

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

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IN THE MATTER OF APPLICATION NO. 2146 OF THE EL DORADO IRRIGATION DISTRICT TO APPROPRIATE FROM THE SOUTH FORK OF THE AMERICAN RIVER AND WENGER CREEK, TRIBUTARIES OF THE AMERICAN RIVER IN EL DORADO COUNTY FOR IRRIGATION PURPOSES, APPLICATION NO. 2270 OF THE EL DORADO IRRIGATION DISTRICT TO APPROPRIATE FROM THE NORTH FORK OF THE COSUMES RIVER, CAMP CREEK AND SLY PARK CREEK, TRIBUTARIES OF THE COSUMES RIVER IN EL DORADO COUNTY FOR IRRIGATION AND DOMESTIC PURPOSES, APPLICATION NO. 2271 OF THE EL DORADO IRRIGATION DISTRICT TO APPROPRIATE FROM THE NORTH FORK OF THE COSUMES RIVER, CAMP CREEK AND CLEAR CREEK, TRIBUTARIES OF THE COSUMES RIVER IN EL DORADO COUNTY FOR IRRIGATION PURPOSES AND APPLICATION NO. 4868 OF THE EL DORADO IRRIGATION DISTRICT TO APPROPRIATE FROM SPANISHMEAKER CREEK AND DIAMOND CREEK, TRIBUTARIES OF THE COSUMES RIVER IN EL DORADO COUNTY FOR MUNICIPAL PURPOSES.

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Decision No. 2146, 2270, 2271, 4868 D 122

Decided Sept. 30, 1926

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APPEARANCES AT HEARING HELD APRIL 23, MAY 6, 7 AND 8, 1926

For Applicant:

El Dorado Irrigation District

Thomas Mann
Joseph E. Spink

For Protestants:

Diamond Ridge Water Company)
Sadie Belcher)
Mrs. Nancy Blawitt)

C. E. McLaughlin

Earl Deacon and 20 other)
various users along the)
lower Cosumnes River)

Joseph W. Cross

Staten Island Land Co.

No Appearance

Cosumnes River Water Users Association

C. L. Harber

of

White, Miller, Heidman
& Harber

EXAMINER:

Edward Ryatt, Jr., Chief of Division of Water Rights
Assisted by Everett N. Bryan, Deputy Chief

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O P I N I O N

Application No. 2146 was filed December 17, 1920. It proposes an appropriation of 320 cubic feet per second of direct diversion and 15,000 acre feet per annum of diversion to storage from the South Fork of the American River throughout the entire year and an appropriation of 5000 acre feet per annum of diversion to storage from Webber Creek to be collected from November 1 to June 30 of each season for the irrigation of 80,870 acres of land lying within Townships 8, 9, 10, and 11 North, Ranges 8, 9, 10 and 11 E. in El Dorado County. Storage is to be made in the Webber Creek Reservoir which is to have a capacity of 5000 acre feet. The maximum rate of diversion to storage in the Webber Creek Reservoir from the South Fork of the American River is to be 320 cubic feet per second. The project is commonly known as the Big Canyon Irrigation Project. The application was protested by Earl D. Desmond, manager of the Nicolaus Estate and by Sadie Balcher.

Application No. 2270 was filed March 22, 1921. It proposes an appropriation of 50 cubic feet per second of direct diversion and 14,000 acre feet per annum of diversion to storage from the North Fork of the

Cosumnes River, 8,000 acre feet of which will be stored in the Camp Crossing Reservoir which will have a capacity of 8,000 acre feet and 6,000 acre feet of which will be diverted at a maximum rate of 70 second feet to storage in the Hazel Valley Reservoir which will have a capacity of 20,000 acre feet, an appropriation of 70 cubic feet per second of direct diversion and 15,000 acre feet per annum of diversion to storage from Camp Creek, a tributary of the Cosumnes River, 6000 acre feet of which will be stored in the Granite Basin Reservoir which will have a capacity of 6000 acre feet and 7,600 acre feet of which will be diverted at a maximum rate of 95 second feet to storage in the Hazel Valley Reservoir, and an appropriation of 30 cubic feet per second of direct diversion and 7,000 acre feet per annum of diversion to storage from Sly Park Creek, a tributary of the Cosumnes River, the storage to be made in the Hazel Valley Reservoir. The water which it is proposed to divert will be used for irrigation purposes on about 32,000 acres of land lying within the boundaries of the El Dorado Irrigation District.

