

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

ooo

IN THE MATTER OF APPLICATION NUMBER 92 OF THE PARADISE
IRRIGATION DISTRICT TO APPROPRIATE FROM LITTLE BUTTE
CREEK, TRIBUTARY OF BUTTE CREEK IN BUTTE COUNTY, FOR
AGRICULTURAL PURPOSES AND IN THE MATTER OF APPLICATIONS
NUMBER 2894 AND NUMBER 3437 OF THE PARADISE IRRIGATION
DISTRICT TO APPROPRIATE FROM THE WEST BRANCH OF THE
NORTH FORK OF THE FEATHER RIVER IN BUTTE COUNTY FOR
AGRICULTURAL PURPOSES

ooo

DECISION NO. 92 - ~~2894-3437~~ D 59
Decided June 2, 1925

APPEARANCES AT HEARING HELD August 20, 1924

FOR APPLICANT Raymond A. Leonard
A. J. Lloyd

FOR PROTESTANT Pacific Gas & Electric Co., P. M. Downing
FOR PROTESTANT Oro Electric Corporation P. M. Downing

EXAMINER Edward Hyatt, Jr., Acting Chief of Division of
Water Rights
John C. Fales, Assistant Hydraulic Engineer

O P I N I O N

These three applications, together with application Number
476, Permit 271 are units of a single enterprise for the irrigation of
a gross area of 11,100 acres of land included within the boundaries
of the Paradise Irrigation District.

The main features of the four applications are as follows:
Application Number 476, Permit 271 being included in this discussion
for the reason above mentioned.

Application Number 92 was filed July 31, 1915. It proposes an appropriation of 6,600 acre feet per annum of the waters of Little Butte Creek for agricultural purposes by means of storage. It was protested by the Oro Electric Corporation and J. W. Browning.

Application Number 476 was filed September 21, 1916, and approved May 3, 1917, under Permit Number 271 for an appropriation of 9,500 acre feet per annum of the waters of Little Butte Creek, for agricultural purposes by means of storage.

Application Number 2894 was filed June 21, 1922. It proposes an appropriation of 3,000 acre feet per annum of the waters of the West Branch of the North Fork of the Feather River for agricultural purposes by means of storage. It was protested by the Pacific Gas and Electric Company and J. W. Browning.

Application Number 3437 was filed May 23, 1923. It proposes an appropriation of 50 cubic feet per second from natural flow and 5,000 acre feet per annum by means of storage, of the waters of the West Branch of the North Fork of the Feather River, both for agricultural purposes. It was protested by the Pacific Gas and Electric Company, by the Natomas Company of California and by J. W. Browning.

These several applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing at 707 Forum Building, Sacramento, at 10:00 a.m. on August 20, 1924.

Of this hearing, applicant and protestants were duly notified. No appearances were made on behalf of the Natomas Company of California, J. W. Browning was not represented at the hearing but through his attorney, Mr. Rutledge, filed a Notice of Appearance and Statement of Grounds of Protest with the Division of Water Rights in the form of a legal brief on August 18, 1924.

At the hearing it was brought out clearly that the main thing to be determined was, whether or not unappropriated water was available in sufficient quantity to justify the approval of the applications and it was agreed that certain engineering data should be submitted by the Pacific Gas and Electric Company to be reviewed by Mr. Norris, engineer for the Paradise Irrigation District.

The protest of the Oro Electric Corporation, against the approval of application Number 92 was filed February 10, 1916. It is based upon a claim of ownership of the Nickerson Ditch, the intake of which is in Section 25, T 23 N, R 3 E, M.D.B. & M. and that the water which is taken into this ditch is carried down to the Kunkle Reservoir in Section 31, T 22 N, R 4 E, M.D.B. & M. and is used for generating electricity for public distribution, and for supplying the public with water for irrigation purposes, and for domestic and municipal use and that the proposed diversion under Application 92 will naturally conflict with the right of the company.

