

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 13694,)
13744, and 17687 to Appropriate Water)
from East Branch of North Fork)
Feather River and Tributaries in)
Plumas County)

Decision No. D 984

ADOPTED NOV 22 '60

Substance of the Applications

Applications 13694 and 13744 were filed in 1950 by Robert P. Wilson and were subsequently assigned to the National Youth Foundation.* Application 17687 was filed June 28, 1957, by Robert P. Wilson. The applications propose diversions from the East Branch of the North Fork Feather River, Spanish Creek, Indian Creek, Lights Creek, Moonlight Creek, and Hosselkus Creek for power generation purposes. The amounts of water to be appropriated from each source and the season of each appropriation are set forth in the attached Appendix I. The proposed location of the dams to be constructed under these applications and the physical features of each dam and reservoir formed are set forth in Appendix II. The location of each proposed powerhouse and the pertinent physical features of the conduit system necessary to determine the maximum theoretical horsepower that may be generated are shown in Appendix III.

* The National Youth Foundation is a non-profit corporation composed of Robert P. Wilson and his wife. Mr. Wilson is sometimes referred to hereinafter as "the applicant".

Hearing

Applications 13694, 13744, and 17687 were completed in accordance with the Water Code and applicable administrative rules and regulations. A public hearing under the provisions of the California Administrative Code, Title 23, "Waters", was held before the State Water Rights Board (hereinafter referred to as the "Board") on May 19, 1959, in Quincy, California, before Board Member W. P. Rowe. The hearing was continued at the request of the applicant to July 28, 1959, applicant having stated that much of his data had been lost or misplaced but copies would be available before this date. On June 26, 1959, the applicant was furnished a list of factual information which the Board's staff deemed essential in studying the merits of the applications. On July 27, 1959, the hearing was again continued to February 10, 1960, at the request of the applicant. On February 10 and 11, 1960, the matter was heard before Board Members Kent Silverthorne (Chairman) presiding, and Ralph J. McGill. The applicants, protestants, and other interested parties were duly notified of all sessions of the hearing.

Sources of Proposed Appropriations

Indian Creek originates in Plumas County in the northeastern part of T28N, R11E, MDB&M*, at an elevation of approximately 7,000 feet. It flows in a southwesterly direction

* All township references herein are from Mount Diablo Base and Meridian (MDB&M).

approximately 22 miles where it receives the flows of Hosselkus Creek. Hosselkus Creek originates in Plumas County in Section 12, T26N, R11E, and flows in a southwesterly direction 8 miles before entering Indian Creek.

Lights Creek originates in the northern part of T28N, R11E, and flows approximately 9 miles in a southerly direction where it receives the flow of Moonlight Creek. Moonlight Creek originates in the southeast part of T28N, R10E, at an elevation of approximately 6,600 feet and flows approximately $6\frac{1}{2}$ miles in a southeasterly direction to its junction with Lights Creek. Below its confluence with Moonlight Creek, Lights Creek flows in a southwesterly direction approximately 6 miles to join Indian Creek.

Indian Creek continues on a northwesterly course after its confluence with Lights Creek for approximately 10 miles where it joins Spanish Creek to form the East Branch of North Fork Feather River.

Spanish Creek rises in Plumas County in Section 1, T24N, R7E, and flows approximately 22 miles in a general northerly direction to its junction with Indian Creek.

Below the confluence of Indian and Spanish Creeks, the East Branch of North Fork Feather River flows in a westerly direction approximately 15 miles to where it enters the North Fork Feather River.

Change in Project as Set Forth
in Applicant's Applications

At the time of the hearing, the applicant stated that he wished to delete the portion of the applications that contemplated construction of the East Branch dam and powerhouse and that he was abandoning that portion of the project (R. T. 106, 107).

Applicant's Plan of Operation

The applicant stated that there are no reservoir operation studies for any of the reservoirs that would show the intended releases through the powerhouses and the effect on the stream regimen below them (R.T. 175, 250). In general, he indicated that releases for power generation would be on a continuous flow basis to the extent of available water supply with no fluctuations (R.T. 88, 90). Later in his testimony he stated that Moonlight Creek and upper Lights Creek reservoirs would be operated alternately and that Spanish Creek and Mill Creek reservoirs would be operated on a peaking basis (R.T. 236).

Availability of Unappropriated Water

Requirements for Downstream Rights

Testimony presented on behalf of the Biggs-West Gridley Water District, Richvale Irrigation District, Butte Water District, and Sutter Extension Water District shows that these districts claim rights to divert the direct flow of the Feather River based on Notices of Appropriation of

Water filed with the Butte County Recorder between 1902 and 1909 (R.T. 21 and SWRB Exh. 2). These districts share a common point of diversion, and each district is entitled to a certain percentage of the water diverted (R.T. 27). Although the rights claimed indicate a year-round diversion season, the normal diversion season is from the middle of March through the first week in November (R.T. 31). During the period of low summer flow, it is necessary for the districts to purchase water stored in Lake Almanor by the Pacific Gas and Electric Company (R.T. 23).

