

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

oOo

In the Matter of Applications 2469, 3441, 3442, 3443, 3444 and
4182, Permits 2860, 2861, 2862, 2863, 2864 and 2965, re-
spectively, by the City of Sacramento to appropriate
variously from Silver Creek and the South Fork
thereof for agricultural and domestic,
municipal and power purposes.

oOo

ENCISION A. 2469-3441-3442-3443-3444-4182 D 406

Decided

July 10, 1937

oOo

APPEARANCES AT HEARING HELD AT SACRAMENTO, CALIFORNIA, JULY 3, 1930.

For Permittee
City of Sacramento

C. H. S. Edwell, Mayor
Arthur D. Ferguson, Councilman
James S. Bean, City Manager
Hugh B. Bradford, City Attorney

For Sacramento Municipal Utility District

Albert Elkus, Director
R. A. Merkley, Director
Robert L. Jones, Director
Albert Givan, Engineer and
General Manager
Robert L. Shinn, Attorney

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of Water
Resources, Department of Public Works, State of California.

oOo

OPINION

THE PROJECT

The above numbered applications were approved for a combined municipal,
power and irrigation project, the place of use under the latter embracing the
area of the Sacramento Municipal Utility District. The pertinent data in re-
spect to the permits is given in the following table.

App. No.	Filed	Purpose	Amounts		Approved
			S.F.S.	AS. Ft.	
3469	5- 3-21	Municipal	309	90,000	8-19-27
3441	5-25-23	Power	300	75,000	8-19-27
3442	5-25-23	Power	300	—	8-19-27
3443	5-25-23	Municipal	—	120,000	8-19-27
3444	5-25-23	Power	300	180,000	8-19-27
4182	9- 2-24	Irrigation	300	210,000	2-15-28

At the time of approval the following construction and use dates were fixed in the permits:

App. No.	Permit	Use	Construction		Use
			Begin	Complete	Complete
2489	2860	Municipal	July 1, 1928	Dec. 1, 1933	Dec. 1, 1977
3445	2863	Municipal	July 1, 1928	Dec. 1, 1933	Dec. 1, 1977
3441	2861	Power	July 1, 1928	Dec. 1, 1930	Dec. 1, 1931
3442	2862	Power	July 1, 1928	Dec. 1, 1930	Dec. 1, 1931
3444	2864	Power	July 1, 1928	Dec. 1, 1930	Dec. 1, 1931
4182	2865	Irr. and dom.	July 1, 1928	Dec. 1, 1936	Dec. 1, 1940

DISCUSSION

It will be observed from the table above that the first application of this group was filed in 1921, some were filed in 1923 and the last in 1924. The City early realized that its bonding capacity was not sufficient to finance the water and power project proposed, and accordingly the City was the prime mover in the organization of the Sacramento Municipal Utility District, which organization was perfected in 1923 under an act of the Legislature approved May 23, 1921. Beginning with the fiscal (city) year 1924-1925 the expenditures made in furtherance of the project, including bond elections, surveys, etc., were carried on by the District; prior to that time, by the City. After the creation of the Utility District Application 4182 was filed to care for the irrigation and especially the domestic needs of the district outside the city proper.

The first Silver Creek bond election to vote bonds for financing the mountain water development was held September 27, 1927, and failed to

carry. The permittee was accordingly not in a position to begin construction within the time fixed in the permits and appeared before the Division of Water Resources in a conference on May 16, 1928, requesting a further time within which to begin and complete construction of the various units of the project. This request was supported by a letter received May 17, 1928, and was based on the expectation of calling a second bond election in the fall of 1928. As a result of these representations, orders were issued advancing the time until July 1, 1929, to begin construction under all permits except Permit 2965 which latter permit was extended by order of December 13, 1928, to July 1, 1929, to begin construction work. A progressive schedule of construction for the various units of the work was also allowed in the orders affecting the first five permits.

