

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

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In the matter of Application 5206 of American River Hydro-  
Electric Company to appropriate from the American  
River in Sacramento County for power pur-  
poses.

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Decision A. 5206 D - 333

Decided Oct. 15, 1932

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Appearances at Hearing Held January 10, 1927

For Applicant

American River Hydro-Electric Co.

Stephen E. Kieffer  
A. J. Cleary

For Protestant

North Fork Ditch Company

L. K. Jordan  
C. F. Metteer

For Western States Gas and Electric Co.

Chickering and Gregory  
by V. I. Campagno

For Truckee River Power Co.

Geo. G. Devore

For Pacific Gas and Electric Co.

Geo. A. Hunt

EXAMINER: Edward Hyatt, Jr. Chief of Division

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O P I N I O N

Although this opinion relates only to Application 5206 it appears logical to include therein a discussion of Application 5207 of the American River Hydro-Electric Company as this application was filed for the purpose of utilizing for irrigation and domestic purposes a portion of the water which

applicant seeks to appropriate for power purposes under Application 5206. Application 5207 has not been completed sufficiently for advertising and for this reason has not been set for hearing.

General Description of Projects

Applications 5206 and 5207 were filed on September 13, 1926, by the American River Hydro-Electric Company for appropriations to cover a coordinated hydro-electric and agricultural development on the American River near Folsom. Application 5206 proposes an appropriation of 2,000 cubic feet per second by direct diversion and 320,000 acre feet per annum by storage for power purposes and Application 5207 proposes an appropriation of 600 cubic feet per second by direct diversion and 50,000 acre feet per annum by storage for agricultural and domestic purposes.

The point of diversion proposed under both applications is located about three-fourths of a mile above the town of Folsom in Sacramento County and about 2,000 feet upstream from the existing dam of the Pacific Gas and Electric Company. At this point it is proposed to erect a dam for direct diversion and for the impounding of some 320,000 acre feet and by means of which it is said the flow in the American River may be regulated to some 2,000 second feet.

The proposed power house would be located immediately below the existing Folsom dam of the Pacific Gas and Electric Company. Diversion would be made by tunnel from the proposed dam to the power house where 1,000 second feet would be dropped through a head of 178 feet into the existing canal of the Pacific Gas and Electric Company through which it could be conducted to the Folsom Power Plant of that company and 1,000 second feet would be dropped through a head of 220 feet into the American River.

The water appropriated for irrigation purposes under Application 5207

would be used upon lands lying east of Sacramento, extending to Lincoln on the north, to Folsom and Roseville on the east and to Elk Grove on the south. A definite description of the place of use is lacking as the application has never been completed.

Application 5206 was protested by the North Fork Ditch Company as a record protestant prior to the hearing.

Hearing Held in Accordance with Section 1a  
of Water Commission Act

Application 5206 was completed sufficiently for advertising in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on January 10, 1927, at 10:00 o'clock A. M. in Room 707, Forum Building, Sacramento, California. Of this hearing applicant and record protestant were duly notified. At the hearing appearances were entered on behalf of Truckee River Power Company as a protestant and the Pacific Gas and Electric Company and the Western States Gas and Electric Company and El Dorado Power Company as interested parties only.

Protests

As the action of this office upon Application 5206 will be governed by considerations other than those arising from the protests, the discussion of the objections of protestants to the approval of Application 5206 will be omitted.

Failure of Applicant to Secure Necessary  
Right of Way

On September 4, 1926, an agreement was entered into between the applicant and the State Board of Prison Directors under the terms of which the applicant was to have acquired 560 acres of land for its dam and reservoir site. This contract, however, was declared to be void by the State Attorney

General and in order to afford applicant an opportunity to legally acquire the necessary lands action has been withheld upon Application 5206 for more than five years.

During the 1929 session of the State Legislature, Senate Bill 873 was passed which made it possible for the applicant to negotiate with the State Department of Finance for the purchase of the state lands.

Although it appears that several conferences were held between the applicant and the Department, nothing of consequence apparently resulted therefrom as the Department under date of May 7, 1932 informed this office that no negotiations were pending for the erection of a dam at Folsom.

Subsequent correspondence passed between this office and the applicant and an opportunity was given for further showing in the matter. An extension of time was requested by the applicant based upon the fact that it was engaged in completing the "constructive finances" which would require about six months longer, and that it was involved in preparing a defense to a complaint which had been secured in April 1932 by some 160 riparian land owners seeking injunctive relief against any diversion or impoundment of the waters of the American River.

Under date of September 1 the applicant was advised that it has not been the practice of this office to suspend action in connection with applications to appropriate from the Sacramento River and tributaries merely because of the pendency of the so-called "Delta Suits" and many applications had been approved and development was proceeding thereunder despite this general litigation and applicant was requested within 20 days to furnish this office with copies of pleadings in such cases as might be urged as cause for delay, together with an historical record of each case showing the title, date of filing, continuances taken and upon whose motion, and present status. To date

no reply has been received.

Where litigation is urged as an obstacle to development it is incumbent upon the applicant to use the same diligence in prosecuting the litigation that it would in concluding any other matters which are or may be obstacles to the consummation of the project. Certainly it would appear that diligence had not been manifested in acquiring the necessary right of way and there has been no showing on the part of the applicant that the litigation has been actively pressed.

Prosecution of negotiations for financing the project can not be deemed to establish diligence in these matters.

Project Proposed Under State Filing

Under Application 5635 of the Department of Finance of the State of California it is proposed to appropriate 2500 cubic feet per second by direct diversion and 338,000 acre feet per annum by storage for power purposes, the water to be diverted at approximately the same point of diversion as specified in Application 5206.

This filing was made by the Department of Finance under an act of the legislature which became effective July 29, 1927, (Cal. Statutes 1927, Chapter 286). This act provided among other things that the Department of Finance might, in its discretion release or assign any portion or all of any of its applications filed under the provisions of the Act, when such release or assignment was for the purpose of development not in conflict with the general or coordinated state plan.

In the event that the applicant should, in the future, be in a position to proceed with the proposed project it would appear that an assignment of the State filing to the company would be in order. Certainly applicant could not proceed with the development without consent of the State because of

the State's ownership of a portion of the reservoir site.

Conclusion

The record clearly indicates that the applicant is not now and has not for some years past been active in negotiating for the necessary rights of way and that it has failed to prosecute with due diligence those reasonable and necessary matters which should and would have been undertaken by an applicant who was earnestly desirous of consummating his appropriation at the earliest possible date. In view of the manifest lack of diligence on the part of the applicant in acquiring the lands required for the dam and reservoir site, it is the opinion of this office that further extension of time is not warranted and Application 5206 should be cancelled for failure to complete.

ORDER

Application 5206 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held and it appearing to the Division that Application 5206 is incomplete and that applicant has not exercised due diligence in the prosecution of said application to complete:

IT IS HEREBY ORDERED that Application 5206 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 15 day of Oct, 1932.

EDWARD HYATT, State Engineer

By

Harold Conkling  
Deputy

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