The Decree of Plumas County Superior Court, dated December 10, 1950 (SWRB Exh. 11), adjudicating the rights to the water of the Indian Creek Stream System provides for the following total diversions in cubic feet per second at points located downstream from the applicants' diversion points during the seasons indicated:

<u>Stream</u>	<u>Diversions</u>	
	<u>Nov. 1 - Feb. 28</u>	<u>Mar. 1 - Oct. 31</u>
Lights Creek	2.75	14.50
Hosselkus Creek	0.40	0.40
Indian Creek (below Hosselkus Creek)	47.60	55.58

These diversion are for beneficial use in Indian Valley and along streams tributary to Indian Creek. In general, water diverted under these rights is used for domestic, stockwatering, and irrigation purposes.

The Pacific Gas and Electric Company claims rights to divert water for power generation at various points from the

North Fork Feather River between Rock Creek Diversion Dam located within the NW $\frac{1}{4}$ of Section 35, T25N, R6E, and Big Bend Diversion Dam located within the SW $\frac{1}{4}$ of Section 31, T22N, R5E. The Company also claims a right to divert 60,000 miner's inches of water from the Feather River for irrigation at a point within the NE $\frac{1}{4}$ of Section 25, T19N, R3E (SWRB Exh. 2).

Requirements for Fish Conservation

All of the streams from which appropriations are sought under these applications sustain a native fish population of rainbow and brown trout (R.T. 51-68). The Department of Fish and Game also stocks many of these streams with trout fingerlings, and those of catchable size (F&G Exh. 4). Most reaches of the streams are easily accessible by major improved roads and are fished regularly (R.T. 73-77). To sustain fish life in these streams, it is necessary to maintain certain minimum flows and to prevent severe fluctuations in the flows below the powerhouses. In order that this may be accomplished, the Department of Fish and Game has requested that certain minimum flows or the natural flow, whichever is less, be released below each dam (R.T. 51-68 and F&G Exh. 5).

Section 5937 of the Fish and Game Code requires that the owner of any dam allow sufficient water to pass around, over, or through the dam to maintain fish life below the dam. Further, use of water for the preservation and enhancement of fish life is a beneficial use, and when acting upon applications to appropriate water, the Board must consider the public interest in the use of water for this purpose (Water Code Sections 1243, 1257).

Conclusion

Water appropriated by direct diversion under these applications would be diverted through the powerhouses, released into the stream channels below them, and would still be available to meet downstream demands. The maximum amounts of water available for appropriation to storage under subject applications would be the natural flow at the proposed dams less the amounts necessary to meet the year-round and March 1 through October 31 diversion requirements under the Indian Valley Decree hereinbefore set forth. Water available for appropriation to storage would also be limited by the rights of Pacific Gas and Electric Company on North Fork Feather River and the rights of Biggs-West Gridley Water District and others who divert from the Feather River farther downstream. A consideration of these rights and an examination of Staff Exh. 7 and Department of Fish and Game Exh. 2 indicate that unappropriated water is frequently available for the purpose and during the season stated in the applications.

Feasibility of the Project

As has been previously pointed out, the record is devoid of any operation study for the project. The applicant conceded at the hearing that even if the project were to be operated without restriction to accommodate existing rights, and without regard to releases requested for the maintenance of existing fisheries, it would be at best very marginal and there is question whether some of the units are financially

feasible (R.T. 83, 94, 164). Mr. Wilson stated that the units on Moonlight Creek, Lights Creek, and Hosselkus Creek are not feasible from a strict standpoint of power return (R.T. 163, 218).

Power Utilization

It is the applicant's intention to utilize all the power developed locally for the refining of ores and the production of metals, with the exception that some of the power developed in the Mill Creek powerhouse might be marketed. At the present time there are no industrial plants which can use this power and there are no definite plans for their construction.

Mr. Wilson envisions that the Western Copper Company, a Nevada corporation which he has organized, or some other corporation organized for the purpose will lease the mining properties of the National Youth Foundation, finance the construction and operation of the necessary refining plants, pay the National Youth Foundation royalties on the ore processed, and also pay for the power consumed in the plants (R.T. 170, 214, 215). However, no commitments have been made by any corporation or individual to do any of these things (R.T. 216).

