

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 15625 by Ida A. Scolari to
Appropriate Water from Middle Fork Feather River in Plumas
County for Irrigation Purposes.

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Decision A 15625 D 831

Decided May 24, 1955

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In Attendance at Investigation Conducted by the Division
of Water Resources on September 30, 1954:

R. A. Scolari	Representing the applicant
Buck Noble	Representing the protestant Westover Company
Francis Carmichael	Representing Protestant Carmichael
Raymond Folchi	Representing Protestant Folchi
Donald H. McCrea	Representing the protestant Pacific Gas and Electric Company
Guido Ramelli	Representing the protestants Ramelli
K. L. Woodward Associate Hydraulic Engineer Division of Water Resources Department of Public Works	Representing the State Engineer

Also present -- Raymond J. Nesbit, Associate Hydrographer,
Division of Water Resources

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OPINION

General Description of the Project

The applicant seeks to appropriate 1.00 cubic foot per second from Middle Fork Feather River from May 25 to August 15 of each year. She also seeks to appropriate 50 acre-feet per annum from the same source, this amount to be collected during the month of March and stored in an off-stream reservoir. There is to be but one point of diversion, that being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T22N R15E, MDB&M. The diversion dam is described as being "Dam #238 Middle Fork Feather River Adjudication". Water is to be conducted from the diversion dam by a ditch, 5 cubic feet per second in capacity, 4,000 feet long, to a 50 acre-foot reservoir, located within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of the adjoining Section 17. From the reservoir water is to be conveyed by ditch to the proposed place of use, the latter being 110 acres in extent, contained within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 of the same township. It is wanted for the irrigation of 50 acres of alfalfa and 50 acres of general crops from May 25 to August 15. The applicant claims to own the place of use, but not the land at the proposed point of diversion, the latter being owned, according to the application, by Frank Carmichael.

Protests

Individuals and/or entities protested the application as follows:

Guido and Jane Ramelli protest that the proposed appropriation will deprive them of the supply they have been diverting under Application 9213 Permit 5304. They state that they irrigate 72.32 acres in Section 28, T23N R14E, MDB&M, and use water for domestic purposes, that their diversion heads at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 of that township, and that their protest may be disregarded and dismissed "if an adequate supply is allowed to flow into the pool above Beckwourth Bridge, from which we divert from Middle Fork Feather River."

Richvale Irrigation District protests that the proposed appropriation will deprive it of "water it requires for irrigation of lands within its boundaries and to which it has established rights". It claims a right based upon numerous notices of appropriation posted prior to December 19, 1914, lists those filings on an exhibit which accompanied its protest, and asserts that it has succeeded to ownership of 26.65 per cent of all rights and claims in and to the waters of Feather River acquired by virtue of those notices. It states further that Butte County Canal Company, its predecessor, first diverted and used the water in question in 1905, that use expanded under the successor to that concern to peaks of about 2,000 cubic feet per second, that

it (the protestant) purchased 26.65 per cent of the water rights of Sutter-Butte Canal Company and has used that water, plus additional water purchased and pumped each year since 1939, and that its diversion heads at Sutter Butte Canal Company Dam in Section 33, T19N R3E, MDB&M. Its protest contains additional statements as follows:

"Richvale Irrigation District supplies water to about 25,000 acres of land within its boundaries. During the past six years the average acreage supplied with water has been 12,000 acres of rice, 300 acres of irrigated clover, 200 acres of other irrigated crops. To supply these crops, its water rights are fully used and additional water is purchased."

"The water for this district is diverted from the Feather River through the Sutter Butte Canal system. Its water rights were adjudicated as against the Great Western Power Company in 1924 in action #2360, Butte County Superior Court. The Sutter Butte Canal system supplies protestant, the Biggs-West Gridley Water District, the Sutter Extension Water District, and lands within the service area of the Sutter Butte Canal Company. Each district has a percentage interest in the water rights of the Canal Company and during the summer season there is a shortage of water for all concerned."