As originally filed, the direct diversion from the North Fork of the Cosumnes River was to have been made from April 15 to October 15 of each season and the diversion to storage was to have been made from about November 1 to about July 1 of each season, the direct diversion from Camp Creek was to have been made from April 15 to October 15 of each season and the diversion to storage was to have been made from about October 1 to about July 1 of each season and the direct diversion from Sly Park Creek was to have been made from April 15 to October 15 of each season and the diversion to storage was to have been made from about November 1 to about June 1 of each season. At the hearing, however, the applicant requested that the application be amended in such a manner that all diversions should be confined

to the period from November 15 to June 15 of each season and the applications have been amended accordingly.

The application was protested by the following parties:

Nancy Blawatt
W. S. Grimshaw
W. F. Pierce
E. E. Hutchinson
A. Marquis
E. Clements Herst Co.
P. C. Dressler
W. C. Sheldon
Earl D. Demond, Manager of
Nicolaus Estate
J. D. Grunless
Elizabeth Mills
John Mahan
Statens Island Land Co.

Sadie Belcher
H. P. Westenburg, Executor of
E. H. Mahan Estate
Chas. Calquhoun
Arelli Bros.
F. M. Grimshaw
E. I. Palm
Wm. K. Lindsay
Arch Riley
A. D. Murphy
C. E. Hutchinson
Diamond Ridge Water Co.
Paul E. Peterson

Application No. 2271 was filed March 22, 1921. It proposes an appropriation of 80 cubic feet per second of direct diversion and 5000 acre feet per annum of diversion to storage from the North Fork of the Cosumnes River. The direct diversion is to be made from April 15 to October 15 of each season and the diversion to storage is to be made from about October 1 to about June 30 of each season and is to be collected in the Middle End Reservoir which will have a capacity of 5000 acre feet. It also proposes an appropriation of 80 cubic feet per second of direct diversion and 20,000 acre feet per annum of diversion to storage from Camp Creek, a tributary of the North Fork of the Cosumnes River. The direct diversion from this source is to be made from April 15 to October 15 of each season and the diversion to storage is to be made from about October 1 to about June 30 of each season and is to be collected in the Pleasant Valley Reservoir which will have a capacity of 30,000 acre feet. Under this application, it is proposed to irrigate 78,134 acres lying within Townships 10 and 11 North, Ranges 10, 11 and 12 E., M.D.B. & E. The application was protested by the following:

Nancy Blavett
W. S. Grimshaw and H. P. Westerburg,
Executors of A. H. Mahan Estate
E. E. Hutchinson
Chas. Colquhoun
A. Marquis
Arelli Bros.
E. Clemens Horst Co.
F. M. Grimshaw
P. C. Drescher
E. A. Palm
W. C. Sheldon
Earl D. Desmond, Manager of
Nicolaus Estate

Sadie Belcher
W. F. Pierson
Geo. J. Haslam
Arch Riley
A. D. Murphy
J. D. Granless
C. E. Hutchinson
Elizabeth Mills
Diamond Ridge Water Co.
John Mahan
Paul E. Petersen
Staten Island Land Co.
Sadie Belcher

Application No. 4888 was filed January 15, 1926. It proposes an appropriation of 2900 acre feet per annum of diversion to storage from Stensbreaker Creek and 1900 acre feet per annum of diversion to storage from Diamond Creek, both streams being tributary to the Cosumnes River. The maximum rate of diversion from Stensbreaker Creek is to be 20 cubic feet per second and from Diamond Creek, 13 cubic feet per second. Storage is to be made in the Hazel Valley Reservoir which will be constructed to a capacity of 20,000 acre feet. As originally filed, the period of diversion from both sources was from October 1 to July 1 of each season but by the request of the applicant made at the hearing, the period of diversion has been amended to the period from November 15 to June 15 of each season. The water is to be used for a municipal supply for the City of Placerville.

The application was protested by the following:

Wm. K. Lindsay
Earl D. Desmond, Manager of
Nicolaus Estate

Diamond Ridge Water Co.
Sadie Belcher
Staten Island Land Co.

These several 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, Sacramento, at 10:00 A.M. o'clock on April 23, 1926. Of this hearing, applicant and protestants were duly notified.

At the hearing, the El Dorado Irrigation District denied any further interest in Applications Nos. 2146 and 2271.