There are factors which may discourage the construction of these refining plants. According to testimony presented by Mr. Wilson, the ores in this area are of a low grade, and it is essential that low-cost power be available to allow them to be refined at a profit (R.T. 9). Because the available water supplies would not provide a year-round power output, the refining plants could operate only during a portion of each year

unless they were to purchase additional power from another source (R.T. 169). If, as indicated by the testimony, present power costs in the area are too great to allow refining of these ores at a profit, standby power (which is usually more costly) would probably be too expensive even on an interim basis. This might force the refining plants to operate only during that portion of each year when low-cost power would be available from this project.

Economy of Project

No substantial evidence was presented regarding costs of the various units of the project. Mr. Wilson stated that he had no idea what the total cost of the project would be other than a "wild guess" based upon preliminary estimates made before the applications were filed (R.T. 161-162). At another point in his testimony he estimated that with the East Branch dam and associated power generation facilities eliminated, the remaining units would not "run over 25 or 30 million dollars" (R.T. 195). He expressed the opinion that the power investment could be amortized in 30 or 40 years and that the mining, smelting, and refining operation would be amortized within a ten-year period following commencement of operations (R.T. 196, 206). This conclusion was not substantiated by cost studies (R.T. 161, 164).

The economics of the proposed project baffle analysis. The applicant's primary purpose in constructing the project is said to be to obtain money for a youth foundation. This depends on a favorable return from capital obtained by charitable donations in staggering amounts from undisclosed and unpledged

donors, which return depends on profits from the smelting and refining of minerals (the unit costs of which processes are not in evidence) which, in turn, depend upon the development of certain mineral properties. There is no substantial evidence before the Board as to the extent and value of such mineral deposits. Finally, a considerable portion of the mineral lands is held under locator's claims or disputed patents, the title to the same not having yet been perfected by the applicants (R.T. 222).

Ability to Proceed

Financial Capability

At the time of the hearing, the National Youth Foundation had no cash. Its only assets were "some 10,000 acres of leases and options and fee lands" of which approximately 2,500 acres are held in fee (R.T. 171, 204). The appraised value of these fee lands was described by the applicant Wilson as "nil almost" and there are outstanding taxes due on them (R.T. 252).

The National Youth Foundation is a non-profit corporation composed of applicant Wilson and his wife (R.T. 199). Since it was organized for charitable purposes, it cannot attract investors for profit. According to Mr. Wilson's testimony, it was founded by reason of assistance and promised assistance of a Mr. Prince, a man of vast wealth who has since deceased without apparently making provision for the foundation (R.T. 199,203). Other parties were said to have

made contributions to the foundation (R.T. 200). Mr. Wilson expects certain unnamed wealthy men to donate the substantial sums necessary for this venture but he has no commitments from them, and no such parties appeared at, or expressed any interest in, the hearing (R.T. 209).

Schedules and Plans for Construction

Mr. Wilson stated that construction could start within ten days from the granting of permits (R.T. 179). However, the record shows that engineering plans and specifications have either not been prepared, or have been lost or destroyed, and such basic problems as the availability of construction materials for the dams have not been solved. No petition for a Federal Power Commission license, required by law, has been filed (R.T. 239).

Due to the applicant's failure to have complete engineering studies, he has no definite construction schedule and only a very general plan for proceeding with the construction of the project (R.T. 176, 177).

Access to Project Sites

The principal portion of the lands proposed as reservoir sites is owned by the United States, and the necessary Federal Power Commission License is yet to be obtained. There remain parcels in private ownership, under unexercised options and under litigation, to which the applicant does not have access (R.T. 155-161). In respect to some of the lands in private ownership which the applicant expects to purchase, there

has been no showing that the owners are willing to sell at all, or at a price the applicant can pay. Moreover, the applicant is without the power of condemnation.

Effect of Approval of Applications

Permits issued by the Board are required to specify the respective periods of time within which construction work must be commenced and completed and water applied to beneficial use (Water Code Sections 1395, 1397). In determining the length of time to be allowed, the particular conditions surrounding each case govern, the guide being due diligence commensurate with the size of the project and the obstacles to be overcome (Water Code Section 1396, 23 Cal. Adm. Code 777). If a permit were to be issued to these applicants, the many contingencies and obstacles which must be overcome would require that a substantial period of time be allowed within which to commence construction and that further substantial time covering a period of several years be granted for completion of construction and full use of water.

A permit, once issued, remains valid until revoked in the manner prescribed by the Water Code. The permittee acquires a right to appropriate water to the extent stated in the permit with a priority as of the date of filing the application. During the term of the permit and until it is revoked, no one else is entitled to receive a permit (except on a temporary basis) and if another application is filed, it must be denied unless there is water in addition to that covered by

the outstanding permit (see Eaton v. State Water Rights Board (1959) 171 Cal. App. 2d 409, 340 P. 2d 722).