Since the filing of the protest, the Pacific Gas and Electric Company purchased the properties of the Oro Electric Corporation and by an agreement with the Pacific Gas and Electric Company dated April 13, 1917 the Paradise Irrigation District acquired the Magdala Site, the water rights of the Pacific Gas and Electric Company on Little Butte Creek and part of Cherokee Ditch. This agreement evidently eliminates the protest made by the Oro Electric Corporation.

J. W. Browning filed a protest against application Number 92 under date of April 17, 1924. He alleges that he is the owner of over 5,000 acres bordering upon Butte Creek below the point of intended diversion in Townships 17 and 18 North, Range 1 East, M.D.B. & M. and intends to use the water of Big Butte Creek for the irrigation of

same, that protestants right is based upon prior appropriations and the beneficial use of water and upon the ownership of land riparian to Butte Creek, that protestant has used the water from Butte Creek during each of the seasons of 1914 to 1920 inclusive for irrigation purposes, that protestant and his grantors and predecessors in interest have owned and occupied the above described land for more than ten years prior to the filing of this application and have used the water of Butte Creek for irrigation, stock watering and domestic purposes during this period, that as a riparian owner he is entitled to have the water flow of Butte Creek down the channel of said creek and of its various waterways and to pass through, by and over said land subject only to the right of lands riparian to the creek above his lands, to make a reasonable use of the waters of the Creek; that the proposed diversion will interfere with and prevent the flow thereof to the lands of the protestant and will prevent his use of the water, that protestant has an appropriative right to Butte Creek waters, by virtue of appropriation initiated in 1903 through the diversion of 15 cubic feet of water per second at or near the center of the NE $\frac{1}{4}$ of Section 17, T 18 N, R 1 E, M.D.B. & M. and continuous diversion and beneficial use of the water from that time to the present. That the use of the water as applied for would diminish the natural flow of water in Butte Creek to the injury of the protestant.

In the brief filed by Mr. Browning in lieu of his appearance at the hearing he also states that by virtue of a Decree of Court in an action brought in the County of Sutter the protestant was granted 6/108 ths. of the natural flow of the water of Butte Creek and 24/108 ths. were required to be left in the stream to pass the protestants lands for the use of other riparian owners lower on the Creek, the remainder of the

flow being assigned to riparian lands above, that in later years, the flow in Butte Creek has been augmented by drainage water from rice fields and the augmented flow was assigned to the riparian owners by this decree in the same proportion as above.

That the amount of the natural flow during the summer season was determined in this action to average about 108 second feet . That the share of the natural flow which had been assigned to protestant is wholly insufficient for the proper irrigation of his lands, all of the same, which the upper riparian owners were entitled to, having been habitually appropriated and used together with the water from the rice fields and that if the application was approved the waters of Butte Creek which would reach protestants lands would be still further diminished and to that extent his rights would be injured.

The Paradise Irrigation District in answer to the protest of Mr. Browning state that although the use of the waters of Butte Creek by the protestant is unknown to them, the applicant does not expect to be granted the right to use waters which are put to beneficial use by reason of prior appropriation or by the ownership of land riparian to Butte Creek, upon which water is applied during the year 1924 in accordance with the laws of the State of California. The applicant denies the right of the protestant, provided that ^{applicant} ~~protestant~~ can make beneficial use of the waters, to have the waters of Butte Creek flowing down the channel of the creek and of its various waterways and to pass through, by, and over the lands owned by protestant but applicant admits the right of protestant to make a reasonable use of the water. Applicant denies that the appropriation of the water proposed by them will interfere with and prevent the flow to the protestants lands and that the right of the protestant will be violated. Applicant denies that the water applied for

will diminish the natural flow of water in Butte Creek to such an extent that protestant will be injured and asks that the application be granted subject to the vested rights of the protestant.

During July 1922, a field investigation was made by Engineer H. M. Stafford of the Division of Water Rights in connection with application Number 2576 for the appropriation of water from Butte Creek.