The fact was brought out that application No. 2146 had been assigned to the Sacramento Municipal Utility District, but the President of the District who was in attendance at the hearing disclaimed all knowledge of or interest in the application and it may therefore be concluded that the Utility District has abandoned the application and therefore it should be rejected.

It further developed during the course of the hearing that the El Dorado Irrigation District had no intention of proceeding under application No. 2271 and had no further interest in that filing. This application may therefore be considered to have been abandoned and future discussion in this opinion will be confined to applications 2270 and 4888 only.

Hendy Blawatt and Sadie Belcher claim riparian rights by virtue of ownership of land situated below the junction of Deer Creek and the Cosumnes River and allege in effect that the amount of water flowing in the Cosumnes River after May 1 of each year is insufficient to supply the needs of those who have already acquired vested rights to the waters of said stream and that further diminution of the waters by the approval of applications would inflict irreparable injury upon them.

W. S. Grimschaw, E. P. Westerburg, Executor of R. H. Mahan Estate, W. F. Pierson, E. B. Hutchinson, Arch Riley, Charles Colquhoun, A. D. Murphy, A. Marquis, J. D. Granless, Orelli Bros., C. H. Hutchinson, E. Clements Herst Co., Elizabeth Mills, F. M. Grimschaw, W. C. Sheldon, Paul E. Pierson and E. A. Palm claim riparian ownership and appropriative rights of long standing in the vicinity of Slough House, and deny the right of non-riparian lands to water from the Cosumnes River and its tributaries until such a time as the

riparian lands are fully provided for or until there is a change in the present legal status of riparian rights and allege that the use of water by applicant as proposed will diminish the supply available to them and infringe upon their rights.

Some of this group of protestants claim appropriative rights by virtue of permits 1030 and 1329 issued by the Division of Water Rights on applications 1836 and 2296 and allege in effect that the approval of application No. 2270 would infringe upon the rights of the permittees and render these permits valueless.

The Diamond Ridge Water Company claims the right to the waters of the North Fork of Cosumnes River, Camp Creek, Sly Park Creek, Stonebreaker and Diamond Creeks to the extent of 1000 inches measured under a four inch pressure, based upon thirty years of use prior to the filing of the District's applications and alleges in effect that the area now irrigated comprises 624 acres of land which is susceptible of an increase to as much as 12,000 acres, and that the continued diversion of 1000 miner's inches is necessary to supply the present and potential water users along its ditch system.

John Mahan and F. C. Drescher claim riparian rights on the Cosumnes River and allege in effect that all available water in said stream and its tributaries has been used by riparian owners and that the flow has been inadequate to supply the demand and consequently it has been necessary for them to resort to pumping from wells in order to meet their water requirements and that the approval of the applications would only result in further depletion of the already insufficient supply of water.

The Staten Island Land Company claim that if the applications were approved, the natural flow of the Mokelumne River, to which the

Cosumnes River is tributary, would be so reduced during dry seasons of the year and during all seasons of dry years as to cause the water heretofore diverted by it under vested rights to become polluted with salt water from the Pacific Ocean, thus making it unfit for irrigation and domestic use; that the flow of water in the Mokelumne River would be so reduced that the protestant would be compelled to resort to pumping instead of diverting by means of siphons as it is doing at the present time and that the seepage of water from the ferks of the Mokelumne River surrounding Staten Island would be greatly diminished thereby reducing the value of the agricultural lands.

William X. Lindsay claims rights to the waters of the Cosumnes River by virtue of riparian ownership and use of water since 1853 and alleges in effect that the approval of the applications would result in the diminishing of his already insufficient water supply.

Earl D. Desmond, Manager of the Nicolaus Estate, claims riparian and prescriptive rights and use of water by flooding on 1000 acres of land and alleges in effect that the approval of the applications would so diminish the flow of the Cosumnes River as to result in injury to him.

The project of the El Dorado Irrigation District may be divided into the initial and ultimate developments.

Under the initial development, it is proposed to construct the Hazel Valley Reservoir to its full capacity of 20,000 acre feet and the Camp Creek Canal which will divert the flood waters of Camp Creek, Stonebreaker and Diamond Creeks where they will be mingled with the waters of Sly Park Creek in the Hazel Valley Reservoir. These waters will then be conducted to the lands of the District through the Main Canal which will terminate about one-half mile above the town of Camino, at which point the waters will be diverted to the main El Dorado Canal which now serves the greater portion of the irrigated lands within the District. The initial project

will provide for the irrigation of 10,000 acres of land of which about 9000 acres are to be supplied by the proposed works and the balance from the source now controlled by the El Dorado Water Corporation, but now under option to the District. This supply upon which the District now holds an option is obtained from two principal sources, one being Webber Creek which is tributary to the South Fork of the American River and the other being water obtained by purchase from the Western States Gas and Electric Company.