"Protestant's interest is 26.65% of the Sutter Butte Canal Company rights which yield when water is available in the Feather River approximately 533 C.F.S. This quantity is not adequate to meet the District's requirements."

"In each year when the flow of the Feather River at the Sutter Butte Canal Co. dam drops below 2,000 C.F.S. the entire flow of the river is and has been for many years used to supply the needs of the users from the Sutter Butte Canal Co. system. This occurs in most years between June 1st and July 15th and in dry years as early as May 1st. Thus there is no unappropriated water in the Feather River after the

dates mentioned and any appropriation by applicant during that period would deprive protestant of water to which it is entitled."

Westover Company protests that the proposed appropriation would deprive it of the supply which it has a prior right to divert from Middle Fork Feather River after May 25 of each year. It bases its claim of a right to water from the source in question upon an adjudication of Middle Fork Feather River, states that it irrigates 659.9 acres and waters 1,000 head of cattle, describes its point of diversion as "points of diversion #243, 244, 245 and 246 as per D.W.R. Map - Middle Fork Feather River Adjudication."

Biggs-West Gridley Water District protests upon the same grounds as those advanced by Richvale Irrigation District. It claims to have purchased 28 per cent of the water rights of Sutter Butte Canal Company and to have used this water, plus additional water, purchased and pumped each year since 1942.

Frank Carmichael protests that the proposed appropriation will seriously impair his water rights and the water he is now taking "under permit on file in your Department".

Mary Folchi protests that the proposed appropriation "will cut off water in main dam necessary to irrigate meadow". She asserts "there is no other way to irrigate the meadow unless this flow is maintained", that her claimed right to the use of water is based upon "Prior Application". As to extent of present and past use, she refers to "Proof #80, Priority 1874 and 1880," and states "1.45 cubic feet per second". Water used to irrigate

144 acres of meadow hay-land from April 1st to Sept. 1st." She states that her diversion point is at Decker Dam, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T23N R14E, MDB&M. She states that her protest may be disregarded and dismissed "if sufficient water to irrigate meadow land is assured".

Pacific Gas and Electric Company protests, its protest reading in part:

"PACIFIC GAS AND ELECTRIC COMPANY ... protests the granting of a permit ... and for cause therefor avers that the place of proposed diversion is above and upstream from place where Protestant diverts or is entitled to divert water and such diversion by Applicant would detract from natural flows to which Protestant is entitled as derived from original right of appropriation ... and of subsequent continuous and diligent application of the water to beneficial use, to wit:

"The right to divert in the NE $\frac{1}{4}$ of Section 25, T19N R3E, MDB&M, at the Western Canal headdam, 60,000 inches from the natural flow of the Feather River and its tributaries above said headdam into the Western Canal for irrigation use, with priority of February 3, 1908."

"Said appropriative right of this Protestant is dedicated to public use, the waters diverted thereunder are devoted to public use for irrigation purposes, and any diminution thereof would be contrary to the public interest."

"WHEREFORE, Protestant prays that portion of the application relating to direct diversion be denied."

Answers

Passages from the applicant's answers to all protests except the protest by Pacific Gas and Electric Company are as follows:

"In reply to your protest. This application was not made with the intention of depriving the Protestant of his appropriative rights. This application is for storage and use of surplus water, which has been put to beneficial use for at least the last 12 years of which the local Protestant was always aware of my use of this water. The Protestant has never objected or complained of any shortage or damage."

The applicant in answering the protest of the Pacific Gas and Electric Company asserts that her application was not made with the intention of depriving anyone of any established water rights, and that in her opinion, the approval of her application would have no effect upon the flow at the Pacific Gas and Electric Company's point of diversion at any time of year.

Field Investigation

The applicant and the protestants with the approval of the Division, having stipulated to the submittal of the application and protests upon the official records of the Division, a field investigation was conducted on September 30, 1954, by an engineer of the Division. The applicant and the protestants, except Richvale Irrigation District and Biggs-West Gridley Water District were present or represented during the investigation.

