

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 13959 by Frank Carmichael to  
Appropriate Water from Honcut Creek in Yuba County for Irrigation  
Purposes.

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Decision A. 13959 D. 736

Decided March 24, 1952

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Participants in the Investigation Conducted by the Division of Water  
Resources on October 10, 1951 in Connection with the Proposed Appropriation:

|                  |   |
|------------------|---|
| Frank Carmichael | Applicant   |
| Ray Maxwell      | Applicant's Attorney  |
| P. J. Minasian   | Protestant's Attorney   |
| A. S. Wheeler    | Senior Hydraulic Engineer,<br>Division of Water Resources,<br>Department of Public Works,<br>Representing the State Engineer. |

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OPINION

General Description of the Project

The application initiates an appropriation of 8 cubic feet per second from Honcut Creek, a tributary of Feather River, from April 1 to June 1 of each season, for the purpose of irrigation. The proposed diversion is to head at a point within the SE $\frac{1}{4}$  of Section 13, T17N R4E, MDB&M. Diversion is to be effected by means of a brush and gravel dam, 3 feet high by about 40 feet long. The conduit is to be an earth ditch: bottom width 3 feet, top width 7 feet, water depth 2 feet, length

6000 feet, grade 0.002. The designated place of use is pasturage aggregating 633 acres and located within Sections 13, 14, 23, 24 and 26 of T17N R4E, MDB&M. According to the application this land has another source of water supply, described therein as "rediversion from Honcut Creek of water in Application 11596 Permit 7086."

#### Protest

The Sutter Butte Canal Company protests the application. It claims appropriative rights initiated prior to December 19, 1914 to divert upward of 100 000 miner's inches from Feather River and it also claims a right under Permit 6242 (Application 10529) to divert 234 cubic feet per second from the same stream. It asserts that its main canal heads within Section 33, T19N R3E, MDB&M and that it also diverts by pumping at a point within Section 16, T16N R3E, MDB&M. It argues that the applicant's proposed point of diversion is upstream from one of its own points of diversion and will therefore directly invade its rights, and it also apprehends that the applicant's proposed diversion may interfere with diversions at its (the protestant's) upper intake "unless all rights of the protestant in and to - - - waters of the Feather River are sufficiently protected and safeguarded and the applicant notified officially that at times during the irrigation season there is no water in excess of the rights and requirements of the protestant." It states that irrigation ordinarily extends from about April 1 to about October 15, that use by its predecessor in interest, the Butte County Canal Company, commenced in 1905, that the system and works have been greatly extended and serve lands in both Butte and Sutter Counties, that

up to 2000 cubic feet per second have at times been diverted, and that its project is not fully developed but is steadily growing.

Answer

No answer to the protest is of record.

Field Investigation

The parties having both stipulated to an informal hearing as authorized in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was scheduled for October 10, 1951 and all interested parties were duly notified thereof. The field investigation resolved itself into a general discussion of the situation with the applicant at Honcut and further discussion with the protestant's attorney and with the applicant's attorney, at Oroville and Marysville, respectively. An inspection of the site of the proposed development appeared unnecessary and was dispensed with.

Records Relied Upon

Application 13959 and all data and information on file therewith.

Discussion

According to the report of the field investigation of October 10, 1951, the protestant's attorney, when interviewed at Oroville, stated that according to his understanding the diversion proposed by the applicant would have interfered with use by the protestant in but one of the 20 years last past, that any appropriation based upon Application 13959 would be subject to vested rights, and that he personally saw no reason for continuing the protest which however he lacked authority to withdraw in

the absence of an order so to do from the protestant's Board of Directors.

According to the report of field investigation the flow of Honcut Creek, which heads in the Sierra Nevada foothills below the 3000 foot contour, does not receive spring runoff from melting snow and therefore seldom reaches the Feather River after July 1.

Information from the annual reports of Sacramento-San Joaquin Water Supervision (compiled by the Division of Water Resources) is to the effect that Honcut Creek joins Feather River at mile 43.7 on the latter stream and that the protestant's upper and lower diversions head respectively 14 miles upstream and 6 miles downstream from that junction.

The applicant's proposed point of diversion, on Honcut Creek, scales approximately 14 miles upstream from the same stream junction.