The ultimate project contemplates the construction of the Granite Basin Reservoir on Camp Creek, Capps Crossing Reservoir on the North Fork of the Cosumnes River, the Cosumnes Canal and the completion of the distribution system.

During both stages of the development, a portion of the water will be discharged into the North Fork of Webber Creek and diverted from this creek onto the lands of the District by two existing ditches known as the Old and the New Webber Ditches.

The storage under the initial project will amount to 22,000 acre feet, 20,000 acre feet of which will be made under the applications before this office and 2000 acre feet from Webber Creek in the Webber Reservoir. Under the ultimate development, an additional 16,000 acre feet will be stored or a total of 38,000 acre feet. With the construction of the Granite basin Reservoir and the Capps Crossing Reservoir, the District contemplates the generation of power, the revenue from which will go toward the financing of the project.

Under the initial project, the District assumes a probable net duty of 1.8 acre feet per acre per annum and under the ultimate development, a probable net duty of 2.0 acre feet per acre per annum.

For municipal use in the City of Flacerville, the District estimates that the quantity of water should not be less than 2000 acre feet per annum with a probable peak draft of 2,500 gallons per minute.

The drainage area of the Cosumnes River watershed above the main agricultural area of the valley is approximately 534 square miles. The average seasonal run-off from this area as measured at Michigan Bar for the seasons 1908 to 1925 inclusive is 334,500 acre feet, of which amount about 89% runs off during the months of January to May inclusive. As the period of irrigation in this vicinity commences about the middle of April, the greater portion of this run-off finds its way to the Pacific Ocean via the Mokelumne and San Joaquin Rivers without being put to beneficial use.

The aggregate area of watersheds from which the applicant proposes to divert under applications 2870 and 4888 is 54.13 square miles or about 10% of the total watershed area above the main agricultural lands in the valley. The mean seasonal run-off from this area has been estimated by the District's engineer to be approximately 80,700 acre feet or about 21% of the mean seasonal run-off of the Cosumnes River at Michigan Bar.

The testimony presented at the hearing indicated that the correct area of the El Dorado Irrigation District is 30,702 acres (p. 294 transcript) of which the total arable land which the District proposes to serve is 19,750 acres. (Transcript, p. 35.)

Based upon a net duty of 2.0 acre feet per acre per annum, the total net water requirement for this area would be 39,500 acre feet per annum, and assuming 30% losses, the gross agricultural needs of the District would be about 56,500 acre feet per annum.

The District could not at most get more than 3860 acre feet per annum from Diamond and Stonebreaker Creeks for municipal purposes under its application No. 4888, so that is the average yield of those two watersheds.

Therefore, if the needs of the District were to be fully satisfied by diversions from Cosumnes River, not more than approximately 60,000

acre feet per annum, or roughly 75% of the run-off above the District's points of diversion or 15.6% of the run-off at Michigan Bar would be utilized. As a matter of fact, however, the District will, in the initial development, secure 2860 acre feet per annum from Webber Creek and ultimately propose to secure, as may become necessary, up to a total of 40 second feet for a period of 150 days each year from American River under an option now held upon the properties of El Dorado Water Corporation.

Neither in the protests received to these applications, the answers thereto, nor at the time of the hearing have any data been presented to the Division upon which to base any definite or precise conclusion as to the extent of present vested rights to the use of water from the lower Cosumnes River.

We find one statement in the transcript that the present diversion capacity approximates 160 to 165 cubic feet per second. According to the 14th irrigation census of the United States taken in 1919, there were 3259 acres irrigated in the Cosumnes River Basin, and a total of 6405 acres susceptible of irrigation by constructed work and the available water supply. Irrigated areas on the upper watershed and those irrigated from wells are included in these figures but the major portion of these lands were undoubtedly those irrigated or to be irrigated from Cosumnes River below Michigan Bar gauging station of the Water Resources Branch of the United States Geological Survey.