Records Relied Upon

Application 9213 Permit 5304; Application 15625; Water Supply Papers, United States Geological Survey, Part 11 - "Pacific Slope Basins in California"; report - "Water Supply and Use of Water on Middle Fork of Feather River and Tributaries" - Division of Water Resources, August, 1937; judgment and decree, No. 3095, Superior Court, State of California, in and for the County of Plumas, January 19, 1940; reports on watermaster service in Middle Fork of Feather River Watermaster Service Area, seasons of 1937, 1938 etc. to include season of 1954.

Information Secured by Field Investigation

The report covering the field investigation of September 30, 1954, contains among other statements the following:

"Middle Fork Feather River originates in a plateau area at an elevation of about 8,100 feet on the west slope of the main divide of Sierra Nevada Mountains in the east portions of Sierra and Plumas Counties. Its channel follows a general northerly direction for about 20 miles through Sierra Valley and then turns west and enters Middle Fork Feather River Canyon immediately below Beckwourth."

"Due to the terrain and the method of irrigation employed in the valley it appears to be a physical impossibility to apportion to each user a continuous flow of the amount allowed under the decree or to establish a system of rotation whereby each user would be entitled to a greater amount of water over a shorter period of time. The practice, especially near the north end of the valley in the vicinity of the applicant, is to divert the major, if not entire, flow at

the particular diversion point on to the land entitled to irrigation and then allow the water to naturally drain back into the channel for use by the next party. The water applied to the lands by the lowermost user under the decree drains into a natural pool of about 3/4 mile in length in the vicinity of Beckwourth from which Mr. Ramelli diverts and from which, if sufficient quantity is present, the excess flows downstream."

"According to Mr. Ramelli no water normally flows beyond the pool between about the middle of June and the beginning of the fall rains. It was noted that the river channel was dry at and above the town of Portola, although a considerable quantity stood in the pool at the above-mentioned bridge. A gravel dam has been bulldozed across the river at Portola and it is understood that due to the extremely low flow of the town's other sources of domestic water, it has been necessary during the past summer to divert water accumulating at the dam through its filtration system for use by the people."

"Applicant Scolari and protestants Carmichael, Westover Company and Folchi are included in the Middle Fork of Feather River decree and their use of water is regulated by a State Watermaster. Their rights, points of diversion, description of diversion works and areas allowed irrigation thereunder are set forth in the report and the decree and are also previously noted."

"Guido and Jane Ramelli plan to divert from the pool near Beckwourth as allowed under Application 9213 Permit 5304. According to Mr. Ramelli irrigation from this source had been carried on prior to 1952 but the diversion works were destroyed by high water that year and no use under the permit has subsequently been made. He indicated that new works will be installed next spring and use of water will commence immediately thereafter."

"Pacific Gas and Electric Company, Richvale Irrigation District and Biggs-West Gridley Water District divert from the main stem of Feather River below Oroville. According to Mr. McCrea

the relative rights of these agencies as well as Sutter Extension Water District and Sutter Butte Canal Company were adjudicated as between themselves by court order on December 15, 1924. The adjudication included 3,700 c.f.s., of which 1,200 c.f.s. were allocated to the right now claimed by Pacific Gas and Electric Company."

Information Obtained from Division Files

The flow of Feather River at a station designated "Feather River near Oroville" has been measured and recorded by the United States Geological Survey since January, 1902. "Feather River near Oroville" is described as being within the NE $\frac{1}{4}$ of Section 2, T19N R4E, MDB&M. The asserted rights of diverters from Feather River served through the Sutter-Butte Canal system, such diverters including the protestant Richvale Irrigation District and the protestant Biggs-Gridley Water District, according to the protests, aggregate 2,000 cubic feet per second. The asserted rights of the Pacific Gas and Electric Company to divert from Feather River amount, according to that Company's protest, to 1,200 cubic feet per second. These claimed rights aggregate 3,200 cubic feet per second. "Feather River near Oroville" is located at mile 71.0 (measured from mouth of Feather River), the Sutter-Butte Canal heads at mile 58.1, the Western Canal (the basis of the Pacific Gas and Electric Company protest) heads at mile 61.2. Certain data abstracted from the Water Supply Papers, United States Geological Survey, are as follows:

