

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

Revision

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IN THE MATTER OF APPLICATION NUMBER 4244 BY W.H. FORBES,
A. G. FOLGER AND TOM FOX AND APPLICATION NUMBER 4344 OF
EVA RANDALL, BOTH TO APPROPRIATE WATER FROM MILL CREEK IN
EL DORADO COUNTY FOR AGRICULTURAL AND DOMESTIC PURPOSES.

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DECISION NO. 4244, 4344, D 76

Decided October 2, 1925

APPEARANCES AT HEARING HELD August 26, 1925

For Applicants W. H. Forbes, et al	W. H. Forbes
For Applicant Eva Randall	Henry S. Lyon, Attorney Placerville, California
For Pacific Gas & Electric Co.	Geo. A. Hunt, Engineer
For Western States Gas & Electric Co.	W. C. Fox of Chickering & Gregory, Attys, Merchants Exchange Bldg. San Francisco, California

Examiner: Edward Hyatt, Jr., Chief of Division of Water Rights

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O P I N I O N

These applications are for the appropriations of water from Mill Creek a tributary of South Fork of American River in El Dorado County, both being originally filed for agricultural and domestic purposes at summer home sites owned by the applicants.

Application Number 4244 was filed September 30, 1924 by W. H. Forbes, et al and proposes the appropriation of 0.15 second foot through a conduit which applicant has used since 1915. Application Number 4344, filed November 28, 1924

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by Eva Randall originally proposed the appropriation of 0.15 second foot for use on land contiguous to that of Forbes, et al. The area to be served under each application is riparian to the source. Both applications are protested by the Pacific Gas and Electric Company and by Western States Gas and Electric Company. Application 4244 is protested by Eva Randall.

These 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 Room 707 Forum Building, Sacramento at 10:00 o'clock a.m. on August 26, 1925. Of this hearing applicants and protestants were duly notified and each was represented thereat.

It appears from evidence submitted at the hearing that applicant Number 4244 has, since 1915, been using water from the same source for the same purposes and by means of the same conduits as described in this application. Two houses have been furnished with a domestic supply and water has been used also for irrigating lawns, shrubbery and alfalfa. The area heretofore irrigated is in some doubt but it appears to have been approximately 1 1/2 acres or more. Applicant testified it was not expected to increase this use but the application was not amended and we are therefore under the necessity of considering it as contemplating domestic use and the irrigation of 15 acres.

Applicant Number 4344 made no claim of prior use and agreed to amend the application by striking out all reference to irrigation under an understanding with the two power companies that they would withdraw their protests. The application was so amended and the opposition of the power companies was thereupon withdrawn. This applicant testified that he contemplated using this appropriation in the domestic service of some fifty lots.

The customary allowance of the Division in such cases is 0.001 cubic foot per second or 650 gallons per day per lot and therefore it appears that 0.05 second foot should be ample to satisfy this appropriation.

Both the Pacific Gas and Electric Company and the Western States Gas and Electric Company opposed any irrigation use under these applications claiming earlier appropriative rights to divert at points downstream. Neither of these companies opposed domestic use, however.

It appears that the Pacific Gas and Electric Company claims an appropriative right of 1000 second feet initiated in 1895 and has for many years diverted for beneficial uses all of the flow in the American River at its point of diversion at Folsom Dam whenever the flow at that point fell as low as 1000 second feet. There was no denial of this claim and of the further claim that any diversion from the source proposed in these applications would tend to reduce the available supply of the Pacific Gas and Electric Company after about July 15th of a normal year.

It appears further that the Western States Gas and Electric Company operates an hydro-electric power plant known as the American River Plant diverting from South Fork of American River at a point below the confluence of the source named in these applications (i. e. Mill Creek) with South Fork of American River and that about the middle of June in a normal year the natural flow of this stream at protestants diversion point becomes so low as to enable protestant to divert all of the water under appropriative rights initiated prior to 1913 and a permit granted by the Division of Water Rights upon Application Number 1439 filed September 8, 1919. There was no denial of these rights claimed by this protestant nor of the claim of protestant that diversion by these applicants after about June 15th of a normal year would diminish by a equal amount the available supply of protestant. There are however,

undoubtedly years in which this protestant does not use the entire flow at its point of diversion until considerably after July 1st.

The protest of Randall (Applicant No. 4344) against Application Number 4244 is based upon the contention that it tends to subvert an existing agreement between the two parties as to the use of the waters of the source in question. It appears that Fox, Folger and Forbes (Applicant No. 4244) acquired their property from Randall and that there may have been an intention at the time the purchase contract was signed to divide the waters of Mill Creek between them and that Randall may thereafter have endeavored to enforce such an arrangement. The deed was not introduced in evidence and it appears that Fox, Folger and Forbes deny that there ever was any agreement, either oral or written, upon the subject. We do not see however that the point is a material one as this is an application to appropriate unappropriated water only, subject to vested rights and can subvert no valid contract. We doubt however the sufficiency of any such agreement even if duly executed, to distribute the waters of this stream.

It is not a function of the Division in this proceeding to adjudicate or determine the claimed existing rights of these two applicants. Each of these applications is a proceeding de novo and as such, if approved, should be approved subject to any and all rights ante dating the time at which the applications were themselves filed with this office.

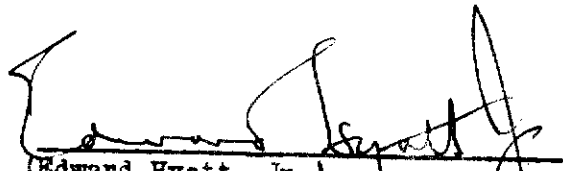
O R D E R

Applications Number 4244 and Number 4344 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 application Number 4244 be approved and a permit issued thereon subject to such of the usual terms and conditions as may be appropriate with period of diversion for irrigation use limited to the season from about March 1st to about July 1st.

IT IS FURTHER ORDERED that application Number 4344 be approved subject to the usual terms and conditions for an amount not to exceed 0.05 cubic foot per second and that a permit be issued thereon subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this second day of October, 1925.


(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

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