

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

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In the Matter of Application 9602 of Charles J. Mathews and
Application 9603 of John L. Sullivan, Jr., to Appropriate
Water from Honcut Creek in Yuba County for
Irrigation Purposes.

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Decision A. 9602, 9603 D 447
Decided *November 13, 1939*

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APPEARANCES AT HEARING HELD AT MARYSVILLE, OCTOBER 17, 1939

For Applicants

Charles J. Mathews)
John L. Sullivan, Jr.)

Rich & Weiss, Attorneys at Law
By Richard H. Fudge

For Protestants

M. T. Thome, William Thome, Pearl Creason)
Chas. A. Wetmore, Jr. and H. F. Uts)

Chas. A. Wetmore, Jr.

Garden Highway Mutual Water Company

Desmond A. Winship

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

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O P I N I O N

GENERAL DESCRIPTION OF PROJECTS

Application 9602 of Charles J. Mathews and Application 9603 of John
L. Sullivan, Jr. are identical with the exception of the description of the
place of use. Under each application it is proposed to appropriate 3 cubic
feet per second from Honcut Creek, a tributary of the Feather River in Yuba
County, from March 15th to September 15th of each season for irrigation pur-
poses. The point of diversion is described as being within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$

of Section 27, T 17 N, R 3 E, M.D.B.&M. Under Application 9602 it is proposed to irrigate 151.57 acres and under Application 9603 it is proposed to irrigate 149.43 acres, each tract of land being located within Sections 26 and 27, T 17 N, R 3 E, M.D.B.&M.

PROTESTS

M. T. Thome, William Thome, Pearl Creason, Charles A. Wetmore, Jr. and H. F. Utz claim rights initiated prior to the effective date of the Water Commission Act, riparian rights and prescriptive rights to appropriate from Honcut Creek. A pump has been installed on Lot 42 of Mosnett-Wetmore Subdivision No. 1 about 0.8 of a mile above the proposed point of diversion of the applicants and it is claimed that approximately 155 acres are under irrigation.

These protestants claim that while the point of diversion of the applicants is below them on Honcut Creek, it is above protestants with reference to the source of the water supply as Honcut Creek does not flow after May in ordinary years and the water diverted by them actually comes from the Feather River which backs into Honcut Creek. Protestants allege in effect that during periods of low flow there is insufficient water to supply the demands of both applicants and protestants.

The Garden Highway Mutual Water Company has Application 1699, Permit 1793 before this office for 43.87 cubic feet per second to be diverted from the Feather River from about April 15th to about October 31st of each season for the irrigation of 3010.11 acres of land. Its point of diversion is located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T 13 N, R 3 E, M.D.B.&M. about 30.6 miles below the applicants' proposed point of diversion. This protestant alleges in effect that its water supply would be jeopardized during those years when the flow in the Feather River is below normal.

HEARING HELD UNDER SECTION 1a OF THE WATER COMMISSION ACT

Applications 9602 and 9603 were 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 were set for public hearing in accordance with Section 1a of the Water Commission Act on Tuesday, October 17, 1939, at 10:00 o'clock A.M. in Supervisor's Chamber, Court House, Marysville, California. Of this hearing applicants and protestants were duly notified.

GENERAL DISCUSSION

Both applicants and protestants agreed at the hearing that the waters which applicants are seeking to appropriate are the waters of Honcut Creek augmented by the flow from springs along its banks and the waters of the Feather River which during the low flow period back up into Honcut Slough. It appears that it was applicants' original intent to appropriate any water in Honcut Creek at their point of diversion whether it be from the waters of Honcut Creek or from water backing into Honcut Creek from the Feather River and it is the opinion of this office that Applications 9602 and 9603 should be amended to include the Feather River as a source of appropriation.

There was no controversy at the hearing over the continuous flow allowance of water which the applicants seek to appropriate. The protestants were concerned however lest the applicants would for shorter periods of time increase the rate of pumping to such an extent that it would interfere with their diversions.

In this connection the Examiner directed attention to the fact that so long as they did not interfere with the prior rights of others, the water could be pumped at a greater rate than the continuous flow allowance pro-

vided that the average diversion during a thirty day period did not exceed the continuous flow allowance. Attention was also directed to the fact that the diversion would be under the supervision of this office and an arrangement could possibly be made for rotation with the other users of water at times when there was danger of interference.

The applicants fully understand that should the applications be approved they would acquire no legal right to divert water at greater rates to the injury of others and stated at the hearing that they intend to respect prior and existing rights and to use the water in harmony with the other users on the stream.

The records of this office indicate that applicants irrigated the entire area which they propose to irrigate under Applications 9602 and 9603 during the 1938 irrigation season and 250 acres thereof during the 1939 irrigation season. No interference with the rights of others was reported which in itself would lead to the conclusion that there is unappropriated water in the sources of proposed appropriation during a year of normal runoff.

The records of this office indicate that the average duty of water by the protestants during the past three years has been approximately one cubic foot per second for each 73 acres of irrigated land. It is believed that with conservative use of water a duty of 1 cubic foot per second for each 80 acres of irrigated land which is the customary allowance for irrigation purposes in the Sacramento and San Joaquin River valleys, is ample and based upon this duty of water it is our opinion that the amount of water for which Applications 9602 and 9603 should be approved should be limited to 1.89 c.f.s. and 1.87 c.f.s., respectively.

CONCLUSION

1. The source of proposed appropriation in Applications 9602 and 9603 should be amended to include the Feather River.
2. Application 9602 should be approved for an amount of water not to exceed 1.89 c.f.s.
3. Application 9603 should be approved for an amount of water not to exceed 1.87 c.f.s.

ORDER

Applications 9602 and 9603 for permits to appropriate water having been filed with the Division of Water Resources, 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 9602 be amended to include the Feather River as a source of appropriation and as amended approved for an amount of water not to exceed 1.89 cubic feet per second and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and

IT IS FURTHER ORDERED that Application 9603 be amended to include the Feather River as a source of appropriation and as amended approved for an amount of water not to exceed 1.87 cubic feet per second and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 13 day of November 1939.

EDWARD HYATT, State Engineer

BY MAROLD CONKLING

Deputy

(Seal)

WRS:MP