

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 14616 by Leo A. Yates to Appropriate
Water from Sub-lateral F of Reclamation Drain 2047 Tributary to
Colusa Trough Canal 2047 in Colusa County for Irrigation and
Recreational Purposes.

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Decision A. 14616 D. 806

Decided September 22, 1954

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In Attendance at an Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on July 28, 1953:

Leo A. Yates	Applicant
Neil J. Cooney	Applicant's Attorney
Orville J. Kuhl	Protestant
Babu Singh	Accompanying Protestant Kuhl
Frank Ford	Representing Protestant Capitol Outing Club
Edward Lithicume	Representing Protestant Colusa Outing Club
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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OPINION

General Description of the Project

The applicant seeks to appropriate 4.0 cubic feet per second from April 1 to December 31 of each year from Sublateral F of the main drain of Reclamation District 2047. He proposes to divert at a point within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 16N R3W, MDB&M. The project includes a concrete dam, 7 feet high by 12 feet long and 1,000 lineal feet of open ditch. The water is wanted for the irrigation of 160 acres of rice land partly within the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 18 and partly within the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 19, T16N R2W, MDB&M. It is to be used incidentally for duck club purposes. Construction is said to be complete. The applicant claims no other water right or source of water supply, states that he owns the proposed place of use, disclaims ownership of the land at the proposed point of diversion, to which however he asserts right of access.

Protests

Orville J. Kuhl protests the application, alleging insufficiency of water in the source filed upon. He bases his own claim of a right to use of water from that source upon use made before 1914, also upon Permit 8320. He describes his point of diversion as being located 1,337 feet east from west quarter corner of Section 19, T16N R2W, MDB&M. As to the terms under which his protest may be disregarded and dismissed he states:

" ... if applicant takes water from same source as already granted in Permit No. 9042 ... which permit includes all of applicant's lands. Above Application No. 14616 is a repetition and duplication of Permit No. 9042."

The protest also contains the following statements:

"There will be 85% less water in Sublateral F of 2047 drain in 1953 and henceforth, than in previous years. Glenn Colusa Irrigation District will hereafter divert 85% of former water from Sublateral F, of 2047 Drain via a new ditch finished in January 1953"

"Applicant does not own land in Section 24 and has no right of way to divert water from Section 24 to Section 19."

"Applicant does not own land in Section 19 between applied point of diversion in Section 24 and his property line, a distance of 99.47 feet This land is owned by protestant and no one including applicant has been given the right to cross

"Applicant was given water right to same water as being applied for ... in Permit No. 9042 Above Permit No. 9042 includes all of applicant's lands and therefore Application No. 14616 is a repetition

"Applicant has access to the water from Stone Corral Creek via Lateral F of Maxwell Irrigation District from which source water has been delivered to his lands in past years, and in 1952."

Capitol Outing Club protests the application on grounds of alleged insufficiency of supply. It asserts a right based upon use prior to 1914, also a right based upon a permit issued by the Division. It claims to divert from April to December, for irrigation and for recreation, at a point within Section 20, T16N R2W, MDB&M. It also states as follows:

"This protest may be disregarded and dismissed if applicant takes water from the same source as already granted in Permit No. 9042 dated July 28, 1952, which permit includes all of above applicant's lands. The above Application 14616 is a repetition and duplication of Permit 9042 already granted."

Colusa Outing Club also protests the application, its protest closely paralleling the protest by Capitol Outing Club. It bases its claim of a water right upon use prior to 1914 and upon a right initiated by the filing of Application 14378.

Answers

The applicant's answer to the protest of Orville J. Kuhl contains the following statements:

"1. That applicant and his predecessors in interest, including protestant Orville J. Kuhl, have been diverting water and putting same to a beneficial use from Sub-lateral F of Reclamation District No. 2047 for over 30 years.

"2. That applicant is entitled to a pro-rata share of the water in Sub-lateral F of Reclamation District No. 2047 as against protestant KUHL by reason of use, and by reason of a contract between applicant and ORVILLE J. KUHL, and also by reason of a judgment of the Superior Court ... in and for the County of Colusa dated the 12th day of January 1950, a copy of which is attached hereto and made a part hereof.

"3. That Permit No. 8320 gives protestant ORVILLE J. KUHL no right to the surplus drainage water in sub-lateral F of Reclamation District No. 2047 at applicant's point of diversion.

