

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

oOo

In the Matter of Application 6522 of the Linden Irrigation District to appropriate from Calaveras River in Calaveras, Stanislaus and San Joaquin Counties for Irrigation and Domestic Purposes, and Applications 6630 and 6631 of the City of Stockton to appropriate from the Calaveras River in San Joaquin County for Power and Municipal Purposes, respectively.

oOo

DECISION A 6522, 6630, 6631 D-279

Decided *January 16, 1931*

oOo

APPEARANCES AT HEARING HELD AT STOCKTON, January 8, 1931

For Applicants

Linden Irrigation District
City of Stockton

A. L. Cowell
J. Leroy Johnson, City Atty.

For Protestants

Herbert J. Smythe, et al
Hunt Bros. Packing Company
Vernon Vignolo, et al
L. F. Grimsley, et al
Raymond T. and C. H. McGurk
F. J. Dietrich, et al
Charles M. Weber
W. B. Hogan, City Mgr. of Stockton
Carlo Bisso)
Vittorio Solari)
Joseph Ross and Esther Smith)
Gio Batta Ratto)
Domenico Paoletti)
Frank Solari)
V. Lagorio, et al.)
Annie L. Benjamin)
Bernard Etcheverry)
Jennie Hunter)

Carlton C. Case
B. S. Schuman
Geo. A. Ditz & R. L. Beardsley
" "
" "
" "
" "
J. Leroy Johnson

No appearance

oOo

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, assisted by
Everett N. Bryan, Hydraulic Engineer

oOo

O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 6522 was filed on January 3, 1930, by the Linden Irrigation District. It proposes an appropriation of 175 cubic feet per second of direct diversion throughout the entire year and 40,000 acre feet per annum of diversion to storage from about November 1st to about June 1st of each season.

The City of Stockton has completed a flood control reservoir on the Calaveras River and the application is for the flow of the river as regulated or augmented by the release of stored water or operation of this flood control reservoir. The application also includes releases from any other reservoir that "may be hereafter constructed in such location as to augment the flow of the river". The water is to be used for irrigation and domestic purposes on 12,330 acres within the boundaries of the Linden Irrigation District.

The District consists of a main area west of Bellota, designated as Area No. 1 which will be served from the point indicated as the main diversion point located within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, T 2 N, R 9 E, M.D.M. The other areas, designated as Area No. 2; Area No. 3 and Area No. 4, are smaller parcels on or near the river about 5 miles above Bellota and will be served by pumping from the river at points located as follows:

- (1) within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 31, T 3 N, R 10 E, M.D.M.
- (2) " NW $\frac{1}{4}$ " NW $\frac{1}{4}$ " " " " "
- (3) " NE $\frac{1}{4}$ " NW $\frac{1}{4}$ " Section 36, " R 9 E, "

The plans of the District contemplate mainly the replenishing of the ground water within Area No. 1 by percolation. A large pond will be created by the diversion dam and smaller ponds will be created by dams across North Slough and the Old Calaveras River. The area of the underground basin is not given as it has no well defined limit, but the ground

formation to the west of the District is less permeable than within the District and it is the expectation of applicant that most of the water which may be caused to percolate into the ground will be recovered by the numerous private pumping plants which now or may hereafter irrigate the lands. There is to be some pumping from the various ponds and channels for surface irrigation, and some water may be taken out for that purpose, by means of ditches, but the quantity or points of diversion cannot be foretold.

The two pumping plants now in use in the upper part of the District deliver water directly to the land to be irrigated.

Application 6522 was protested by the following:

Herbert J. Smythe, et al.	Vittorio Solari
Vernon Vignolo, et al.	Joseph Ross and Esther Smith
L. F. Grimsley, et al.	Gio Batta Ratto
Raymond T. and C. H. McGurk	Domenico Paoletti
F. J. Dietrich, et al.	Frank Solari
Charles M. Weber	V. Lagorio, et al.
W. B. Hogan, City Mgr. Stockton	Annie L. Benjamin
Carlo Bisso	Bernard Etcheverry
	Jennie Hunter

Application 6630 was filed April 10, 1930, by the City of Stockton.

It proposes an appropriation of 200 cubic feet per second by direct diversion and 65,500 acre feet per annum by diversion to storage from October 1st to July 1st of each season. The source of the proposed appropriation is the Calaveras River. The point of diversion is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 31, T 4 N, R 11 E, M.D.M. Storage is to be made in the Calaveras Flood Control Reservoir of the City of Stockton. The water is to be used for power purposes and returned to the Calaveras River within Section 23, T 3 N, R 10 E, M.D.M. The place of use is not designated in the application. The application was protested by Hunt Bros. Packing Company.

Application 6631 was filed April 10, 1930, by the City of Stockton.

It proposes an appropriation of 50 cubic feet per second of direct diversion

throughout the entire year and 90,000 acre feet per annum of diversion to storage from October/^{1st} to July 1st of each season. The source of the proposed appropriation is the Calaveras River. The point of diversion is within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 31, T 4 N, R 11 E, M.D.B. & M. Storage is to be made in the Calaveras Flood Control Reservoir of the City of Stockton. The water is to be used for municipal purposes on 25,000 acres of land more or less within T 2 N, R 7, 8 and 9 E, M.D.B. & M.