It follows that approval of these applications would serve to withdraw from appropriation the water sought for a long period of time without regard to the ultimate success or failure of the project. Water Code Section 1255 directs the Board to reject an application when in its judgment the proposed appropriation would not best conserve the public interest. It is not in the public interest for the Board to issue permits which would have the effect of placing in suspense rights to large quantities of water from East Branch of North Fork Feather River and its tributaries for a project of such questionable feasibility.

Summary and Conclusion

An analysis of the record shows that the applicants:
(a) have no present market for the power to be developed nor contracts or agreements to deliver power in the future, and that the use of power depends on indefinite future industrial development, (b) have failed to present evidence demonstrating that their project can be operated so as to protect downstream rights, provide necessary flows for the maintenance of fish life, and be feasible, (c) have not shown that they have reasonable assurance of obtaining the necessary finances to construct the project, (d) have not shown that they have obtained access to property necessary for the project or that they are able to obtain the same within a reasonable time, and (e) have not shown

that, if granted permits, they could proceed with due diligence to complete construction of their project and beneficial use of the water.

Upon the basis of this record, the Board finds that approval of Applications 13694, 13744, and 17687 would not best conserve the public interest, and that they should be denied.

ORDER

Applications 13694, 13744, and 17687, having been filed with the former Division of Water Resources, protests having been filed, jurisdiction over the administration of water rights, including the subject applications, having been subsequently transferred to the State Water Rights Board, a public hearing having been held, evidence having been received and considered by the Board, and said Board now being fully informed in the premises,

IT IS HEREBY ORDERED that Applications 13694, 13744, and 17687 be, and the same are, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this day of , 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member

APPENDIX I

Appropriations Proposed by Applications

Source	: Direct : Diversion* : (cfs)	: Storage : (afa)	: Storage Season : Beginning	: End
<u>Application 13694</u>				
East Branch of North Fork Feather River		5,000	Oct. 1	May 30
Spanish Creek	300	5,500	Oct. 1	May 30
Indian Creek	500	1,500	Oct. 1	May 30
<u>Application 13744</u>				
Lights Creek	100	15,000	Oct. 1	May 31
Moonlight Creek		10,000	Oct. 1	May 31
<u>Application 17687</u>				
Hosselkus Creek	20	3,000	Oct. 1	June 1

* Direct diversion season is year-round.

APPENDIX II

Dam and Reservoir

Name of Dam	:	Location				Dam		Reservoir	
		:	:	:	:	:	:	:	:
	:	:	:	:	:	:	Surface:	Area	Capacity
	:	:	:	:	:	:	:	(ac.)	(ac. ft.)
	:	Subdivision:	Sec.:	T	R	(ft.)	(ft.)	(ac.)	(ac. ft.)

Application 13694

Mill Creek	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	20	25N	7E	130	750	243.6	13,783
East Branch	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	23	25N	8E	40	750	119.4	2,228
Spanish Creek	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	16	25N	9E	170	550	230.4	15,897
Indian Creek	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	35	26N	9E	40	350	118.4	1,591

Application 13744

Lower Lights Creek	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	30	27N	11E	150	1,600	102.7	13,878
Upper Lights Creek	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	5	27N	11E	150	1,000	127.0	6,272
Moonlight Creek	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	2	27N	10E	210	800	441.5	28,115

Application 17687

Beardsley	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	22	26N	11E	85	300	90.0	3,000
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APPENDIX III

Power Generation

Name of Powerhouse	Subdivision	Location	Sec.	T	R	Tunnel & Penstock Length in feet	Capacity in cfs	Static head in feet	Theoretical horse-power
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Application 13694

Mill Creek	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	19 25N 7E	10,100	1,200	200	27,200
East Branch	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	22 25N 7E	38,130	800	380	34,600
Spanish Creek	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	16 25N 9E	2,300	400	200	9,100
Indian Creek	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	16 25N 9E	17,210	800	590	53,500

Water will be returned to North Fork of Feather River in NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 19, T25N, R7E.

Application 13744

Lower Lights Creek	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	31 27N 11E	6,450	130	200	2,950
Upper Lights Creek	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	19 27N 11E	17,850	100	600	6,820
Moonlight Creek	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	19 27N 11E	15,300	30	1,750	5,960

Water will be returned to Lights Creek in SW $\frac{1}{4}$ of SW $\frac{1}{4}$ in Sec. 31, T27N, R11E.

Application 17687

Beardsley	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	28 26N 11E	8,500	20	1,250	2,840*
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Water will be returned to Hosselkus Creek in SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 28, T26N, R11E.

* This value is given as 2,500 Hp in the application but diversion capacity and static head as indicated would produce 2,840 Hp as shown in the table.