Water year	Flow of Feather River near Oroville during March in cubic feet per second	Date upon which flow of Feather River near Oroville receded to 3,200 cubic feet per second
1940-41	14,790	July 4
41-42	7,991	July 11
42-43	18,590	June 23
43-44	6,467	June 11
44-45	5,637	June 17
45-46	6,450	June 12
46-47	7,140	May 10
47-48	3,803	July 4
48-49	6,845	June 3
49-50	8,457	June 17
50-51	8,314	June 9
1951-52	11,850	August 3
Average	8,861	June 21

The flow of Middle Fork Feather River at the crossing of that stream by Western Pacific Railroad in Section 26, T23N R4E (about 1.1 miles above the Ramelli intake) was measured and recorded by Division personnel during portions of 1936, 1937 and 1938. According to Division report entitled "Water Supply and Use of Water on Middle Fork of Feather River and Tributaries", August, 1937, that flow in 1936 averaged 26.9 cubic feet per second from May 8 to May 31, 40.5 cubic feet per second during June, 2.22 cubic feet per second during July; it receded gradually, falling below 3.0 cubic feet per second (the Ramelli entitlement) on July 4 or 5. According to Division watermaster reports the flow of the same stream at the same point of measurement in 1937 averaged 40.3 cubic feet per second from May 9 to

May 31, 3.28 cubic feet per second during June, dropped below 3.0 cubic feet per second about June 30, exceeded that rate intermittently (on 8 days in all) thereafter; and in 1938 flow lasted later, averaging 78.5 cubic feet per second over the last 8 days of June, 47.8 cubic feet per second during July and 12.8 cubic feet per second over the first half of August, dropping below 3 cubic feet per second on about August 15.

The flow of Middle Fork Feather River has also been measured by the United States Geological Survey at a station designated "Middle Fork Feather River near Clio". That station scales about 69 miles above "Feather River near Oroville" and about 12 miles below the protestant Ramellis' intake. According to Water Supply Papers, flows passing the Clio gage during water-years 1935-36, 1936-37 and 1937-38 (the water-years that include the lesser periods mentioned in the preceding paragraph) were respectively 92.8, 72.6 and 263% of the average of flows over a 27-year period.

The report covering watermaster service within Middle Fork Feather River Watermaster Service Area, 1954 season, contains among other statements the following:

"This is the fifteenth annual report on Watermaster Service in the Middle Fork of Feather River Watermaster Service Area and covers the period of water distribution in 1954 beginning April 1 and terminating September 30."

"The service area was created by order of the Division of Water Resources on March 29, 1940, to include, with the exception of certain tributaries and springs named in the order, all water rights of Middle Fork of Feather River in Plumas and Sierra Counties above Beckwourth, as established by the decree entered in the Middle Fork of Feather River Adjudication proceeding on January 19, 1940, Superior Court, Plumas County, No. 3095."

"On December 26, 1940, the service area was amended to include the rights of the stockholders of Sierra Valley Water Company and the right under Application 9293, Permit 5181, and to exclude certain rights included in the original order. Watermaster Service has been provided during each irrigation season since the service area was created and annual reports prepared to show the work accomplished."

"Water rights in the ... Service Area are grouped in six divisions in the Middle Fork of Feather River decree. The divisions and schedules defining the water rights therein are as follows:

...

