

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the Matter of Application 14803)
by Feather Water District to appro-)
priate water from Feather River in)
Sutter County)

Decision No. D 949

ADOPTED NOV 24 '59

Substance of the Application

Application 14803, filed on May 12, 1952, by the County of Sutter and assigned to Feather Water District on March 26, 1959, is for a permit to appropriate 130 cubic feet per second by direct diversion, year-round, from Feather River for irrigation and domestic purposes. Diversion is to be effected by pumping from the unobstructed channel within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 35, T14N, R3E, MDB&M*, and the water is to be conveyed to the place of use via 10,000 feet of earth and concrete-lined ditch and 15,500 feet of concrete pipeline. The area to be irrigated consists of 8,480.88 acres within a gross area of 8,679.89 acres being within T13N, R2 and 3E and T14N, R2 and 3E. Domestic use is to be made within the entire gross area.

* Hereinafter all township references are from Mount Diablo Base and Meridian (MDB&M).

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Protests and Answers

Protests against approval of the subject application were received from 32 parties including the United States Bureau of Reclamation. The protestants, in the main, represent water users in the Sacramento-San Joaquin delta area. Two of the protestants, Garden Highway Mutual Water Company and Elvas Farms Company, obtain their water supply from the Feather and American Rivers, respectively. The protestants claim appropriative, riparian and prescriptive rights and are apprehensive that the appropriation proposed under Application 14803 will interfere with their use of water under prior rights. They allege that there is insufficient unappropriated water in the rivers supplying the delta for the development contemplated after prior rights of protestants are satisfied; that there will be interference with natural drainage of certain delta lands; that the quantity and quality of waters in the delta area will be altered; and that the proposed appropriation, if granted, will result in increased operational costs to holders of prior rights.

In answer to the objections advanced by the protestants, the original applicant, County of Sutter, claims that there is sufficient unappropriated water in the Feather River at the proposed point of diversion to satisfy the requirements in most years under Application 14803; that the County is entitled, under State law, to have its requirements met from the waters of the Feather River; that the diversion which it seeks will not in any way impair the operation or rights of the protestants; and that

the points of diversion of Protestant Elvas Farms Company are located at points too far upstream on the American River to be affected by the flow of the Sacramento River of which the Feather River is a tributary.

Hearing

Application 14803 was completed in accordance with the Water Code and applicable administrative rules and regulations and a public hearing under the provisions of the California Administrative Code, Title 23, "Waters", was held before the State Water Rights Board (hereinafter referred to as "the Board") on Tuesday, July 21, 1959, in Sacramento. Of the hearing the applicant, protestants, and other interested parties were duly notified.

Source

The Feather River heads on the crest of the Sierra Nevada, takes a general southwesterly course to a junction with the Sacramento River about 30 miles south of the City of Marysville and 15 miles northwest of the City of Sacramento. The river is formed by three principal branches, the north fork draining about 2,220 square miles of the area at the north and west, the middle fork draining 1,340 square miles in the north and at the east, and Yuba River draining about 1,300 square miles at the south. From the junction with the Feather River the Sacramento River continues in a southerly direction approximately

65 miles through the "Delta" area to Suisun Bay. The American River, a principal tributary, joins the Sacramento River at the City of Sacramento.

The watershed of the Feather River above the applicant's proposed point of diversion is, for all practical purposes, the area above the United States Geological Survey gaging station at Oroville (3,611 square miles) plus the Yuba River drainage area (1,300 square miles) or 4,911 square miles, ranging in elevation from 10,457 feet (Lassen Peak) to approximately 40 feet.

Water Supply and Water Requirements

The flow of Feather River at Nicolaus, some 11 miles downstream from the proposed diversion, has been recorded on a year-round basis by the United States Geological Survey since April, 1943 (Staff Exh. 8). The mean monthly flows for that gage covering the period of published record, October, 1943 to September, 1956, is set forth in Table I herein.

TABLE I

Mean Monthly Flows of Feather River at Nicolaus
for Period 1943 to 1956
(cfs)

<u>Year</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
1943-44	1936	2339	2549	3155	8578	11940	10040	10290	3022	541	216	541
1944-45	1354	4677	7107	5270	24710	11100	12210	11970	4419	665	449	894
46	1736	4185	23980	19250	8702	11250	14050	11060	2889	626	489	902
47	1425	2968	4719	2383	8154	12630	9635	2017	1249	273	401	686
48	2205	2648	2333	8425	4298	6336	22280	17740	9919	1197	263	776
49	2161	2349	2895	2915	4552	13980	13610	8676	1648	226	150	462
1949-50	641	1396	1384	8537	18209	13881	18447	13599	5477	655	303	1157
51	2639	24020	36870	20690	22090	14160	12260	10910	2122	472	321	1488
52	2547	4281	16480	23570	28460	20810	42640	36520	18200	5355	1419	1905
53	2778	2952	6048	36740	9479	10580	15450	15860	12620	2588	1076	2002
54	2975	4123	4179	7085	14710	19530	21210	9451	2595	975	962	1465
1954-55	2483	3870	5547	5383	3646	4685	5580	9062	2475	426	371	729
56	1231	2194	38570	38530	23180	19250	17710	21060	10490	2208	1465	2386
Average	2009	4769	11743	13995	13751	13087	16548	13709	5933	1247	607	1184
Median	2161	2968	5547	8425	9479	12630	14050	11060	3022	655	401	902

The only filing of record with the Board on the Feather River of priority earlier than Application 14803 and located downstream from the Nicolaus gage is Permit 2175 (Application 3206) which allows a diversion not to exceed 87.49 cubic feet per second between April 1 and October 31 for irrigation purposes. However, the Board's records are limited to appropriative rights initiated subsequent to December 19, 1914, the effective date of the Water Commission Act and, therefore, do not include appropriative rights initiated prior to that date and riparian rights.