In ordinary practice, diversion works (and particularly pumps which are the principal means of diversion from the lower Cosumnes) are never operated to capacity. While there has undoubtedly been some increase in the irrigated area from lower Cosumnes River since 1919, we conclude therefore

in the absence of a definite presentation of the facts by the interested parties that probably a continuous flow of 100 to 125 cubic feet per second, or 60% to 65% of the present diversion capacity should amply provide for present uses upon this section of the river.

Based upon the records of the Water Resources Branch of the United States Geological Survey, the mean daily flow of the Cosumnes River at Michigan Bar during the month of June for the eighteen years, 1909 to 1926 inclusive, is shown by the following table:

Date	Flow (c.f.s.)	Date	Flow (c.f.s.)	Date	Flow (c.f.s.)
June 1	448	11	389	21	192
2	454	12	318	22	161
3	445	13	296	23	162
4	451	14	278	24	153
5	414	15	260	25	145
6	400	16	259	26	134
7	390	17	250	27	128
8	378	18	241	28	120
9	360	19	224	29	111
10	320	20	209	30	107

During this period of time, the flow in the Cosumnes River on the 15th of June varied from a minimum of 5 second feet in 1924 to a maximum of 840 second feet in 1911. On the last day of the month, the flow varied from a minimum of 1 second feet in 1924 to a maximum of 340 second feet in 1911.

From the above table, it may be seen that the average flow on the 30th day of June for this eighteen year period is 107 cubic feet per second and it appears probable therefore that there is unappropriated water in the Cosumnes River up to the first day of July in a normal year.

The District has, however, of its own accord endeavored to guard against infringements of the rights of lower users by amending its applications

in such a manner as to limit the season of diversion to the period from November 15th to June 15th. As the period of diversion to storage from Sly Park Creek as named in the application terminated on June 1, this date would necessarily remain unchanged.

As to the possible interference with the rights under permits 1030 and 1320, it is to be noted that application No. 2270 of the El Dorado Irrigation District was filed in this office three weeks earlier than application No. 2296 filed by Joseph W. Gross, trustee, and later assigned to Chas. E. Hutchinson, Jauch Bros., A. S. Marquis, Bert Granless, Annie L. Parker, Jennie Fassett, Elizabeth Mills, Carlton E. Flint, C. Daniel Flint and George J. Hanlon, and therefore any appropriation made by these parties under permit No. 1320 issued on Application No. 2296 must necessarily be subject to any rights which the applicant may acquire under its application No. 2270.

The rights of J. D. Granless under application No. 1030, permit 1030, license 537 to divert 2.0 cubic feet per second from the Cosumnes River is however prior to the rights initiated by the applicant and therefore any right which the applicant may acquire will be subject to this prior appropriation.

As to the objections of the protestants that water should not be taken from one watershed into another until such a time as the riparian lands are fully provided for, it may be said that Section 11 of the Water Commission Act clearly defines unappropriated water in the legal sense and this interpretation is closely followed by the Division in determining this point.

The riparian right question is covered in Section 11 by the declaration that waters which have not been used or which are not reasonably needed for useful and beneficial purposes upon riparian lands are subject to appropriation, and that ten consecutive years of non-use upon riparian land

is conclusive presumption that the water is not needed.

Our studies of this matter would indicate that roughly 5/6 of the irrigation development so far accomplished in the State has proceeded under appropriative rights and only 1/6 under claim of riparian rights. The simpler developments which border the stream have already, for the most part, been accomplished and anything like a complete utilization of California's water resources in an agricultural way will involve, in an increasing ratio, the transportation of water to non-riparian lands. We are convinced that refusal to admit of such transportation would stifle future agricultural development. The entire flow of Cosumnes River is now used during the low flow period and this applicant has voluntarily restricted its diversion season to a period of the year during which, in years of normal precipitation, there is an abundant flow and waste into the ocean. There has been no showing by any of these protestants, unless it be by Earl D. Desmond, that the proposed appropriations will in any way injure protestants.

It may be possible that those on the lower reaches of the Cosumnes River who, like Earl D. Desmond, are irrigating their lands by flooding them during the winter season, may have to modify their present methods of irrigation if storage is practiced to any considerable extent on the upper watershed.