Application 6631 was protested by Hunt Bros. Packing Company.

PROTESTS

Against the approval of Application 6522 of Linden Irrigation District

Group (1)

Vernon Vignolo, et al., L. F. Grimsley, et al, Raymond T. McGurk and C. H. McGurk, F. J. Dietrich, et al, claim interference with prior vested rights acquired by riparian ownership, appropriation and use.

Group (2)

Vittorio Solari, Joseph Ross and Esther Smith, V. Lagorio, et al., Frank Solari, Domenico Paoletti, Gio Batta Ratto, Carlo Bisso, Bernard Etcheverry, object to any action which may interfere with their rights to the waters of Mormon Slough as owners of lands riparian thereto.

Group (3)

W. B. Hogan, City Manager of Stockton, and Charles M. Weber allege in effect that waters which the District seeks to appropriate should be acquired by the City of Stockton or State of California and stored and distributed to the Linden Irrigation District and others by contract; that the amount of water applied for is grossly in excess of the District's needs and may result in preventing the City of Stockton from developing water in the future.

Group (4)

Annie L. Benjamin and Jennie Hunter claim no rights to the use of the water which the District proposes to appropriate but allege in effect that the project is not feasible and that their lands which lie within the exterior boundaries of the District will not be benefited but will be burdened with taxation.

Group (5)

Herbert J. Smythe, George Ferryman and Lydia B. Young allege in effect as follows:

- (a) The Division of Water Resources has no right to approve the application.
- (b) The Linden Irrigation District has no right and in absence of the consent of the riparian owners or by proceedings in eminent domain can obtain no right to appropriate from the Calaveras River.
- (c) The proposed diversion and ponding works of the applicant will unlawfully change the course of a natural stream.
- (d) The Linden Irrigation District intends to divert more water than it can reasonably use.
- (e) By the proposed appropriation the stream flow of Mormon Slough would be so diminished that the protestants riparian thereto could not obtain the amount of water to which they are entitled and which is necessary for the irrigation of their lands.
- (f) The appropriation would result in diminishing the percolation of the waters of Mormon Slough to and upon the lands of protestants and to underground channels and reservoirs.

Against the approval of Applications 6630 and 6631 of the City of Stockton

- (a) Hunt Bros. Facking Company owns lands riparian to Mormon Slough and claims appropriate rights and alleges in effect that applicant is without right to interfere with percolating waters or the underground flow and surface flow of the Calaveras River to the injury of protestant.

HEARING SET IN ACCORDANCE WITH SECTION 1a
OF THE WATER COMMISSION ACT

Application 6522 of the Linden Irrigation District was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on January 8, 1931, at 10:00 o'clock A.M. in Council Chamber, City Hall, Stockton, California.

Applications 6630 and 6631 were not completed but being in direct conflict with Application 6522 and having been protested were also set for

hearing at the same time and place. Of this hearing applicants and record protestants were duly notified.

Application 6522

Several attempts were made by the Linden Irrigation District to compromise differences with the protestants to the end that the protests might be withdrawn. On Tuesday evening July 8, 1930, an informal public meeting was held in the City Council Chamber of Stockton for the purpose of discussing the matter. At the conclusion of this meeting, it was the general understanding that the riparian owners on Mormon Slough and the representatives of the Linden Irrigation District would effect a compromise. In consideration of withdrawal of the protests by the former the latter would consent to the insertion of a clause in any permit which might be issued in approval of Application 6522 to protect the rights of the riparian owners on Mormon Slough. This compromise arrangement, however, failed of completion and it was therefore deemed advisable to have the matter set for public hearing in accordance with Section 12 of the Water Commission Act.

At the hearing an effort was made by certain of the protestants to show that the dam which the District proposed to construct would increase the elevation of the water table to their injury. The showing was inconclusive and it may be said in passing that it is not material to the ruling of the Division in this case inasmuch as the Division is without authority to grant relief in the premises.

Protestants claim that all of the water in the Calaveras River belongs to the riparian owners and therefore this office has no jurisdiction over the appropriation sought under Application 6522. Article 14, Section 3 of the Constitution of California declares however that the public welfare requires that the water resources of the State be put to beneficial use to

the fullest extent of which they are capable; that waste, unreasonable use and unreasonable methods of use must be prevented; that rights to water or the use thereof shall be limited to water reasonably required and shall not extend to waste, unreasonable use, unreasonable methods of use or unreasonable methods of diversion; and that riparian rights attach to only so much of the flow as may be required or used consistently with this amendment, for purposes for which such lands are or may be adaptable, in view of such reasonable and beneficial uses.

Uncontroverted testimony presented at the hearing indicated that there was far more water than the amount of water now used and also the amount that could be used by the riparian owners. In view of the Constitutional provision noted above the riparian owners can claim only the amount which is reasonably necessary for their needs and there appears to be a large surplus.