The Department of Water Resources and its predecessor agencies have since 1924 gathered basic data relating to water supply and water utilization in the Sacramento and San Joaquin Valleys. The most recent publication by the Department covering this activity is Bulletin No. 23-55 "Report of Sacramento-San Joaquin Water Supervision for 1955" (Staff Exh. 7). Table II, compiled from the information contained in Bulletin No. 23-55, indicates the water requirements on the Feather River downstream from the Nicolaus gage.

TABLE II

Diversion of Water from Feather River
 Below Nicolaus Gage - 1955

<u>Month</u>	<u>Acre-feet</u>	<u>Equivalent Flow cubic feet per second</u>
April	218	3.7
May	538	8.8
June	1123	18.9
July	1780	29.0
August	976	15.9
September	656	11.0
October	88	1.4

Total acreage irrigated - 2,287 acres.

A comparison of Tables I and II readily shows that since 1943, the date flow was first recorded at Nicolaus on a continuous basis, a surplus of water has always existed on the Feather River downstream from the proposed point of diversion assuming that the 1955 diversions as shown in Table II are representative of the water requirements between the gage and the Sacramento River.

The applicant has relied chiefly on studies and recommendations by the former Division of Water Resources, contained in Bulletin No. 6, "Sutter-Yuba Counties Investigation", (Staff Exhibit 6) in support of its application. According to that bulletin during the study period, 1921 through 1950, ample water would have been available from Feather River to meet the demands of the project, except during the seasons of 1924 and 1931 (RT pp. 37, 38).

In order to obtain a supplemental supply of water for years of deficiency the applicant has executed an agreement (FWD Exh. 4) with the Pacific Gas and Electric Company for purchase of water released from Lake Almanor in connection with operation of hydroelectric power plants, if water is available as determined by the Company (RT pp. 27-29).

Proposed Water Exchange

The Feather Water District has been actively negotiating a contract with the United States for an exchange of Central Valley Project water from Sacramento River. A draft of the proposed agreement is in evidence as applicant's Exhibit 3. The

proposal in effect provides that the water furnished to the District by the United States shall be used by the District to replace water diverted from the Feather River under Application 14803. Under this plan, no depletion of the Sacramento River and delta supply would occur and the protests of the water users downstream from the junction of the Feather and Sacramento Rivers would be satisfied. The United States has indicated its willingness to enter into such a contract upon issuance of a permit to the District (RT pp. 14-17).

Disposition of the Protests

The only Feather River protestant, Garden Highway Mutual Water Company, entered into a stipulation with Feather Water District dated July 15, 1959, which provides for withdrawal of the Company's protest upon condition that any rights of diversion obtained by the District under its permit shall be subject to satisfaction of prior rights of the Company under its Licenses Nos. 2033, 4695, and 5629 (RT pp. 13, 14).

No appearance was made at the hearing on behalf of Protestant Elvas Farms Company. However, the points of diversion of the Company are obviously too far upstream on the American River to be affected by any appropriation of the applicant on the Feather River.

The delta protestants have indicated that their protests will be satisfied if an equal quantity of good quality water is substituted in the delta for the water diverted from Feather River by the applicant. The delta protestants desire

that a condition providing for this substitution of water be included in any permit issued to the applicant (RT p. 52).

The United States Bureau of Reclamation has indicated that its protest against Application 14803 would be satisfied upon the applicant's stipulation to an agreement for exchange of water as previously mentioned (RT pp. 16-18).

Conclusion

The evidence indicates and the Board finds that unappropriated water normally exists in the Feather River insofar as the prior rights of Feather River users are concerned, that prior rights of Sacramento River and delta water users will not be interfered with if a comparable substitute supply is provided by the applicant through exchange of Central Valley Project water from Sacramento River; and that Application 14803 should be approved and permit issued subject to the execution of such an exchange contract.

Order

Application 14803 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, protests thereto having been filed, jurisdiction of water rights including the subject application having been subsequently transferred to the State Water Rights Board, a public hearing having been held, evidence having been received and considered by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14803 be and the same is hereby approved, and it is ordered that a permit be issued to applicant subject to vested rights and to the following terms and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 130 cubic feet per second, to be diverted from January 1 to December 31 of each year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before December 1, 1960, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1962.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

6. Progress reports shall be filed by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit 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 said water.

8. No water shall be diverted under this permit until an agreement has been consummated between the permittee and the United States providing for a concurrent exchange of water from the Central Valley Project for water diverted under this permit to the extent necessary to supply the prior rights of the Sacramento River and Sacramento-San Joaquin delta users.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California on this 24th day of November, 1959.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member