"4. That the works of diversion referred to in Application No. 14616 had no connection whatever with the works of diversion referred to in Permit No. 8320 of protestant ORVILLE J. KUHL.

"5. Applicant states that no water is now or has been diverted under Permit No. 9042 dated July 28, 1952, and that applicant is withdrawing his lands from inclusion in Permit No. 9042.

"6. Applicant denies the statement made in the first paragraph of the back of Kuhl's protest, and states that there is not available accurate information as to how much water there will be in Sub-lateral F 2047, in 1953, but it is believed that there will be the normal amount of surplus drainage water in said lateral.

"7. Applicant denies the second paragraph on the back of protestant Kuhl's application, and in that regard states that he does have a legal right-of-way to divert water from Section 24 to Section 19 as provided by his deeds and the attached judgment.

"8. Applicant denies the statements made in the third paragraph on the back of the KUHL protest, and states the fact to be that he has a title to a portion of Section 24 for the purpose of diverting water from the cement weir on Section 24 to and across the section line of Section 19, to the southwest corner of his property.

"9. Applicant denies the statements made in paragraph 5 on the back of the KUHL protest, and states the fact to be that no water is available to him before September 1 of each year from the Maxwell Irrigation District."

Extracts from the purported copy of Court Order of January 12, 1950, referred to in the 2d paragraph of the applicant's answer and attached thereto are as follows:

"NOW THEREFORE, IT IS ORDERED ... that plaintiffs be, and they are hereby declared to be entitled to the use of, and a pro-rata share of the available water from the concrete weir"

"IT IS FURTHER ORDERED ... that plaintiffs have the right to divert the water from said weir, at a point near the Southwest corner of plaintiffs' property from a private drain located on lands of defendants."

"IT IS FURTHER ORDERED ... that there shall be maintained by defendants on their lands south of the concrete weir and in Lateral 'F' a stop-box, as the same has been maintained in the past, for the purpose of holding back the water so that the water may be diverted to west portion of plaintiffs lands, and in the absence of defendants, or their failure or refusal to maintain such stop-box, plaintiffs shall have the right to do so, and for that purpose shall have the right to go upon the lands of defendants."

"IT IS FURTHER ORDERED ... that plaintiffs are entitled to the use of an earthen dam located on a drain on the lands of defendants, adjoining plaintiffs lands on North, for the purpose of diverting water from said drain to the eastern part of plaintiffs property."

The applicant's answer to the protests by Capitol Outing Club and by Colusa Outing Club contains the following passage:

"That both applicant and his predecessors in interest and the protestants, Capitol Outing Club and Colusa Outing Club, have all three been diverting water at their respective diversion points for over 30 years without protest against applicant or his predecessors in interest, and that there is sufficient water for all three diverters and sufficient water for the granting of this application to applicant; that applicant is not applying for more water than he and his predecessors have been using in the past, and applicant is not attempting to deprive the Capitol Outing Club or the Colusa Outing Club of the amount of waters they have been receiving and putting to use in the past."

Field Investigation

The applicant and the protestants with the approval of the Department having stipulated to the submittal of the application and protests upon the official records of the Department, a field investigation was conducted on July 28, 1953, by an engineer of the Division. The applicant and the protestants were present or represented during the investigation.

Records Relied Upon

Applications 13735, 14297, 14378, 14616 and all data and information on file therewith; Sacramento-San Joaquin Water Supervision Reports, Division of Water Resources, Department of Public Works, for 1948, 1949, 1950, 1951 and 1952.

Information Secured by Field Investigation

The report of the field investigation of July 28, 1953, reads in part as follows:

"The source ... is Sub-lateral F of the Main Drain (Colusa Trough) of Reclamation District 2047 which drains an area of from 4 to 5 square miles of rice lands on the floor of the West side of the Sacramento Valley between Colusa and Maxwell.

"Flow in the source fluctuates considerably and, during the irrigation season, consists almost entirely of run-off from lands within the Glenn-Colusa Irrigation District which lands are irrigated with water obtained from the Sacramento River. Flow at applicant's diversion point at the time of this investigation was about 6.0 cfs of which 4 was going over the dam ... and 2 was by-passing the dam through a ditch dug by Babu Singh.

"The ditch was dug by Babu Singh to prevent applicant from building up water behind the dam by means of flash boards to a point where he could divert by gravity since such building up had, in the past, caused flooding of a portion of the Babu Singh lands.