Mr. Desmond owns 1871 acres of land which is located on both sides of the Cosumnes River about a mile and a quarter above its junction with the Mokelumne River. His method of irrigating is to allow the flood waters to pass through pipes placed in the levees, regulating the flow by gates, and allowing the water to stand on the land during the winter time, draining it off again in the spring, at which time the land is planted to beans. In this way, the soil is impregnated with water and covered with a fine silt which insures excellent crops without the expense of leveling the land and otherwise

preparing it for irrigation, the building of a diversion dam or the installation of a pumping system.

During the year 1924, Mr. Demmond claims he was forced to resort to pumping on account of the extremely low flow in the river and only 1/3 of his usual crop was obtained.

Evidence presented at the hearing indicated that all the land owners along the river from McCannell's Station where the upper Stockton Road crosses the Cosumnes River to the mouth of the Cosumnes River practice this same method of irrigation.

While this system of irrigation may be practicable and profitable to those who practice it, nevertheless it is a wasteful, uneconomic method which, if protected, would stand in the way of a complete development of the water resources of the State. There has been no showing by this protestant that the appropriations proposed would appreciably affect the level of the floods which pass his property and upon which he depends for irrigation, and even had there been such a showing, we cannot bring ourselves to the conclusion that waters which are useful merely in elevating the flood crest so that water will overflow the river banks and pass out over the lands to be irrigated are "reasonably needed for useful and beneficial purposes", as described in Section 11 of the Water Commission Act. It was admitted by this protestant that there was a vast quantity of water that escaped past his property that might be used by some other appropriator without detriment to him, except insofar as it was useful in elevating the crest of the flood and we must, therefore, find that there is unappropriated water in the Cosumnes River during the winter and spring of normal years despite the use as described above by Edward D. Demmond and others who practice a similar method of irrigation.

The Diamond Ridge Water Company claims the normal flow of the stream by virtue of prior appropriative right and maintains that a sufficient

supply should be set aside for their future use.

Evidence presented at the hearing indicated that the capacity of the ditch at the intake was 400 miner's inches and during the year 1923, when the ditch was operated by the El Dorado Water Corporation, the demand was less than 100 inches. While there are some 12,000 acres susceptible of irrigation in this area, it appears that the present irrigated lands of the Diamond Ridge Water Company aggregate only 624 acres. The Diamond Ridge ditch was constructed in 1864 and at the present time, is in poor condition. The rate of development has therefore been very slow due primarily to the shortage of water during the growing season and although it seems further development cannot proceed without storage, neither the company nor the irrigators are pressing any plans for securing such storage.

On January 12, 1917, the Diamond Ridge Water Company filed applications 863 to 868 inclusive to appropriate from the North Fork of the Cosumnes River, Squaw Hollow Creek, Sly Park Creek, Steelays Fork of the North Fork of the Cosumnes River and Camp Creek. Both direct diversion and diversion by storage was contemplated under the application for domestic and irrigation purposes on a proposed irrigation district in the vicinity of Placerville having an area of about 20,000 acres. Since these applications were not advertised as ordered by the State Water Commission they were replaced by Applications 1285 to 1290 inclusive which were filed May 20, 1919 and were identical with the former group. These latter applications were cancelled in June 23, 1925 on account of the applicants inability to proceed and failure to complete its applications.

At one time, the El Dorado Water Corporation contemplated the purchase of the present Diamond Ridge System and paid \$10,000 on the option. This option was relinquished in 1924 because of the failure of the people in that section to purchase water sufficient to pay for more than half the running expenses of the system. An endeavor was made also to include the Diamond Ridge water users within the boundaries of the El Dorado Irrigation District but opposition was manifested by practically two-thirds of them.

The fact is it appears the Diamond Ridge interests are concerned more over the loss of reservoir sites than the loss of water, if the development proposed by El Dorado Irrigation District proceeds.

Since the protestant, Staten Island Land Company, failed to appear at the hearing and submit evidence in confirmation of their allegation, they have failed to support the burden of proof appropriate to a moving party.

It may be said, however, that during the proposed period of diversion by the applicant there is an abundance of water from other sources passing protestants' points of diversion.

Relative to the salinity question, it may be said that a right to saline protection has been definitely denied to the Town of Antioch as an appropriator, and therefore it is believed that the Division has no choice but to declare the water of the Cosumnes River unappropriated insofar as the control of the salinity question is concerned. Although it is true that the Town of Antioch was an appropriator and the Staten Island Land Company claims riparian rights, it appears that an appropriator in the Delta needs saline protection just as much as the riparian user, and that if the one is not entitled thereto, neither is the other. The protest of the Staten Island Land Co. may therefore be dismissed.

