

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

Decision

oOo

IN THE MATTER OF APPLICATION NUMBER 4057 by EL DORADO
POWER COMPANY TO APPROPRIATE WATER FROM SILVER FORK,
A TRIBUTARY OF THE SOUTH FORK OF AMERICAN RIVER IN
EL DORADO COUNTY FOR POWER PURPOSES

oOo

DECISION NO. 4057 D 97

Decided March 27, 1926

APPEARANCES AT HEARING HELD June 18, 1925.

For Applicant: W. C. Fox of Chickering & Gregory, Attys.

For Protestant: Henry Lahiff in propria persona

Examiner: Everett N. Bryan, Office Engineer, Division of Water Rights

oOo

O P I N I O N

On June 30, 1924, El Dorado Power Company filed its application
Number 4037 to appropriate 250 second feet to be directly diverted and 7500
acre feet to be stored from Silver Fork of American River in China Flat Reser-
voir, all for use through a power house on the South Fork of American River and
to be returned to the South Fork about one half mile above the mouth of Silver
Fork. This project would be coordinated with the power development of the
Western States Gas and Electric Company, an allied corporation.

The application was completed in accordance with the Water Commission
Act and the requirements of the Rules and Regulations of the Division of Water
Rights and thereafter protests were filed by Stephen E. Kieffer and by Henry Lahiff.
The protest of Stephen E. Kieffer was subsequently withdrawn, it appearing to him
that he would not be adversely affected by consummation of the application. The
protest of Henry Lahiff still standing however the matter was set for a public
hearing in Room 707 Forum Building, Sacramento, at 10:00 o'clock a.m. on June 3, 1925.

FILED
JUN 3 1925

18, 1925. Of this hearing applicant and protestant received due notice and both were represented thereat.

Protestants objection appears to be based rather upon grounds of equity than upon any legal grounds. In 1910 he conceived a rather ambitious power development and posted notices of appropriation upon American River and Silver Fork but by his own admission has done nothing toward the development of this project. In 1911 he purchased the 160 acres of land upon which lies the confluence of Silver Fork and South Fork of American River. The following year he began construction of a ditch some two thousand feet in length which would divert the water from Silver Fork a short distance above his property line and take it by a northwesterly course to a point near the center of his property. When the World War broke out in August 1914 he states this ditch was about half complete, and thereafter for a time he prosecuted the construction in a rather desultory fashion until it was completed and the first beneficial use of the water made in 1923. In that year he irrigated some seven acres on the north side of South Fork of American River.

He also in 1922 installed a 40 inch Pelton wheel which operates under some 77 feet of pressure and returns the tail water to South Fork approximately 1000 feet above the confluence of Silver Fork. There are approximately 400 feet of 12 inch and 100 feet of 8 inch penstock leading from the lower end of the ditch to this Pelton wheel which is belt connected to a Triplex pump of a capacity of some 2000 gallons per hour and draws water from South Fork for irrigation and domestic uses about the so-called Silver Fork resort. There is also a 2 inch pipe line leading from the penstock and delivering water by gravity for irrigation of the lands of the protestant between the highway and South Fork.

Protestant testified that the maximum acreage so far irrigated by him from Silver Fork was approximately 10 acres. He has also used the water for domestic uses about his resort and to drive the Pelton wheel. In 1925 he installed a 5 kilowatt electrical generator and intends to install another and larger generator.

The legal basis of protestants claim of right to the use of the water in question is doubtful. He has chosen to stand upon claim of riparian right. The fact is however that on December 15, 1921, he sold to the applicant in this matter without any reservation of riparian right a portion of the property in question which effectively cuts the same off from any frontage upon South Fork of American River to a point some 1200 feet above its confluence with Silver Fork and cuts off all frontage on the lower 1000 feet of Silver Fork. It cannot therefore be seen how the protestant can use water from Silver Fork upon the land he desires to irrigate, and at the resort he has constructed under claim of riparian right.

There may be some legal basis for a claim of appropriative right by protestant. He began construction of the present diversion system serving this property in 1912 and appears never to have lost sight of his original project to serve his property by a diversion conduit leading from Silver Fork.

It is however not a function of the Division of Water Rights in this proceeding to adjudicate the rights of protestant and fix definitely the extent thereof. The protestant testified at the hearing that during the low flow season of the year he would at most require only approximately half the natural flow of water passing his point of diversion; that he would irrigate during only 3 $\frac{1}{2}$ to 4 months of each year, and that his use of water from Silver Fork would not be continuous throughout the year. It appears that protestant freely admits there is surplus water passing his point of diversion throughout the year and that his principal concern at this time is lest the applicant by these proceedings initiate a right such that it may divert from Silver Fork and so reduce the flow at protestant's diversion point that protestant can only get the water which he seeks to divert by the construction of a water tight dam. Protestant freely admitted that during some months of the year the proposed diversion by applicant could have no possible ill effect upon him.

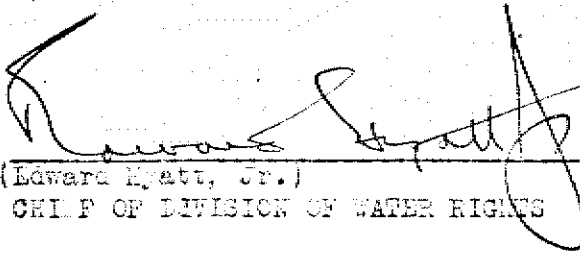
The applicant it appeared was disposed to treat with the protestant in an effort to work out some mutually satisfactory arrangement which would forestall the litigation which protestant threatened if a permit were issued to applicant. It was the hope of the Division to assist in working out such an amicable solution of the difficulty. After some nine months of effort along this line however there appears no prospect of an agreement being reached between the two parties and that action should proceed without further delay.

ORDER

Application Number 4057 for a permit 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 said Application Number 4057 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 27th day of March, 1926.


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

JCF:MF