"The flow at applicant's diversion would have been in the neighborhood of 40.0 cfs had it not been for the dam

"This dam was put in by the Glenn-Colusa Irrigation District in Sub-lateral F to recapture run-off from the district for re-use on lands west of the lateral by delivery through a new canal with a booster pumping plant located beside the "Line Road" about midway in the canal. Leaks in the dam were causing about 3.0 cfs of the 6.0 cfs flow at applicant's diversion point.

"Run-off from lands irrigated by re-use of Sub-lateral F waters by the irrigation district does not enter Sub-lateral F and therefore is not available for use by applicant. However, such run-off enters Laurline Creek and is available for use by protestants. On the date of this investigation such flow, as measured at the "Line Road," was about 25 cfs and the flow at Protestant Kuhl's diversion point was about 30 plus cfs of which Protestant Kuhl was diverting an estimated 12.0 cfs leaving 18 plus cfs to satisfy the other protestants' claims of a total of

6.0 cfs. It was therefore evident that, at the time of the investigation, applicant could have been diverting without injury to protestants. This, it appeared, is the normal condition during the rice irrigation season.

"On August 18, 1953, the writer was again in the area and found that the flow at Protestant Kuhl's diversion was around 50 cfs. Mr. Kuhl and Applicant Yates were interviewed at that time and they both stated that the increased flow was due to the commencement of the draining of rice checks and that such a condition would exist until the checks and the irrigation district canals had been drained. This condition would extend into October.

"In view of the above described condition it is evident that unappropriated water is available during such rice checks and canals emptying period.

"From the foregoing it appears that prior to about May 1 and after October 15 shortages in flow may occur. However, during the low flow period applicant and Protestants Capitol Outing Club and Colusa Outing Club need only a small amount of water in April for starting duck feed growth in their duck ponds and after October 15 only sufficient water to off-set seepage and evaporation losses in the duck ponds. The duck ponds being filled during the period when the rice checks and canals are being emptied.

"The shortage of water complained of on the part of protestants early in 1953 was not due to the dam placed in Sub-lateral F by the irrigation district but to shutting off delivery of water to the rice checks for the purpose of controlling the 'leaf miner' infestation in the rice. When the infestation had been eliminated and the rice checks refilled with water the shortage ceased to exist.

"Applicant's use of water is for duck pond purposes only.

"Except during September and early October, when the duck ponds are being filled, and during the rice feed growing period, applicant requires very little water.

"Orville J. Kuhl ... requires water for rice irrigation and diverts by means of a propeller pump said to have a capacity of 15.6 cfs.

"Protestant's use extends from about April 1 to about October 1.

"At the time of this investigation the protestant's plank dam had partially washed out and the breach had been partially filled by earth filled sacks. This had reduced the water level behind the dam resulting in the pump having to operate against a higher head. Mr. Kuhl claimed that this had reduced the delivery of the pump to about 12 cfs.

"Capitol and Colusa Outing Clubs ... like applicant, require water for duck pond uses only and in the same manner.

"It would appear that applicant had been diverting and using water from Sub-lateral F without any color (of) right although on December 20, 1949 the Superior Court ... did award him a pro-rated share of the water in the lateral

"The matter of right of access was discussed and Mr. Cooney stated that, while the judgment ... above referred to was not conclusive ... a subsequent court order was entered requiring that the ditch across Protestant Kuhl's land be opened and applicant be permitted to use it. A copy of this order was subsequently filed with the Division In view of the order it would appear that applicant probably has right of access Mr. Kuhl claimed that since April 1950 applicant had not used the ditch because Babu Singh had cut off the water which statement Babu Singh confirmed. Applicant, however, showed that a court order requiring repairing and reopening of the ditch had been entered and in consequence he had diverted through it from May 12 to September 1, 1950 when he was stopped from further diversion by court action initiated by Babu Singh who claimed that in building up the water level behind the dam to permit diversion by gravity, applicant had flooded a portion of his land and prevented him from harvesting the rice thereon. This action is still pending in the courts."

The investigator summarizes his report of investigation as follows:

- "1. Flow at applicant's diversion was about 6.0 cfs.
- "2. Flow available for protestants' use was over 30 cfs.
- "3. Shortages may occur prior to May 1 and after October 15.

"4. Unappropriated water appears to exist most of the time between May 1 and October 15.

"5. Applicant may have right of access."