The City of Placerville now obtains its supply from the El Dorado Water Corporation which it in turn obtains in part from Webber Creek and in part by purchase from the Western States Gas and Electric Co.

Testimony presented at the hearing indicated that the present supply is turbid and highly contaminated and the City has been cautioned by the State Board of Health in regard to the use of it for domestic purposes without first submitting it to the process of chlorination.

Instead of making it necessary for the City to install a chlorination plant and a system of filtration which the City is financially unable to

de at the present time, the El Dorado Irrigation District, which will eventually acquire the rights of the El Dorado Water Corporation, intends to serve the City with a municipal supply from Stonebreaker and Diamond Creeks which, being from a higher watershed, will be practically free from contamination and proposes to lease a portion of the present supply obtained from the Western States Gas & Electric Co. to this Power Company for power purposes until such a time as the District may have need of this water for irrigation purposes.

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Certain of the protestants claim that the proposed plan of the applicant to use water for power purposes which has heretofore been used for municipal and agricultural purposes and the substitution thereof of a supply from the Cosumnes River watershed, is in reality a diversion from the Sacramento River watershed for power purposes and deny that the Division of Water Rights has authority to approve an application for irrigation and municipal purposes in the face of definite knowledge that such water will be used for a period of years solely for the development of power.

In this view, the Division cannot concur. As long as the water applied for is to be put to the beneficial use for which it is intended, this office has no authority to deny an application, either wholly or in part on the grounds that a portion of the water asked for is to be used to take the place of water obtained under a prior right. The change in use of the water obtained under a right initiated prior to the passage of the Water Commission Act does not come within the jurisdiction of this office, but even supposing the applicant wished to change the use under his application before this office, either before or after the approval thereof, he may do so in accordance with the terms and conditions of Section 39 of the Water Commission Act.

According to the report of the District's engineer, a maximum of not less than 8000 acre feet will be required for municipal use, in the City of Placerville [p. 7 of Report]. The estimated mean yield of Stonebreaker and

Diamond Creeks as given by the same report is 3580 acre feet per annum.

The amount of water sought for municipal purposes, namely 4000 acre feet per annum, appears to be in excess of the City's needs and is not in accordance with the engineer's estimate.

At the present time, the use of water by the City amounts to about 1498 acre feet per annum (see page 70 Engineer's Report). The population as given in the application is about 2000. This would result in an average use of 668 gallons per day per capita. The city engineer of Placerville estimates the average use as 500 gallons per day per capita. This use appears to be excessive and is probably due to the fact that a large portion of the water is used for irrigation purposes.

It would appear reasonable to assume that the use of the City would not exceed the mean flow of Diamond and Stonebreaker Creeks for many years, and if the application were approved for 3580 acre feet per annum which is the mean flow of these creeks, and a conveyance loss of 20% were assumed, the net yield to the City of Placerville would be 2864 acre feet per annum.

This net yield would, if properly regulated, be sufficient to maintain a mean flow of 3.92 second feet or about 2,560,000 gallons per day which at a rate of use of 500 gallons per capita per day, would be sufficient to supply a population of 5120 people.

As the city grows, the per capita consumption would probably decrease and the number of people that could be supplied would correspondingly increase.

It is the opinion of this office therefore that the amount of water applied for from the two sources should not exceed the estimated normal yield of the watersheds which is 3580 acre feet per annum.

⁷⁶⁴ The lands within the boundaries of the El Dorado Irrigation District appear to be well adapted to the growing of deciduous fruits

particularly pears, peaches and plums, and no doubt there will be a tendency to increase the irrigated acreage as soon as the water is made available. There appears to be no doubt that the uses to which the water are to be applied are highly beneficial and without the proposed supply, there would be very little advancement in agricultural development in that locality.

ORDER

Applications Nos. 2146, 2270, 2271 and 4888 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, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said applications Nos. 2146 and 2271 be rejected and cancelled upon the records of this office, and

IT IS FURTHER ORDERED that said application No. 2270 be approved and that a permit be issued thereon subject to the usual terms and conditions and that application No. 4888 be approved for an amount not to exceed 3500 acre feet per annum, and that a permit be issued thereon subject to the usual terms and conditions.

Dated at Sacramento, California, this 30th day of Sept., 1926.

(Edward Lyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

WEM:CG