"Little Truckee Ditch	Schedule 9"
"Webber Creek and Tributaries	Schedule 10"

The lands of Applicant Scolari, Protestants Carmichael, Folchi and the protestant Westover Company lie within the division of the Watermaster Service Area designated "Webber Creek and Tributaries" in the last of the above quoted statements, and their points of diversion and their entitlements are listed in the so-called "Schedule 10." That division is traversed by Middle Fork Feather River which flows in a northerly direction to the vicinity of Beckwourth, then turns west. Protestant Carmichael is entitled under

Schedule 10 to divert at what is therein designated "Diver-
 sion 238." So also is Ida A. Scolari who now seeks under
 Application 15625 to appropriate additional water at the
 same point. Protestant Folchi and the protestant Westover
 Company divert at points farther downstream.

According to the reports on watermaster service,
 supply available from Middle Fork Feather River and tribu-
 taries (apart from the supply imported via Little Truckee
 Ditch) has never within recent years been enough to satisfy
 decreed rights throughout an irrigation season. Dates upon
 which importations of water from Little Truckee River commenced
 are recorded in the watermaster reports to have been as follows:

Year	Month	Day
1937	May	6
1938	June	16
1939	April	18
1940	April	23
1941	April	26
1942	May	15
1943	May	10
1944	May	17
1945	May	11
1946	May	16
1947	April	18
1948	May	6
1949	May	6
1950	May	28
1951	May	26
1952	June	27
1953	June	14
1954	May	12
Average	May	15

The right of access by the applicant to her point of diversion for the purpose of diverting amounts in excess of those authorized by Court decree is not apparent. In the application the applicant disclaims right of access, indicates that her proposed point of diversion is owned by Frank Carmichael, fails to state what steps have been taken to secure right of access. By letter addressed to the Division on July 9, 1954, Frank Carmichael states,

"In regard to the Scolari application for additional water in Sierra Valley, the point of diversion is on our property and no permission has been granted for said diversion nor is permission anticipated."

A memorandum signed Ray J. Nesbit, dated March 15, 1955, filed with Application 15625, contains statements as follows:

"As watermaster in the Middle Fork Feather River Water Service Area from 1947 to date, the writer has made numerous observations of the water supply and use of water by Applicant Scolari and the protestants."

"... the Webber Creek group is the only supply available during the period ... for direct diversion"

"No water from the Little Truckee River can be diverted into the Webber Creek stream system under the present claim of right until a deficiency exists in the natural flow waters. The following dates of the earliest diversion of Little Truckee water into Sierra Valley indicate the dates on which a deficiency in natural flow has occurred for the protestants during the last 12 irrigation seasons."

1943 - May 12
1944 - May 17
1945 - May 11
1946 - May 16
1947 - Apr. 18
1948 - May 6

1949 - May 6
1950 - May 28
1951 - May 24
1952 - June 27
1953 - June 14
1954 - May 11"

"It is the opinion of the writer that water for direct diversion would not be available for the entire season of use as stated in the application under any conditions of water supply as recorded or reported in the past and during the early portion of the season of use on only rare occasions such as the very wet years of 1952 and 1953."

"In regard to ... storage during March, it is the writer's opinion that water is nearly always available during that period. In the 8 years of observation ... on or about April 1 there has been unappropriated water available at the applicant's point of diversion. . . . The writer sees no objection to the applicant's storage of water if that storage is independent of existing facilities. If adequate by-pass facilities are provided no injury to existing rights could be sustained."

"It is noted that the owner of the land upon which the point of diversion to storage is located has stated that he has not given nor does he intend to give right of access to the applicant. Applicant Scolari has right of access to the ditch only for natural flow rights on the lands described in the Middle Fork Feather River Decree."

Discussion

The March flows of Feather River near Oroville exceed in all years and greatly exceed in most years the aggregate of the rights claimed by Richvale Irrigation District, Biggs-West Gridley Water District and Pacific

Gas and Electric Company to divert from Feather River at the points named in their protests. Also, diversions from Feather River during March are small in comparison with diversions in later months. It is apparent therefore, that the entities just mentioned cannot be injured by Applicant Scolari's proposed diversion to storage in March of each year, of 50 acre-feet. The subsidence of Feather River near Oroville to a flow of 3,200 cubic feet per second (the aggregate of the down-river protestants' claimed rights) has occurred, in the last 12 years of published record, as early as May 10 and as late as August 3, the median time of that occurrence being about June 17. After that time, insofar as the down-river protestants exercise their rights fully, unappropriated water in Middle Fork and other tributaries may be supposed ordinarily not to exist.

