

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

In the Matter of Application No. 1698 of Sutter Investment
Company and Application No. 1699 of Garden Highway
Orchard Company and E. S. Brown

DECISION NO. 1698-1699 D 20
Decided August 8, 1924.

APPEARANCES AT HEARING HELD JULY 30, 1924:

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| For Applicant | - | None |
| For Protestant | - | None |
| Examiner | - | Edward Hyatt, Jr., Acting Chief of Division of Water Rights. |

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O P I N I O N

On March 2, 1920, the Sutter Investment Company filed Applications No. 1698 and No. 1699 to appropriate unappropriated water from Feather River, in Sutter County, for agricultural purposes. Subsequently an assignment was made and duly recorded in the office of the Division of Water Rights by which the Garden Highway Orchard Company and E. S. Brown succeeded in and to the interest of Sutter Investment Company in Application No. 1699. These applications were completed, advertised, and subsequently protested, - Application No. 1698 being protested by Byron Bethany Irrigation District, Empire Navigation Company, California Delta Farms Company, City of Sacramento, and Anderson-Cottonwood Irrigation District, and Application No. 1699 being protested by the City of Sacramento.

The conditions surrounding the two applications were similar and they were accordingly set for a joint hearing, to be held at Room 707 Forum Building, Sacramento, on July 30, 1924, at 10:00 o'clock A. M. Although duly notified there were no appearances at this hearing by any of the parties in interest.

Protest of Byron-Bethany Irrigation District alleges a prior vested right and objects to allowance of any right to appropriate from San Joaquin or Sacramento Rivers and tributaries which will in effect diminish or interfere with the water supply of said District.

Protests of Empire Navigation Company and California Delta Farms Company are identical and allege that the protestants are owners of certain riparian lands in the Delta region of the Sacramento and San Joaquin Rivers, that there is no surplus or unappropriated water in the stream from which applicants propose to appropriate, and that any appropriation of water by applicant would partially deprive said companies of water to which they are rightfully entitled as riparian owners, thereby not only tending to increase the menace of an encroachment of salinity into the Delta waters but also making it possible for applicant to claim foundation for color of title to acquirement of rights by adverse use.

Protest of the City of Sacramento alleges prior rights for municipal supply from Sacramento River, both by appropriation and riparian claim, the enjoyment of which rights will be diminished and interfered with by proposed appropriations of applicants upstream.

Protest of Anderson-Cottonwood Irrigation District alleges prior appropriation and use of water from Sacramento River for the irrigation of lands in said District; also appropriations and use by many others from the same source and alleges that any further permits to appropriate from the same source and its tributaries will necessarily conflict with and endanger the rights of protestant to receive its full amount of water as previously appropriated.

Applicant has not submitted a formal answer to these protests and none of the parties either appeared at the hearing as noticed or submitted

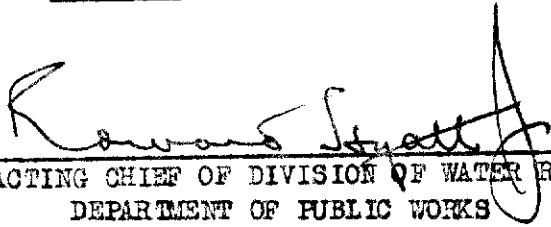
briefs subsequently thereto. The Division of Water Rights has, however, had frequent occasion to investigate the flow in the Feather and Sacramento Rivers, and the use of water therefrom. There have been made available by the United States Geological Survey and agencies of the State of California numerous records of flow in these rivers. The Division of Water Rights has for four years made careful study of the encroachment of salinity into the delta region of the Sacramento and San Joaquin Rivers. It appears, and we believe it may be so stated as a matter of common knowledge, that while there are periods of drought when there is a shortage of water in Sacramento River below the points of diversion stated in these applications, there is unappropriated water available in normal years which can be appropriated without injury to these protestants. These are applications to appropriate unappropriated water subject to vested rights and there is therefore recourse and an adequate remedy available to these protestants and other appropriators of water from these sources should applicants fail to respect prior vested rights.

O R D E R

Applications Nos. 1698 and 1699 for permits to appropriate water having been filed with the Division of Water Rights, protests having been filed, a hearing having been set and waived by the parties in interest and the Division of Water Rights being now fully informed in the premises:

IT IS HEREBY ORDERED, that said applications be approved and that permits be granted subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 8th day of August, 1924.



ACTING CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA