

ALS

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications)
13676, 13956, 13957, 14112, 14113 by)
Oroville-Wyandotte Irrigation District)
and)
Applications 12532, 12573, 14571,)
14572, 14741, 14742, 14983, 14984,)
14985, 14986, 14987, 14988 by)
County of Yuba and Yuba County)
Water District)

Sources: Various
tributaries of
the Feather and
Yuba Rivers

Counties: Butte and Yuba

Decision No. D 907

Decided May 29, 1958

Appearances at hearing conducted at Sacramento on November 19 and 20, 1957, by Henry Holsinger, Chairman; on November 26, 1957, by Henry Holsinger, Chairman, W. P. Rowe, Member, and John B. Evans, Member; and on March 24, 1958, by Henry Holsinger, Chairman, W. P. Rowe, Member, and Ralph J. McGill, Member, State Water Rights Board:

Oroville-Wyandotte Irrigation
District

P. J. Minasian, Attorney

County of Yuba and Yuba
County Water District

Martin McDonough, Attorney
Arthur W. Coats, Jr., Attorney

California Department of
Fish and Game

Lucian Vandegrift
Deputy Attorney General
J. M. Sanderson
Deputy Attorney General

DECISION

History of the Applications

The captioned applications were the subject of a hearing before the former State Engineer on March 3, 4, 5, and 6, 1953, which resulted in the issuance of Decision D 838 by the State Engineer on October 27, 1955. In the interest of brevity Decision D 838 is incorporated into this decision by reference, and the relevant factual data contained in Decision D 838 are not repeated. The State Engineer found that unappropriated water is available from the sources named in the applications for present and future water supplies of the respective service areas which can logically be served therefrom, that the applications of Oroville-Wyandotte Irrigation District and of the County of Yuba and Yuba County Water District are in physical conflict and are intermixed from the standpoint of priority of applications, and to approve the applications strictly in order of their priority would have the effect of allowing neither applicant to proceed with its proposed project. It appeared mandatory that a joint project should be undertaken to supply the areas of use because such a project would develop the water resources to the best and fullest extent in the public interest. The order embodied in Decision D 838 provided that action on the applications be deferred for a period of six months to allow the applicants an opportunity to enter into an agreement for development of a joint project which would ultimately provide for an adequate water supply for all areas and to submit the necessary petitions for changes in the applications to conform with said project.

Subsequent to Decision D 838 an order dated July 3, 1956, was issued by the State Engineer, following further hearing on

June 7 and 8, 1956, providing that action be deferred on the applications until July 1, 1957, to allow the applicants time to further explore financing possibilities and to jointly prepare and submit a report to the State Water Rights Board (hereinafter referred to as "the Board") as to the engineering and financial feasibility of a project or projects to accomplish the general objectives set forth in Decision D 838. It was further ordered that failure of the applicants to submit a joint feasibility report on or before July 1, 1957, would result in cancellation of the applications of either or both applicants.

The applicants were unable to reach an agreement by July 1, 1957, as to a plan of development which would meet the requirements set forth in the order of the State Engineer, but upon certain representations by the applicants that additional negotiations and study might be fruitful, the Board ordered that action be further deferred until September 30, 1957. By September 30, 1957, little if any progress was apparent in reaching agreement and accordingly the matter was set for hearing commencing on November 19, 1957.

The hearing developed that both applicants had attempted in good faith to comply with the order of Decision D 838, that certain proposed agreements had been presented by each for consideration by the opposing side, that many of the differences had been settled but that others had not been reconciled.

The Board then ordered that the hearing be continued for a short but indefinite period, that during the interim the parties continue their negotiations with a view of eliminating the subsidiary points of disagreement, and that briefs be submitted on those major points then unresolved.

Notice was given on February 10, 1958, that the hearing would reconvene on March 24, 1958. On March 21, 1958, the applicants reached an agreement for construction of a joint project, and the agreement was submitted to the Board at the March 24, 1958, session as OWID Exhibit 65. In view of the agreement the Board finds that the order of the State Engineer in Decision D 838 and subsequent order dated July 3, 1956, have been complied with.