Information from Other Sources

Other filings before this office to appropriate at nearby points include the following:

Application 13735 Permit 8320, Orville J. Kuhl, 7 cubic feet per second from a lateral drain of Reclamation District No. 2047, from about April 1 to about October 1 at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T16N R2W, MDB&M, for the irrigation of 282.8 acres of rice. The application was protested by Maxwell Irrigation District, the protest being based upon a claim of right by virtue of Section 22430 of the Water Code. The protest was dismissed as insufficient. In his progress reports Protestant Kuhl has stated that use of water extended from April to September, both inclusive, in 1951, from April to December in 1952 and from April to October in 1953.

Application 13919 Permit 9042, Maxwell Irrigation District, 30 cubic feet per second from "Lurline Creek (Reclamation District No. 2047 Drain)" at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T16N R2W, MDB&M, from March 1 to December 1 for the irrigation of 1,000 acres of rice and 500 acres of pasture and for the supply of 539.2 acres of duck ponds. The application was protested by Luta King and by Orville J. Kuhl, heard and decided in favor of the applicant. At the hearing in connection with Application 13919, Orville J. Kuhl conceded that unappropriated water

exists during June, July, August and early September. As to his use of water in April he testified " ... we never put our rice crops in until the first of May because ... we are afraid that there would not be enough water until the first of May." As to his use during May he testified: "I think one or two years we had put a sack dam in there to hold the water because our pump ... would suck it up faster than it would come down". As to the time required for the filling of his rice checks he testified: " ... it depends on how many acres. We had one hundred seventy-five acres and it took about two weeks time." According to progress reports for 1953 construction is incomplete and use of water not commenced. Under the terms of Permit 9042 construction is to be completed by December 1, 1954, use by December 1, 1955.

Application 14297 Permit 8674, Capitol Outing Club, 3.0 cubic feet per second from April 1 to December 31, from Lateral Drain F, Reclamation District 2047 at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T16N R2W, for irrigation and recreation (duck pond) purposes. Unprotested. According to progress report for 1953 construction and use are complete, water is used during July, August, September and October, will not be used during other months.

Application 14378 Permit 8808, Colusa Outing Club, 3.0 cubic feet per second, year-round, from Lateral Drain F, Reclamation District 2047, at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T16N R2W, for irrigation and recreational purposes. Unprotested. According to progress reports construction and use are complete, use has extended from March through November.

A letter to the Department from Attorney Neil J. Cooney, dated August 3, 1953, reads in part as follows:

"In answering the point which was raised at the hearing ... as to whether Yates had the right to transport water from the weir over the Kuhl lands to his property, we wish to submit the following:

"The writer, and I am sure the Court, in case No. 9877, at all times considered that Yates by reason of express words in his deed, and also by implied grant, not only received the right to receive water from the weir, but also received a property interest in all the drains and ditches attached to the weir that previously served his land in the diversion of water from the weir. ... the weir has been in existence ... since 1918. It was rebuilt ... in 1944, and until two years ago was the sole and only source of water for irrigation and the filling of duck ponds, not only to the Yates land but also various other parcels

"The Court, in entering its judgment in case No. 9877, had before it in evidence the original lease and sales agreement between Yates and Kuhl, the Yates deed and also other older recorded deeds, and in addition the Court heard a lot of testimony This evidence was the basis of Paragraph 4 of the Judgment which provides as follows:

'IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs have the right to divert the water, from said weir, at a point near the Southwest corner of plaintiffs property, and also from two different points on the North boundary of plaintiffs property from a private drain located on lands of defendants.'

"Three months after the judgment was entered, Kuhl placed an obstruction between the weir and the Yates lands, and closed the opening through which the water flowed from the weir directly into the Yates property. Kuhl's actions were the subject of an Order to Show Cause, and hearings were held ... at which time Kuhl was found in contempt He appeared in Court the next day and agreed to remove the obstruction from the water passing to the Yates lands. I happened to find the reporters transcript of what transpired at the last appearance of Kuhl in Court and I am enclosing the same for your

perusal. I am also enclosing ... a copy of the reporters notes of the statement made by Judge Warren Steel at the end of the trial of case No. 9877, which may be helpful to you, particularly lines 12 to 21, on page 4."

The extract from the purported copy of affidavit referred to in the last paragraph of Attorney Conney's letter reads as follows:

"I am satisfied that it was the intention of the parties, without any question whatsoever, that Mr. Kuhl -- or Mr. Yates, was entitled to use the water from the weir, and use it in the manner that it was then being used in 1947 by its owner, Mr. Kuhl; and that is, diverting it, not only to the southwest corner of the Yates property but also in two different points on the north boundary of the property through this private drainage ditch on the Kuhl Strip that's been referred to."