It is not necessary to repeat those portions of Mr. Stafford's report that are applicable to this case but sufficient evidence was presented at that time to enable the conclusion to be made that, during the proposed period of diversion under application Number 92 which is from November first to May first of each season, there is a sufficient amount of unappropriated water during a normal year to satisfy the request of the applicant without injury to the protestant, and since under applications Number 2894 and Number 3437, the applicant intends to augment the supply from Little Butte Creek during seasons in which there may be a deficiency of water in Little Butte Creek by diverting water into Little Butte Creek from the West Branch of the North Fork of the Feather River through the Snow Canal there does not appear to be any reason why application Number 92 should not be approved.

The protest of J. W. Browning filed under date of January 12, 1923 against applications Number 92, Number 2894 and Number 3437 is applicable to and evidently meant for application Number 92 only. It therefore will not be considered in the discussion of the protests against application Number 2894 and 3437, as it does not appear that diversions under these two applications could in any way injure the protestant.

The protest of the Natomas Company of California against the approval of application Number 3437 was filed December 1, 1923. The protestant Company alleges that any new diversion of the waters tributary to the Sacramento River above the diversion points of the protestant will

deprive the Company of the use of water to which it is entitled inasmuch as the protestant is obligated not to take all the waters of the Sacramento River at its points of diversion but to allow certain waters to pass on to prior and lower appropriators, that during summer months of the last three years there has been a shortage of water applicable for use by the protestant Company under permits issued to them by the Division of Water Rights.

The Paradise Irrigation Company answering the protest, does not dispute the rights of the Company to certain waters and acknowledges their prior right but allege that during certain seasons of the year, in fact all of the seasons of some years, there is more than the amount of water that is now being used, and that it is this particular water that applicant desires and asks that their application be approved subject to such vested rights as the Natomas Company of California may have.

The aggregate amount of water which has been permitted for use of the Natomas Company of California is 385 $21/40$ cubic feet per second of direct diversion for use between May first to October first of each season.

As any application is approved by the Division of Water Rights subject to vested rights and since it is evident that during a year of normal flow there is sufficient water in the Sacramento River to satisfy the needs of the Natomas Company of California, there is apparently no reason for the consideration of the protest especially since the protestant Company failed to appear at the hearing and having failed to submit evidence in confirmation of their allegation they have failed to support the burden of proof appropriate to a moving party.

In the interests of the welfare of the entire State which is dependent upon agricultural resources for its prosperity it is of the utmost importance that as much of the available water as possible should be put to beneficial use and if appropriations were limited to water available only during seasons of drought, much of the water upon which the agricultural interests are dependent would flow to the sea and be wasted.

The protest of the Pacific Gas and Electric Company against the approval of applications Number 2894 and Number 3437 was filed on October 25, 1923.

The protestant Company, basing its claim on rights of purchase, appropriation and beneficial use, allege that they are entitled to all of the waters naturally flowing in the West Branch of the North Fork of the Feather River up to 65 cubic feet per second at the protestant's diverting dam in said river where said river crosses Section 30, T 23 N, R 4 E, M.D.B. & M. and 110 cubic feet per second at protestant's diverting dam in said river where said river crosses Section 16, T 24 N, R 4 E, M.D.B. & M. That on February 9, 1922 and prior to the filing of application Number 2894 and 3437 by the Paradise Irrigation District, the protestant filed application Number 2752 and application Number 2755 asking for permits authorizing it to appropriate flood waters of the West Branch of the North Fork of the Feather River at points above the applicants proposed points of diversion. That there is not ordinarily enough water flowing in said West Branch of the North fork of the Feather River at either of protestant's diversion dams to supply the respective requirements and right of the protestant and if the applications of the Paradise Irrigation Company were approved there would be little if any natural flow left in the West Branch, even during flood periods, thereby depriving them of water to which they are entitled.

In answering the above protest of the Pacific Gas and Electric Company, the applicant states that he is claiming no water used by the protestant for more than 40 years last past, including the water which protestant has been using for the development of power. Applicant denies that protestants rights under the filing of application Number 2755 and application Number 2752 are prior to any right which may accrue to applicant as applicant desires to use the waters herein mentioned for irrigation purposes, and that in accordance with the laws of the State, irrigation is a greater and higher use for water than power development. Applicant alleges that there is sufficient water in the West Branch of the Feather River during certain periods of the year and during certain seasons of all of the year to supply the requirements of both applicant and protestant, and denies that protestant will be deprived of any waters to which it is entitled.