The second bond election, scheduled for 1928, was not held as proposed at the conference of May 16, 1928, and permittee not being in a position to begin construction work within the extension allowed, on June 17, 1929, requested a further extension to July 1, 1930, within which to begin construction work. This request was based upon the statement that further studies had been carried on by the City and the Utility District and that it was proposed to call another bond election early in the following October. Permittee was advised that the Division of Water Resources could not, upon the showing made, grant a further extension but that action on the permits would be continued pending the outcome of the proposed election.

The bonds were again defeated at the election on October 10, 1929, receiving a majority of 60% of the votes cast whereas a 2/3 majority was required. Although two bond elections failed to pass, the City as excuse for further extension advanced the arguments (1) that the bonds had twice received a substantial majority of votes, (2) that in all probability another

bond election would be held; (3) that since the last election the Palam project and the Nevada Irrigation District had been advanced as possible sources of supply, and (4) that further time was necessary to make the proper studies and determinations of the practicability of these projects as alternates. The City's position was strongly advocated by the Sacramento County Building Trades Council, the Sacramento Federated Trades Council, and the Sacramento Chamber of Commerce. The matter of further extension was taken under advisement until March 26, 1930, when the permittee was advised that it was proposed to set the permits for a hearing to show cause why they should not be revoked due to lack of diligence.

On May 3, 1930, Messrs. Givan and Shinn representing the City met in conference with Messrs. Caskling and Bryan of the Division of Water Resources. The representatives of the City urged that a hearing at that time would embarrass the City in respect to an election proposed for June 10, 1930, to vote bonds for the repair of the Sacramento City filtration plant, and might easily be misconstrued as an attempt to defeat the purpose of the election. A hearing on the permits was finally set on June 13, 1930, to convene July 3, following.

HEARING BEFORE THE DIVISION OF WATER RESOURCES

Although the permits were in the name of the City of Sacramento the records of the Division of Water Resources indicated that the Utility District was carrying the burden of defraying all expenses made in connection therewith since their issuance. At the hearing of July 3, 1930, the relationship between the Utility District and the City was first explained by Mr. Shinn—that the District had been formed to provide an area of sufficient bonding capacity to finance the project; that the City and District were for all practical working purposes one and the same and that the District's re-

lation had been established by proper resolution passed by the City Council. (This relationship was later strengthened by a contract dated August 28, 1930, between the City of Sacramento and the Sacramento Municipal Utility District.) The permittee next proceeded to show that the City had spent in furtherance of the project in excess of \$55,000 and that the aggregate expenditures by the City and the Utility District had totalled \$238,000 since the inception of the project. Although there was considerable discussion at the hearing as to the possible validity of such action should the Division grant further extension under the permits, nevertheless the permittee maintained that the expenditure of \$238,000 was sufficient evidence of diligence and asked for a further extension of two years time.

While there had been some discussion at the hearing of the filing of a new set of applications as a second line of defense the representatives of the City and the Utility District did not receive the suggestion with much favor, they fearing that other applicants of a later priority, including the State Department of Finance under applications filed in accordance with the provisions of Chapter 286, Statutes of 1927, would then have a priority which might embarrass the City or the Utility District. Nevertheless the Utility District filed a new set of three applications in its own name on July 22, 1930, which applications will serve all the purposes contemplated in the six permits now outstanding. The matter of securing a waiver from the Department of Finance was also taken up jointly by the permittee and the Division of Water Resources should the District decide to proceed under the new set of applications filed.

Following this hearing the City and District officials made various contacts with outside parties who were looking toward development of the power phase and proposed in return to furnish water to the City under its permits.

In 1931 one of the plans under investigation developed to the extent that the matter was brought before the electors at an election held December 16, 1931. The proposal failed to carry by the necessary two-thirds vote and was lost. The City and District continued however to explore every avenue which offered any possibility and in August 1932 the City made an application to the Reconstruction Finance Corporation for a loan to prosecute the work.