"Sub-lateral F" appears to drain indirectly to "Colusa Trough".

Flow in Colusa Trough is of record in Sacramento-San Joaquin Water Supervision Reports since 1924. Monthly mean flows at station designated "Colusa Trough at Colusa-Williams Highway", that station scaling roughly 5 miles downstream from the applicant's proposed intake, for the 5 most recent years of record, in cubic feet per second, are as follows:

Month	1948	1949	1950	1951	1952	Average
January	102	184	308	657	2,641	778
February	56	87	786	444	703	415
March	267	1,798	111	137	482	559
April	523	295	256	443	390	381
May	427	894	706	897	609	707
June	953	540	576	523	721	662
July	492	582	481	610	591	551
August	684	857	692	908	730	774
September	911	912	936	1,023	1,154	987
October	306	280	301	393	460	348
November	289	288	295	318	390	316
December	175	80	893	1,004	2,010	832

Of this station the Water Supervision Report for 1952 states in a footnote to table 48 thereof:

"The flow is return water flowing in the main drain of Reclamation District 2047; it is drainage chiefly from lands irrigated by Glenn-Colusa, Provident, Princeton-Codora-Glenn, Compton-Delavan, Maxwell and Jacinto Irrigation Districts"

Discussion

Protestant Kuhl's use of water, according to the report of field investigation, extends from about April 1 to about October 1. Under Application 13735 Permit 8320, Protestant Kuhl may divert up to 7 cubic feet per second between those dates, or he may divert the equivalent of that continuous flow allowance for any thirty-day period, under certain conditions, in a lesser time. Since his pump is reported to be 15.6 cubic feet per second in capacity, it is probable that he pumps at rates greater than 7 cubic feet per second; and his statement that flow is sometimes insufficient to enable his pump to operate does not mean necessarily that unappropriated water does not exist.

Protestant Kuhl, in the progress reports that he has submitted, states that he has used water, at one time or another, in every month from April to December, both inclusive. That does not mean, however, that he has diverted or normally diverts his full entitlement in all of those months. By his own statements at the hearing on Application 13919, he never plants his rice before May 1, fearing insufficiency of water in April. Insofar as he defers pumping voluntarily, such water as may be present becomes available to a junior appropriator. His statement at the same hearing to the effect that on one or two occasions during May the flow at his point of diversion was less than the capacity of his pump does not mean that unappropriated water may not have been present during that month, occasionally or even usually. His statement that it takes about two weeks (in May) to fill his rice checks suggests that unappropriated water may

be present during at least the other two weeks. At the hearing on Application 13919 he conceded that unappropriated water exists during June, July, August and early September. Since his permit authorizes him to divert only until about October 1, that permit cannot be the basis of an objection to diversion by another after that limiting date. His claim of a water right based upon use prior to 1914 may or may not be valid. It is not supported by the information at hand.

Protestant Kuhl's assertion that the applicant does not own the land at the proposed point of diversion and that he does not hold right of access thereto is a disputed matter which is not within the jurisdiction of the Department to determine. The applicant contends that he is legally entitled to use the facilities for diverting and conveying the water he seeks to appropriate. He has submitted certain documents purportedly supporting that contention. While it is necessary that an applicant to appropriate water secure and maintain rights to the use of and access to his point of diversion, the unsupported denial by a protestant that such rights are held is an insufficient bar to the approval of an application.

Summary and Conclusions

The applicant seeks to appropriate 4 cubic feet per second from Sublateral F of Reclamation District 2047 in Colusa County, for the irrigation of 160 acres of rice and for purposes connected with the maintenance of duck ponds. He states that he does not own the land at the proposed point of diversion but that he holds right of access thereto.

The application is protested by Orville J. Kuhl, who alleges insufficiency of flow in the source filed upon, further diminution of that flow due to recapture by an upstream appropriator of return flow heretofore entering that source, and non-ownership by applicant of point of diversion and right of access thereto. The application is protested also by Capitol Outing Club and Colusa Outing Club, both of which divert at points downstream from the applicant's and apprehend that the diversion that the applicant proposes will leave too little water in the stream to satisfy their prior rights.