OWID-YCWD Agreement

The agreement between Oroville-Wyandotte Irrigation District and Yuba County Water District (OWID Exh. 65), dated March 21, 1958, insofar as the matter relates directly to the applications of Oroville-Wyandotte Irrigation District being considered and to issues relevant to this decision, provides that:

(1) Both parties agree and consent to the issuance of permits on Applications 13676, 13956, 13957, 14112, and 14113; that

(2) Applications 13676, 13956, and 14112 for power and domestic purposes or permits issued pursuant thereto will be amended to include the proposed Kelly Ridge Power Plant within the place of use; that

(3) the amendment of Applications 13676, 13956, 13957, 14112, and 14113 or permits issued pursuant thereto will include as an additional place of use such area in Yuba County as Yuba County Water District may designate; and that

(4) Yuba County Water District will be included as a joint applicant with Oroville-Wyandotte Irrigation District under the five applications cited.

Disposition of the Applications

The California Department of Fish and Game has entered into stipulations with the applicants (OWID Exh. 66 and YC Exh. CC) providing for necessary by-passes or releases of water from all proposed project works for the preservation of fish life. All permits issued as a result of this decision will be specifically subject to the aforementioned stipulations.

Over the years the agency responsible for the administration of water rights in this State has been concerned with the development of low-head, large-flow power projects on the lower reaches of large streams. The Board shares this concern. If allowed to proceed unrestricted, such plants may establish rights to stream flow which may hamper the fullest economic development of the water of the streams for preferred uses as defined in the Water Code. It is therefore believed that the public interest in the development of the streams involved in this decision should be protected by a clause in the permits for power purposes providing that no right to the use of water thereunder shall be acquired which may in any way interfere with future appropriation for domestic or irrigation use.

In view of the finding of the State Engineer in Decision D 838 of the existence of unappropriated water and the ineffectiveness of the protests as a bar to the approval of any of the applications considered therein, Applications 13676, 13956, 13957, 14112, and 14113 by Oroville-Wyandotte Irrigation District should be approved and permits issued provided the power applications are subjected to higher uses and provided all applications are subject to the agreement between Oroville-Wyandotte Irrigation District and Yuba County

Water District (OWID Exh. 65) and the stipulation between OWID and California Department of Fish and Game (OWID Exh. 66).

County of Yuba and Yuba County Water District have indicated a desire that permits be issued for the entire projects contemplated under Applications 14572, 14742, and 14987. The Board finds no obstacle to the issuance of permits thereunder provided the permit issued pursuant to Application 14742 for power purposes is subject to higher uses and provided all permits are conditioned subject to the stipulation between County of Yuba and Yuba County Water District and California Department of Fish and Game (YC Exh. CC).

Applications 12532 and 12573 by County of Yuba and Yuba County Water District are eligible for approval insofar as the diversion from New York Creek is concerned. The applicant has requested permits to that extent and the Board finds no obstacle to such action provided permit issued pursuant to Application 12573 for power purposes is subject to higher uses and provided both permits are subject to the OWID-YCWD agreement and to the stipulation of the applicant with California Department of Fish and Game (YC Exh. CC). The portions of Applications 12532 and 12573 relating to diversion from South Fork Feather River and Lost Creek should be denied for the reasons set forth in the following paragraph.

Applications 14571, 14741, 14983, 14984, and 14985 by County of Yuba and Yuba County Water District should be denied notwithstanding the request of the applicant to hold the applications in abeyance pending construction of the "Oroville-Wyandotte" project (R.T. 3/24/58, p. 28). Inasmuch as permits will be issued pursuant to Applications 13676, 13956, 13957, 14112, and 14113 in support of the project and

Yuba County Water District enjoys a position as joint applicant thereunder, and as the County of Yuba and Yuba County Water District have no immediate plan or purpose to proceed promptly with construction and/or with application to beneficial use of the waters sought under their above-cited applications, the Board has little choice in the action to be taken, since it is a settled principle that an application to appropriate is not a proper means to make a reservation of water for a development at an indefinite and uncertain time in the future.