Before considering the protest of the Pacific Gas and Electric Company a short discussion is necessary regarding the relation of the various applications of the Paradise Irrigation ~~Company~~^{District} and the intended use of the waters by the District.

The Paradise Irrigation District was organized by the approval of the Board of Supervisors of Butte County on March 20, 1916. It includes 11,200 acres of land of which 9,500 acres are considered tillable. The net duty of water upon which the district estimates its needs is 1.5 acre feet but proposes if possible to restrict the use to 1.0 acre foot.

Under application Number 92 it is proposed to divert to storage in Princess Reservoir on Little Butte Creek 6,600 acre feet per annum, between November first and May first of each season. The water stored in Princess Reservoir will flow down the natural channel of Little Butte Creek and be rediverted there at the Magalia Dam, thence through two and a half miles of canal to the pipe distribution system of the district.

The capacity of the Princess Reservoir is 3238 acre feet.

Application Number 476, Permit 271 diverts 9,500 acre feet per annum from Little Butte Creek at the Magalia dam to storage in the Magalia Reservoir the capacity of which is now 3353 acre feet but which it is intended to increase to a capacity of 9500 acre feet.

In order to be assured of sufficient water in dry years to fill any storage on Little Butte Creek, Applications 2894 and 3437 were filed proposing to divert water from the West Branch of the North Fork of the Feather River, to be carried through the Snow Canal and emptied into Kanaka Creek from which it will be rediverted to storage in the Princess and Magalia Reservoirs.

Under Application Number 2894 it is proposed to divert to storage 3000 acre feet from the West Branch of the North Fork of the Feather River at a maximum rate of 50 cubic feet per second from about September fifteenth to June thirtieth of each year.

Under Application Number 3437 it is proposed to divert to storage 5000 acre feet from the West Branch of the North Fork of the Feather River at a maximum rate of 50 cubic feet per second from about September fifteenth to June thirtieth of each season and 50 cubic feet per second of direct flow from about May first to November first of each season.

It is against these two applications that the protest of the Pacific Gas and Electric Company is directed.

There are no measurements of run-off from the watersheds above the proposed point of diversion, available except those made by the Pacific Gas and Electric Company but from this source of information it is evident that there is little or no surplus water available

for appropriation in the West Branch of the North Fork of the Feather River during the months of July to January inclusive of a normal year, but that the proposed diversions could be made without interference with the Company's rights from February to June inclusive. (See letter from Pacific Gas & Electric Company dated October 3, 1924). For instance in the season of 1921 - 22 which may be considered as a normal season, there was 31,960 acre feet available at the Snow Head Dam according to the records of the Pacific Gas and Electric Company. Of this amount the Company considers that the Paradise Irrigation District will be able to divert only a small amount on account of snow conditions but it would appear justifiable that the District be given a chance to divert for agricultural use a certain amount of these waters which would otherwise be wasted.

From data presented by the engineers of the applicant and protestant there is an insufficient supply from Butte Creek to fill the Magalia and Princess Reservoirs to their full capacity during a period of drought and it is therefore necessary that the District acquire a supplemental supply from some other source.

That this additional supply may be obtained from the West Branch of the North Fork of the Feather River during periods of insufficient runoff from the Little Butte Creek watershed is evident from the report of the applicant's engineer and data submitted by the Pacific Gas and Electric Company.

Mr. Morris in his report of May 28, 1923, shows that, during the season of 1919 - 20, which he considers to be 58% of normal, there was an available supply of but 4,590 acre feet from Little Butte Creek.

Considering the duty of water as only 1.0 acre foot per annum, the total amount required for the district's needs would have been 9,500 acre feet or about twice the available supply from this source, and a supplementary supply of from 4,900 to 9,660 acre feet would have been necessary depending upon whether the duty was 1.0 or 1.5 acre feet per annum per acre.