The permittee, not having been successful in its efforts to secure a loan, was advised by the Division of Water Resources by letter of December 17, 1932, that under the circumstances it appeared advisable to withdraw the permits and rely on a new set of applications (which are now on file). In response to this letter James S. Dean, City Manager, and Hugh B. Bradford, City Attorney, and one of the city councilmen called on December 28, 1932, and discussed the water filings by the City and District with Messrs. Hyatt, Conkling and Bryan of the Division of Water Resources. The delegation was advised by Mr. Conkling that unless some good cause for a different course could be shown prior to February 1, 1933, it was felt the permits should be withdrawn.

However, on representations of the City that it was intended to call an election on November 6, 1934, for the purpose of voting bonds for developing the water resources of the Silver Creek watershed, action was still further deferred.

On June 23, 1934, an annexation election was held as a result of which 380,000 acres were admitted to the Utility District increasing the area to 420,000 acres.

On November 6, 1934, a bond election was held authorizing the sale of bonds in the amount of \$12,000,000 for the acquisition and/or construction by the District of a system of works for supplying the District and municipalities therein with electrical power. The result of this election was favorable to the District and apparently every move that has subsequently been made to invalidate the bond issue and prevent the sale of bonds has met with defeat. However studies made by the City indicate that the development of the power phase of the Silver Creek Project is not feasible at this time and the Board of Directors of the Utility District are preparing plans for the construction of a steam electric generating plant and distribution system and are conducting surveys preliminary to the institution of condemnation proceedings before the State Railroad Commission should it be decided to acquire the present distribution system by that method.

No connection is shown to exist between these activities and the hydroelectric power development proposed in the City's applications and no definite plan toward the construction of such works has been indicated.

Since the hearing of July 3, 1930, the situation on the American River has clarified to a certain extent. All filings intervening at the time of the hearing between the permits under discussion and the latest filings made by the Sacramento Municipal Utility District have now been cancelled except those by the State Department of Finance. If and when the District is ready to proceed, if conditions would warrant such a course, the Department of Finance can waive its priority to the extent of the amount asked by the District, inasmuch as the development proposed by the District appears to be embraced within the scope of the State plan as set forth in the applications by the Department of Finance. It would accordingly appear that the position of the

City would not be weakened by taking permits under the later filings should the existing permits be revoked.

Permittee's estimate of the cost of the Silver Creek project is some \$11,000,000 which includes furnishing water to the Sacramento Municipal Utility District and the generation of power in transit. While permittee represents that some \$300,000 has been spent on the project since its inception, in view of the priorities held--some thirteen to sixteen years--it is not believed that diligence commensurate with the project has been manifested and inasmuch as diligence is one of the fundamental principles of an appropriative right to use water it is deemed appropriate that the permits be revoked.

CONCLUSION

The applications under discussion herein were filed variously in 1921, 1923 and 1924--thirteen to sixteen years ago; five of the applications were approved in August 1927 and one in February 1928; time was allowed to begin construction work, to complete construction work, and to put the water to beneficial use; the permittee failed to begin construction within the time allowed in the permits and further time was allowed by order to begin said construction work; the permittee failed to begin the construction work under the permits within the extended time and a hearing was held under the provisions of Section 20 of the Water Commission Act and permittee allowed opportunity to show cause why the permits should not be revoked; the permittee has failed to show diligence commensurate with the magnitude of the project or other cause why the permits should not be revoked and the water declared unappropriated and subject to appropriation under later priorities.

ORDER

Permits 2860, 2861, 2862, 2863, 2864 and 2865 having been issued and time having been allowed within which to begin construction work, complete construction work and complete beneficial use of water, applicant having failed to begin construction work as prescribed under the permits, an extension having been allowed to begin construction work and applicant having failed to begin construction work within the extended time allowed, a hearing having been held under the provisions of Section 20 of the Water Commission Act and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Permits 2860, 2861, 2862, 2863, 2864 and 2865 heretofore issued in approval of Applications 2469, 3441, 3442, 3443, 3444 and 4182, respectively, be revoked and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works, State of California, this *Tenth* day of *July*, 1937.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

(Seal)
MSE:MP