Applications 14986 and 14988 by County of Yuba and Yuba County Water District should be denied for the reasons set forth in the preceding paragraph notwithstanding the provision of Paragraph J of the OWID-YCWD agreement and the request of counsel for the applicant (R.T. 3/24/58, p. 33) that Applications 14986 and 14988 be disposed of simultaneously with Applications 13836 and 13837 of Oroville-Wyandotte Irrigation District (incomplete applications of OWID to appropriate from Slate Creek and Fall River). Deferment of action as requested would serve no apparent useful purpose.

Conclusions

The evidence indicates and the Board finds that unappropriated water normally exists in the named sources in sufficient amounts to satisfy Oroville-Wyandotte Irrigation District under Applications 13676, 13956, 13957, 14112, and 14113; County of Yuba and Yuba County Water District under Applications 14572, 14742, and 14987; and County of Yuba and Yuba County Water District under Applications 12532 and 12573 in part; that said applicants are in a position to proceed within a reasonable time with construction and with application to

beneficial use of the water they seek to appropriate under those applications; that such waters in general, but with certain exceptions and subject to certain conditions, may be taken and used as proposed without interference with the exercise of prior rights; and that those applications should be approved in whole or in part as hereinabove discussed and permits issued pursuant thereto, subject to the usual terms and conditions and to certain additional terms and conditions for the protection of prior rights and in the public interest. The Board finds that as so conditioned the developments proposed under those applications will best develop, conserve and utilize in the public interest the waters sought to be appropriated.

With respect to the County of Yuba and Yuba County Water District Applications 14571, 14741, 14983, 14984, 14985, 14986, and 14988, the evidence indicates and the Board concludes that all such applications should be denied, for reasons hereinbefore set forth in this decision.

ORDER

Applications 12532, 12573, 13676, 13956, 13957, 14112, 14113, 14571, 14572, 14741, 14742, 14983, 14984, 14985, 14986, 14987, and 14988 for permits to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been filed thereto, public hearings having been held and Decision D 838 having been rendered by the State Engineer in which action on the applications was ordered deferred pending entry of further order, jurisdiction of the administration of water rights, including the subject applications, having been subsequently transferred to the State Water Rights Board, a public hearing having been held by the

Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 13676, 13956, 13957, 14112, and 14113 of Oroville-Wyandotte Irrigation District be, and the same are hereby approved, and that permits be issued to the applicant, subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used.

2. The amount of water to be appropriated for power purposes under permit issued pursuant to Application 13676 shall not exceed 200 cubic feet per second by direct diversion from South Fork Feather River between January 1 and December 31 of each year and 77,300 acre-feet per annum by storage from South Fork Feather River to be collected from about November 1 of each year to about July 1 of the succeeding year; 100 cubic feet per second by direct diversion from Lost Creek between January 1 and December 31 of each year and 40,000 acre-feet per annum by storage from Lost Creek to be collected between about November 1 of each year and about July 1 of the succeeding year.

3. The amount of water to be appropriated for power and incidental domestic purposes under permit issued pursuant to Application 13956 shall not exceed 300 cubic feet per second from Slate Creek by direct diversion between January 1 and December 31 of each year and 35,000 acre-feet per annum from Slate Creek by offstream storage at a rate not to exceed 300 cubic feet per second between about January 1 and about July 1 of each year.

4. The amount of water to be appropriated for irrigation and domestic purposes under permit issued pursuant to Application 13957 shall not exceed 300 cubic feet per second from Slate Creek by direct diversion between about May 1 and about November 1 of each year and 35,000 acre-feet per annum from Slate Creek by offstream storage at a rate not to exceed 300 cubic feet per second between about January 1 and about July 1 of each year.