The measurements by the Division of the flow of Middle Fork Feather River at the Western Pacific Railroad crossing near Beckwith* in 1936, 1937 and 1938 indicate that the protestants Ramelli would not have been adversely affected, in a normal year, by diversions such as proposed by the applicant, earlier than some time in early July. They do not in themselves indicate the existence of unappropriated water either at the point of measurement near Beckwith or elsewhere on the stream. As indicated in the preceding paragraph the existence of

* now called Beckwourth

unappropriated water at any point on Feather River or tributaries after about June 17 is questionable. After the beginning of irrigation in Middle Fork Feather River Watermaster Service Area, flows reaching the point of measurement near Beckwith/^(Beckwourth)consist in large part of return flow from irrigated lands, of which some 2,050 acres lie along the approximately 5.7-mile reach between the Western Pacific Railroad Crossing and the Scolari intake.

Unappropriated water within the Middle Fork of Feather River Watermaster Service Area evidently is non-existent after the time in each season when the supply available from Middle Fork and tributaries within that Area requires supplementation from Little Truckee River, a foreign source. The supply of water that is subject to appropriation within the Middle Fork of Feather River Watermaster Service Area therefore appears to have failed during the seasons covered by reports on watermaster service at times ranging from April 18 to June 27, the average time of failure over the 18 years of record being May 15. The diversion proposed by the applicant, between May 25 and August 15 would, in a normal season, be a taking of appropriated water, injurious to downstream users such as Protestants Carmichael, Folchi and Westover Company.

Unappropriated water within the same stream system during the month of March appears plentiful. It may be

accumulated in the amount of 50 acre-feet per annum between March 1 and April 1 and later used beneficially in the manner proposed without apparent injury to any protestant, provided the uncertainty as to right of access for that purpose to the proposed point of diversion is clarified.

Conclusions

The information at hand points to the conclusion that unappropriated water usually exists in Middle Fork Feather River during months of March and may then be diverted to storage and subsequently used beneficially in the manner proposed by the applicant without injury to other water users, provided that the applicant holds or may secure valid right of access to the proposed point of diversion and provided further that the applicant installs and satisfactorily operates facilities that will ensure the by-passing of water required for the satisfaction of prior rights. It also points to the conclusion that unappropriated water at the point at which the applicant seeks to appropriate is non-existent, more often than not, after about mid-May. In view of these conclusions it is the opinion of this office that Application 15625 insofar as it refers to an appropriation of 50 acre-feet per annum, diverted between March 1 and April 1 of each year should be approved and permit issued subject to the usual terms and conditions but subject to special terms

and conditions providing that the issuance of the permit does not confer upon permittee a right of access to the proposed point of diversion and providing further for the installation and operation of appropriate facilities for the necessary by-passing of water as above mentioned. It is the opinion of this office further that Application 15625 insofar as it relates to the appropriation of one cubic foot per second from May 25 to August 15 should be denied.

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ORDER

Application 15625 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15625 insofar as it relates to a diversion of 50 acre-feet between March 1 and April 1 of each year be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms and conditions, to wit:

The issuance of this permit shall in no way be construed as conferring upon permittee a right of access to the point of diversion.

Permittee shall provide such facilities as may be necessary in the judgment of the Division of Water Resources to by-pass water required for the satisfaction of prior rights and shall operate such facilities as directed by the duly appointed watermaster, Middle Fork of Feather River Watermaster Service Area.

IT IS FURTHER ORDERED that Application 15625 insofar as it relates to a diversion from May 25 to August 15 of each year be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 24th day of May, 1955.



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