

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

Decision 1924

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IN THE MATTER OF APPLICATIONS 1739 and 3040 of TABLE
MOUNTAIN AND THERMOLITO IRRIGATION DISTRICTS JOINTLY
TO APPROPRIATE WATER FROM CONCOW CREEK IN BUTTE COUNTY
FOR AGRICULTURAL AND POWER PURPOSES

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DECISION NO. 1739 - 3040 D 33
Decided November 26, 1924

APPEARANCES AT HEARING HELD AUGUST 19, 1924:

For Applicants - Messrs. R. A. Leonard and A. J. ^{Lloyd.} Attorneys

For Protestants - Messrs. J. A. McGregor and C. W. Somerby

Examiner: - Edward Hyatt, Jr., Acting Chief of Division
of Water Rights

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O P I N I O N

These two applications are for the appropriation of water from
Concow Creek or East Branch to be stored and later used jointly by Table
Mountain Irrigation District and Thermolito Irrigation District, primarily
for agricultural uses within the two districts and the generation of hydro-
electric power by means of two power houses belonging to and operated by
the Pacific Gas and Electric Company. The appropriation would be supple-
mentary to a direct flow of 364 miners inches which applicants have purchased
from the Pacific Gas & Electric Company.

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The main features of the two applications are as follows:

Application 1739, filed March 25, 1920, proposes the storage in Lake Wilenor of 8,200 acre feet for irrigation, a total of 3,640^{Acres} in both districts. Application 3040 filed September 16, 1922, proposes the storage in the same reservoir of 13,252 acre feet for the generation of hydro-electric power.

These two applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing at 707 Forum Building at 10 o'clock A. M. on August 19, 1924. Of this hearing applicants and protestants were duly notified. Both parties were represented thereat by attorneys and submitted data in support of their respective contentions as to the availability of unappropriated water flowing in the source specified. Thereafter briefs were duly submitted by both parties.

Since the project entails the use of a certain ditch system it is necessary that a thorough understanding be had of the facts as to applicants' control thereof and protestant's use therefrom. It appears that about 1895 the Pacific Gas and Electric Company acquired by purchase the Cherokee Canal and water rights appurtenant thereto. Under a contract now in force Thermolito Irrigation District purchased from the Pacific Gas & Electric Company 339 inches (8.48 second feet) to be delivered to them through the Miocene Ditch. In 1923 the Company sold to the Districts lands they had acquired in the Gocow Creek Reservoir Site on Lake Wilenor and certain other properties, thereby transferring to the Districts their interest in the project.

It was further developed that from 1895 to 1915 protestants received water through the Cherokee Canal nearly all of such use ceasing at the time of the destruction of the then storage and diversion works in 1914. It appears that the only use of Concow Creek water by any of the protestants since that time was by one J. A. Adneal who irrigated 20 acres up to about four years ago, when the flume at the intake was destroyed by fire, with water from Cherokee Canal. Whether or not such water was received under contract is not germane to the point at issue but it appears that same was purchased from one P. L. Vinton who in turn had purchased same from the Pacific Gas and Electric Company.

It is protestant's contention that the proposed appropriation covers the entire yield of Concow Creek and that consummation thereof will deprive them of water to which they now claim rights based as follows:

1. Beneficial use prior to 1914, since interrupted but without intent to abandon.
2. Riparian right to use water from Cherokee Canal in its status as a permanently substituted channel of Concow Creek.

The further contention is advanced that ~~protestants~~ protestants have heretofore purchased a right to the entire flow of Concow Creek and that the applications should be denied for lack of unappropriated water.

The only available information on the yield of Concow Creek shows a yield of from 10,000 to 60,000 acre feet per annum and same being uncontroverted may be accepted. This amount is certainly sufficient to justify the appropriation of 13,252 acre feet unless a part thereof is now covered by appropriation. Protestants are the only parties advancing claims to rights to use Concow Creek water.

No use of water has been made by protestants for a period of over three years last past, although reasons for non-user have been submitted. The former appropriator sold to applicants any rights it may have had to water from the source after 1914 and no rights to use same have been initiated by protestants since that time. Under Sec. 20 of the Water Commission Act it is plainly shown wherein any rights protestants may have heretofore enjoyed have lapsed through non-user.

Protestants claim to riparian rights to water from Cherokee Canal as a substituted channel of Concow Creek are without weight because the canal has for years ceased to convey water from the creek and cannot therefore be considered as a substituted channel, if it ever did divert the entire flow of the Creek.

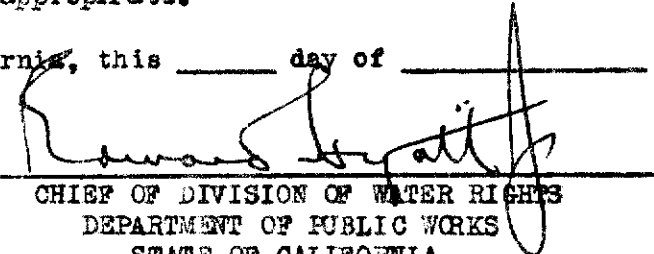
It is accordingly found that there is ample unappropriated water flowing in the source to justify approval of the applications in their present form.

O R D E R

Applications No. 1739 and 3040 for permits 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, briefs having been filed, and the Division of Water Rights now being fully informed in the premises,

IT IS HEREBY ORDERED that said Applications No. 1739 and 3040 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this _____ day of _____
A. D. 1925.


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