In an analysis of the stream flow of the west Branch of the North Fork of the Feather River, submitted by the engineers of the Pacific Gas and Electric Company under date of October 3, 1924, it is shown that during this same season 1919 - 20, there was an available supply of 9,240 acre feet over and above the amount which was claimed by the Pacific Gas and Electric Company, the amount claimed by the Company, including its proposed storage at Round Valley and Philbrook sites under Applications Numbers 2752 and 2755, which have since been approved by the Division of Water Rights.

The season of diversion to storage named in Application Number 2894 as originally filed was "between September 15th and May 1st of each season" but was later amended to "between September 15th and June 30th of each season."

It is a well established practice with the Division to refuse to allow an application to be amended by increasing the period of diversion originally named therein and therefore it would appear proper to restrict the period of diversion named in any permit that may be issued on this application to the period named within the original application.

It would also appear that the period of diversion named in Application Number 2894 should be further restricted by beginning the season of diversion on about February 1st as prior to this time during a normal year there would probably be no storage available without interfering with the prior rights of the Pacific Gas and Electric Company. The resulting period of diversion if these corrections are made would be "between February 1st and May 1st of each season".

In order that the prior rights of the Pacific Gas and Electric Company be protected, it would also appear advisable to amend Application Number 3437 so that the period of diversion to storage named therein should be from "about February 1st to about June 30th of each season" and that the period of direct diversion named in Application Number 3437 should be amended to "from May 1st to June 30th of each season", for the reason that during the remainder of the period stated in the application it appears that there is not sufficient water for the needs of both the Company and the District.

Application Number 92 has been amended by reducing the amount of diversion to storage named therein to 4148 acre feet per annum, in accordance with a letter by Mr. Norris, engineer for the applicant, dated April 2, 1925, which states that this amount should be sufficient for the district's needs.

As the proposed supply from the west Branch of the North Fork of the Feather River is to supplement a deficient supply from Little Butte Creek only, and as the total amount of water named in the four applications is vastly in excess of the storage capacity of Magalia and

Princess reservoirs it appears advisable that a clause be inserted in any permits which may be issued on Application Numbers 2894 and 3497, limiting the amount of water thereunder together with the storage under Applications numbers 92 and 476 to 13,648 acre feet per annum, which is the maximum estimated amount of water which could be stored in Magalia and Princess Reservoirs during any one year, allowing a certain amount of replenishment.

It should be noted that according to information given in the District's applications that there is already a supply available to the District of 50 cubic feet per second from Little Butte Creek through the Nickerson Ditch acquired by purchase from the Pacific Gas and Electric Company.

ORDER

Applications Numbers 92, 2894 and 3437 for permits to appropriate water having been filed with the Division of Water Rights, as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises,

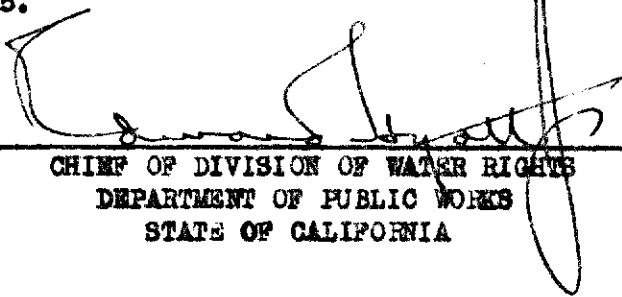
IT IS HEREBY ORDERED that the said application No. 92 be approved, subject to the usual terms and conditions.

That Application No. 2894 be approved, subject to the usual terms and conditions except that the diversion season be limited to the period from about February 1st to about May 1st of each season, and further that total diversions to storage thereunder together with those under permits issued on Applications Numbers 92 and 476 shall not exceed 13,648 acre feet per annum.

14

That the period of direct diversion named in Application Number 3437 be limited to "from about May 1st to about June 30th of each season" and that the period of diversion to storage be limited to "from about February 1st to about June 30th of each season", and that the application be otherwise approved subject to the usual terms and conditions and that total diversions to storage thereunder with those under permits on Applications 92, 476 and 2894 shall not exceed 13,648 acre feet per annum.

Dated at Sacramento, California, this 2nd day of
June, 1925.



CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

WES:HA