The protestant's upper diversion because of its location on Feather River above the stream junction cannot conceivably be affected by the applicant's proposed diversion on Honcut Creek. The protestant's lower diversion, while downstream from the applicant, cannot be affected by the latter's proposed diversion unless the proposed diversion reduces the flow of Feather River to an amount insufficient to satisfy rights both of the protestant and of other downstream users.

Among gaging stations maintained on Feather River are those designated (in the Reports of Water Supervision) as "Feather River at Yuba City" and "Feather River at Nicolaus." Of these the former is about 16 miles below the mouth of Honcut Creek and about 10 miles below the protestant's lower intake; and the latter is about 34 miles below the mouth of Honcut Creek about 9 miles above the mouth of Feather River.

According to the Reports of Water Supervision mean monthly flows at these gaging stations in recent years have been as follows:

| Year    | Feather River at<br>Yuba City (cfs) |       | Feather River at<br>Nicolaus (cfs) |        |
|---------|-------------------------------------|-------|------------------------------------|--------|
|         | April                               | May   | April                              | May    |
| 1941    |                                     |       | 23 000                             | 23 858 |
| 2       |                                     |       | 28 470                             | 20 390 |
| 3       |                                     |       | 20 510                             | 10 790 |
| 4       |                                     |       | 10 040                             | 10 290 |
| 5       |                                     |       | 12 214                             | 11 972 |
| 6       | 9120                                | 5410  | 14 050                             | 11 058 |
| 7       | 6460                                | 1200  | 9 635                              | 2 017  |
| 8       | 14080                               | 10770 | 22 280                             | 17 740 |
| 9       | 8701                                | 4639  | 13 610                             | 8 676  |
| 1950    | 11230                               | 7419  | 18 447                             | 13 599 |
| Average | 9918                                | 5888  | 17 226                             | 13 039 |

According to the Water Supervision Report for 1950, total diversions between the protestant's lower intake and the gaging station at Yuba City during April and May, 1950 aggregated but 68 acre-feet and in the same period diversions from Feather River below the gaging station at Nicolaus aggregated 404 acre-feet. These figures are insignificant in comparison with the amounts the stream has carried in the same two months of each of the several years tabulated. It is concluded therefore that surpluses ordinarily exist, during April and May, in the reach of Feather River under consideration and that the reasons expressed in the protest are insufficiently supported by apparent facts to warrant disapproval of the application.

South Honcut Creek, according to the 1949 Report of Water Supervision, carried mean monthly flows of 261, 24.7, 12.9 and 2.0

cubic feet per second, during March, April, May and June, respectively, of that year, at a station maintained for a limited time at a point approximately 8 miles above the junction of Honcut Creek and Feather River, or approximately 6 miles below the applicant's proposed intake. It is noteworthy that such flows, during April and May, are in excess of the amount sought by the applicant, and that the Feather River discharges, tabulated in an earlier paragraph, indicate that runoff within the Feather River watershed during April and May, 1949, was below normal.

#### Summary and Conclusion

Unappropriated water appears to exist at times during the months of April and May, in the source from which appropriation is sought under Application 13959. Such water ordinarily may be taken and used as proposed in that application without injury to the holders of prior rights. It is the opinion of this office, therefore, that the application should be approved and permit issued, subject to the usual terms and conditions.

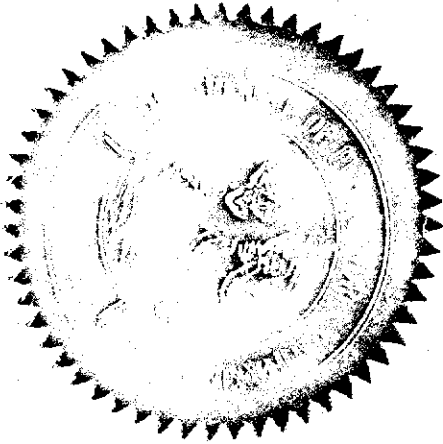
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#### ORDER

Application 13959 having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13959 be approved and that a permit be issued 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 24th day of March 1952.



*A. D. Edmonston*  
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A. D. Edmonston  
State Engineer