The applicant in answering the protest by Orville J. Kuhl claims to be entitled to a share of the water in the source filed upon, by reason of use, contract and court judgment, denies that the normal flow in the source will be reduced, asserts possession of right of way to point of diversion by provisions in deeds and by Court judgment. In answering the protests by Capitol Outing Club and Colusa Outing Club, he asserts that he and his predecessors and the two protestant Clubs have been diverting at their respective diversion points for over 30 years without objection by the Clubs, that there is sufficient water for all, that applicant is not seeking more water than he and his predecessors have used in the past, nor seeking to deprive the protestant Clubs of the amount of water that they have been receiving and using.

The parties having stipulated to proceedings in lieu of hearing, a field investigation was conducted on July 28, 1953. During the investigation the applicant's project was visited in company with the parties and/or their representatives.

According to the report of field investigation, the source filed upon drains certain rice lands on the west side of Sacramento Valley, the flow of the source fluctuates but during the irrigation season consists mainly of runoff from lands within Glenn-Colusa Irrigation District, flow at applicant's proposed point of diversion was about 6.0 cubic feet per second at time of investigation, runoff from lands irrigated by re-use of Sublateral F waters by the Irrigation District does not enter Sublateral F and therefore is not available for use by applicant but is available to protestants, such flow amounted to 25 cubic feet per second at time of investigation, some 30 cubic feet per second were at that time reaching protestant Kuhl who was himself diverting 12 cubic feet per second, this is the normal condition during the rice irrigation season, on a later visit (on August 18, 1953) flow at the Kuhl intake was approximately 50 cubic feet per second, such increased flow was due to the draining of rice checks, a condition that would extend into October, by which time the District channels would have been drained. The report sets forth further that shortages may occur prior to May 1 and after October 15, that during those low-flow periods the parties' needs are relatively small, being limited in April to the starting of growth for duck feed in the ponds and after mid-October to the offsetting of seepage and evaporation losses from the same ponds, the latter being filled while the rice checks and the channels are emptying. The investigator's summary of his report contains the statement "unappropriated water appears to exist most of the time between May 1 and October 15" and the statement "applicant may have right of access".

Prior downstream appropriators from the source filed on by the applicant (or its prolongation) include Application 13735 Permit 8320, Kuhl, 7 cubic feet per second from about April 1 to about October 1 for rice irrigation; Application 14297 Permit 8674, Capitol Outing Club, 3.0 cubic feet per second from April 1 to December 31 for irrigation and recreation (duck ponds) purposes; Application 14378 Permit 8808, Colusa Outing Club, 3.0 cubic feet per second, year-round, for irrigation and recreation (duck ponds) purposes. Diversions under these appropriations head about 0.7, 1.7 and 1.8 miles respectively below the point where the applicant seeks to divert.

By letter dated August 3, 1953, the applicant's attorney outlined reasons which in his opinion support the applicant's contention as to his right to use his proposed diversion and conveyance facilities.

Records of flow in Colusa Trough at Colusa-Williams Highway suggest that flows in tributaries to that stream, such as the source filed upon by the applicant, while probably less in April than in May and probably less in October than in September may nevertheless be substantial in both April and October.

The information above summarized points to the conclusion that unappropriated water probably exists most of the time in the source filed upon by the applicant, that such water may be taken and used beneficially in the manner proposed by the applicant without encroachment upon the rights of others, that the uncertainty as to the applicant's right of access to his proposed point of diversion is a matter beyond the

jurisdiction of the Department to determine and that the protests are insufficient to warrant disapproval of the application. It is the opinion of this office, therefore, that Application 14616 should be approved and permit issued, subject to the usual terms and conditions.

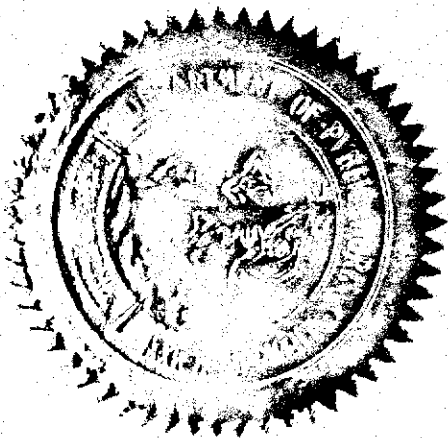
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ORDER

Application 14616 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14616 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of September, 1954.



A. D. Edmonston
A. D. Edmonston
State Engineer