The protestants alleged that the quantity of water which the applicant was seeking to appropriate was greatly in excess of the District's needs. To meet this objection Mr. Tibbetts, engineer for the District, agreed at the hearing that the District would be willing to abide by the decision of this office relative to the amount of direct diversion necessary for the irrigation of its lands. As the customary allowance in that locality is about 1 second foot to each 80 acres of land and as the irrigable area described in the application is 12,330 acres, the amount of direct diversion allowed may appropriately be reduced to 154 cubic feet per second. This amount of water should be allowed over and above the amount of storage applied for in view of the fact that this quantity would not be available throughout the entire year. It is conceivable also that the underground basin may at times be

almost if not entirely depleted at the end of a season of slight precipitation and the applicant should be allowed to replenish the basin at the same time as direct diversion from the source is in progress.

Protestants claimed that as there was no water available for applicants appropriation during the summer months the season of diversion should be limited. From testimony presented at the hearing by applicant's engineer which was uncontroverted and is found to be supported by the stream flow records of the U. S. Geological Survey it appears that during a season of normal runoff there is little or no water naturally available at applicant's proposed point of diversion from about June 1st to about November 1st. It also appears from testimony presented that the effect of the flood control reservoir would be such as to continue the flow not more than one or two weeks after a flood. It is therefore our opinion that the season of direct diversion may properly be limited to the period from about November 1st to about June 15th of each season.

As to the allegation that the proposed diversion would result in unlawfully changing the course of Mormon Slough which is the natural course for the ordinary flow of the Calaveras River it may be stated that no such change is proposed in the application of the District and that the application seeks only to appropriate such surplus waters which have heretofore been unappropriated and therefore this objection is without basis so far as the action of this office is concerned.

The application expressly states that it includes the right to take waters released from any other reservoirs that might thereafter be constructed in such location as to augment the flow of the river and applicant's attorney claims that under any permit which may be issued in approval of Application 6522 the District would have the privilege of divert-

ing any water made available by release from future storage. With this opinion we cannot concur. While this office can recognize an application for water when there is reasonable prospect at the time of the filing of the application that such water will be available, we cannot consider an application for water which was not in prospect at that time. For this reason a clause should be inserted in any permit which may be issued in approval of Application 6522 to the effect that the issuance of the permit shall not be construed to approve Application 6522 insofar as it relates to or contemplates the appropriation of waters not in reasonable prospect at the time of receipt of said application by this office.

Applications 6630 - 6631

Applications 6630 and 6631 of the City of Stockton are in direct conflict with Application 6522 of the Linden Irrigation District.

The applications have not been completed in accordance with the Water Commission Act and Rules and Regulations of this office and under date of October 24, 1930, the City was advised that unless certain conditions were complied with within sixty days from that date the applications would be subject to the provisions of Section 17 of the Water Commission Act which provides that the applications should be rejected and cancelled unless good cause was shown for further extension.

The applications, although unadvertised, were protested by the Hunt Bros. Packing Company and were included in the hearing primarily in order to give the City an opportunity to show cause for further extension.

At the hearing representatives of the City admitted that it had no present plans for proceeding with the development proposed and no arrangements had been made for the financing of the project. Particularly

in view of the fact that Application 6630 enjoys a preferred priority over Application 6522 of the Linden Irrigation District, and that the District is apparently ready to proceed with its project under Application 6522, and in view of the fact the City has shown no good cause for further extension, it appears that Applications 6630 and 6631 should be cancelled on the grounds of failure to complete.

CONCLUSION

The use to which the Linden Irrigation District proposes to put the water is a useful and beneficial one, the District has voted bonds and apparently is ready to proceed as soon as Application 6522 is approved. It is therefore the opinion of this office that Application 6522 should be approved for an amount not to exceed 154 cubic feet per second by direct diversion from about November 1st to about June 1st of each season and 40,000 acre feet per annum by storage to be collected from about November 1st to about June 1st of each season. A special clause should be incorporated in the permit to the effect that the issuance of the permit should not be construed as approving Application 6522 insofar as it relates to or contemplates the appropriation of waters not in reasonable prospect at the time of the receipt of said application by this office.

It is the opinion of this office that Applications 6630 and 6631 of the City of Stockton should be cancelled for failure to complete.

ORDER

Applications 6522, 6630 and 6631 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 6522 be approved for an amount not to exceed 154 cubic feet per second by direct diversion from about November 1st to about June 15th of each season and for an amount not to exceed 40,000 acre feet per annum by storage to be collected from about November 1st to about June 1st of each season and that a permit be granted subject to such of the usual terms and conditions as may be appropriate and subject further to a special term or condition as follows, to-wit:

Issuance of this permit shall not be construed to approve Application 6522 insofar as it relates to or contemplates the appropriation of regulated flow or released storage resulting from appropriations under applications filed, or other developments proposed, subsequently to the filing of said Application 6522.

IT IS FURTHER ORDERED that Applications 6630 and 6631 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 16 day of *January*, 1931.

EDWARD HYATT, State Engineer

BY *Harold Conkeling*
Deputy

WES:MP