5. The total amount of water to be appropriated under permits issued pursuant to Applications 13956 and 13957 shall not exceed 300 cubic feet per second by direct diversion and 35,000 acre-feet per annum by offstream storage.

6. The amount of water to be appropriated for power purposes under permit issued pursuant to Application 14112 shall not exceed 150 cubic feet per second from South Fork Feather River by direct diversion and 250 cubic feet per

second from Lost Creek by direct diversion between January 1 and December 31 of each year.

7. The amount of water to be appropriated for irrigation and domestic purposes under permit issued pursuant to Application 14113 shall not exceed 350 cubic feet per second from South Fork Feather River by direct diversion between January 1 and December 31 of each year and 77,300 acre-feet per annum from South Fork Feather River by storage to be collected between about November 1 of each year and about July 1 of the succeeding year; 350 cubic feet per second from Lost Creek by direct diversion between January 1 and December 31 of each year, and 40,000 acre-feet per annum from Lost Creek by storage to be collected between about November 1 of each year and about July 1 of the succeeding year.

8. The total amount of water to be appropriated under permits issued pursuant to Applications 13676, 14112, and 14113 shall not exceed 350 cubic feet per second from South Fork Feather River and 350 cubic feet per second from Lost Creek by direct diversion; 77,300 acre-feet per annum from South Fork Feather River and 40,000 acre-feet per annum from Lost Creek by storage.

9. The maximum amounts herein stated may be reduced in the licenses if investigation so warrants.

10. All rights and privileges under these permits, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

11. Actual construction work shall begin on or before June 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, these permits may be revoked.

12. Said construction work shall be completed on or before December 1, 1964.

13. Complete application of the water to the proposed uses shall be made on or before December 1, 1975.

14. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

15. The right to store and use water for power purposes which may be acquired under permits issued pursuant to Applications 13676, 13956, and 14112 shall not interfere with diversion and use of said water for domestic and

irrigation purposes whether such uses are made either under prior or subsequent rights; provided however that nothing herein contained shall in any way affect any right acquired by permittee under any other permit for domestic and irrigation purposes.

16. Permittee shall by-pass down the natural stream channels of the streams involved in these permits sufficient water for the purpose of maintaining fish life as set forth in the stipulation for withdrawal of protest of California Department of Fish and Game dated March 24, 1958, filed of record as OWID Exhibit No. 66 at the hearing of Applications 13676, 13956, 13957, 14112, and 14113.

17. The permits issued pursuant to Applications 13676, 13956, 13957, 14112, and 14113 shall be subject to that certain agreement between Oroville-Wyandotte Irrigation District and Yuba County Water District, dated March 21, 1958, filed of record as OWID Exhibit No. 65 at the hearing of said applications.

IT IS FURTHER ORDERED that Applications 14572, 14742, and 14987 of County of Yuba and Yuba County Water District be, and the same are hereby approved, and that permits be issued to the applicant, subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used.

2. The amount of water to be appropriated for domestic and irrigation purposes under permit issued pursuant to Application 14572 shall not exceed 40,000 acre-feet per annum from Canyon Creek by onstream and offstream storage to be collected between about October 1 of each year and about June 30 of the succeeding year. Maximum rate of diversion to offstream storage shall not exceed 300 cubic feet per second.

3. The amount of water to be appropriated for power purposes under permit issued pursuant to Application 14742 shall not exceed 90,000 acre-feet per annum from Canyon Creek by onstream and offstream storage to be collected between about October 1 of each year and about June 30 of the succeeding year. Maximum rate of diversion to offstream storage shall not exceed 300 cubic feet per second.

4. The amount of water to be appropriated for irrigation and domestic purposes under permit issued pursuant to Application 14987 shall not exceed 50,000 acre-feet per annum from Canyon Creek by onstream and offstream storage to be collected between about October 1 and about July 1 of the succeeding year. Maximum rate of diversion to offstream storage shall not exceed 300 cubic feet per second.

