November 19, 1909
June 25, 1910	to	January 9, 1911
July 29, 1911	to	March 4, 1912
July 9, 1912	to	January 14, 1913
June 30, 1913	to	December 22, 1913
July 29, 1914	to	January 27, 1915
July 26, 1915	to	January 2, 1916
July 29, 1916	to	December 2, 1916
July 22, 1917	to	February 5, 1918
June 24, 1918	to	February 5, 1919
June 22, 1919	to	February 28, 1920
July 6, 1920	to	November 11, 1920
July 16, 1921	to	November 22, 1921
July 20, 1922	to	December 4, 1922
July 22, 1923	to	January 27, 1924
May 23, 1924	to	December 7, 1924
July 14, 1925	to	January 28, 1926
June 11, 1926	to	-----
July 16th	Average	to January 1st

From the above table it appears entirely clear that during a season of normal runoff there is no unappropriated water in the American River or its tributaries above the Folsom dam diversion of the Pacific Gas and Electric Company during the period from about July 15th to about January 1st and therefore the applicant's period of diversion for irrigation purposes should be reduced to the period from about May 15th to about July 15th of each year.

The Pacific Gas and Electric Company has made a number of appearances before this office in connection with similar cases and no doubt believed that this office was fully informed in the matter.

While the Pacific Gas and Electric Company did not specifically state in its protest whether or not it had objections to the diversion of a limited amount of water for the domestic use of the applicant, in similar proceedings it has shown no disposition to prevent small appropriations for purely domestic purposes and since the protestant was not represented at the hearing, this office assumes that there would be no objection on the part of the protestant to the approval of an appropriation of a sufficient amount of water for incidental domestic use throughout the remainder of the year as may be required.

When application 5214 was filed Paragraph 25 thereof contained the name of one Wm. R. Nichols, Berkeley, California, as being a claimant of water from the source of supply below the proposed point of diversion of the applicant and accordingly upon the completion of the application a copy of the advertising notice was forwarded to that address. This notice however was subsequently returned to this office unclaimed.

The applicants apparently recognized Wm. R. Nichols (presumably the Nicholls Estate Company) as a downstream claimant and insofar as they intended that this protestant should have notice of the application were proceeding in good faith.

In a letter dated February 21, 1927 this office advised the Nicholls Estate Company of the above fact and that the approval of the application could give no claim of right to interfere with prior vested rights and that unless it was prepared to show that in a normal year the applicant could not divert one-half second foot from about May 15th to about July 15th without trespassing upon the Company's rights, this office could not see how any purpose could be served by further hearing and unless this office was further advised in the matter before March 1st it would be assumed that it did not desire to press the protest and action would be taken accordingly.

As no reply to the letter has been received it may be assumed that the Nicholls Estate Company has no further interest in the matter and its protest therefore is dismissed herewith.

The uses to which the applicant proposes to put the waters of Canyon Creek are beneficial and if there were unappropriated water in the stream throughout the period of proposed use the application would no doubt be approved in its entirety but since as shown above there are certain times of the year during which the applicant could not divert water without interfering with prior vested rights it is thought best to limit the season of diversion to that period of a normal year during which there is unappropriated water in the stream.

It is therefore concluded that Application 5214 should be approved for an amount of water not to exceed 0.50 cubic foot per second to be diverted from about May 15th to about July 15th of each season for domestic and irrigation purposes and throughout the remainder of the year as may be required for incidental domestic purposes.

ORDER

Application 5214 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 5214 be approved for an amount not to exceed 0.50 cubic foot per second from about May 15th to about July 15th of each year and throughout the remainder of the year as may be required for incidental domestic purposes and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 14th day of April , 1926.

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

WES:MP