5. The total amount of water to be appropriated under permits issued pursuant to Applications 14572, 14742, and 14987 shall not exceed 90,000 acre-feet per annum by off-stream storage or at a rate not to exceed 300 cubic feet per second.

6. The maximum amounts herein stated may be reduced in the licenses if investigation so warrants.

7. All rights and privileges under these permits, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

8. Actual construction work shall begin on or before June 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, these permits may be revoked.

9. Said construction work shall be completed on or before December 1, 1964.

10. Complete application of the water to the proposed uses shall be made on or before December 1, 1975.

11. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

12. The right to store and use water for power purposes which may be acquired under permit issued pursuant to Application 14742 shall not interfere with diversion and use of said water for domestic and irrigation purposes whether such uses are made either under prior or subsequent rights; provided however that nothing herein contained shall in any way affect any right acquired by permittee under any other permit for domestic and irrigation purposes.

13. Permittee shall by-pass down the natural stream channels of the streams involved in these permits sufficient water for the purpose of maintaining fish life as set forth in the stipulation for withdrawal of protest of California Department of Fish and Game, dated March 24, 1958, and filed of record as YC Exhibit No. CC at the hearing of Applications 14572, 14742, and 14987.

IT IS FURTHER ORDERED that Applications 12532 and 12573 of County of Yuba and Yuba County Water District be, and the same are hereby approved in part, and that permits be issued to the applicants,

subject to vested rights and to the following terms and conditions,

to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used.

2. The amount of water to be appropriated for domestic and irrigation purposes under permit issued pursuant to Application 12532 shall not exceed 12,000 acre-feet per annum from New York Creek by storage to be collected between about October 1 of each year and about July 1 of the following year.

3. The amount of water to be appropriated for power purposes under permit issued pursuant to Application 12573 shall not exceed 12,000 acre-feet per annum from New York Creek by storage to be collected between about October 1 of each year and about July 1 of the following year.

4. The total amount of water to be appropriated under permits issued pursuant to Applications 12532 and 12573 shall not exceed 12,000 acre-feet per annum.

5. The maximum amounts herein stated may be reduced in the licenses if investigation so warrants.

6. All rights and privileges under these permits, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of water.

7. Actual construction work shall begin on or before June 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, these permits may be revoked.

8. Said construction work shall be completed on or before December 1, 1964.

9. Complete application of the water to the proposed uses shall be made on or before December 1, 1975.

10. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

11. The right to store and use water for power purposes which may be acquired under permit issued pursuant to Application 12573 shall not interfere with diversion and use of said water for domestic and irrigation purposes whether such uses are made either under prior or subsequent rights;

provided however that nothing herein contained shall in any way affect any right acquired by permittee under any other permit for domestic and irrigation purposes.

12. Permittee shall by-pass down the natural stream channels of the streams involved in these permits sufficient water for the purpose of maintaining fish life as set forth in stipulation for withdrawal of protest of California Department of Fish and Game, dated March 24, 1958, filed of record as YC Exhibit No. CC at the hearing of Applications 12532 and 12573.

13. The permits issued pursuant to Applications 12532 and 12573 shall be subject to the agreement between Oroville-Wyandotte Irrigation District and Yuba County Water District, dated March 21, 1958, filed of record as OWID Exhibit No. 65 at the hearing of said applications.

Those portions of Applications 12532 and 13573 seeking diversions from sources other than New York Creek are hereby denied.

IT IS FURTHER ORDERED that Applications 14571, 14741, 14983, 14984, 14985, 14986, and 14988 in their entirety be, and the same are hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 29th day of May, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill*, Member

*John B. Evans, Member, State Water Rights Board, resigned as of January 15, 1958. Ralph J. McGill has been appointed to fill the vacancy created by the resignation of Mr. Evans.