

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

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In the Matter of Application No. 3853 of Fairplay Mutual Water Company to appropriate water from the Middle Fork of Cosumnes River, Tributary of Cosumnes River in El Dorado County, for Irrigation and Domestic Purposes.

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DECISION NO. 3853 D-131

Decided Nov. 15, 1926

APPEARANCES AT HEARING HELD March 31, 1926:

For Applicant:

Fairplay Mutual Water Company

Henry S. Lyon
Edson Abel

For Protestants:

Emma Rose, et al
A. N. Bullock, et al
Staten Island Land Company

H. S. McCurdy
J. W. Cross
No appearance

EXAMINER: Everett N. Bryan, Deputy Chief of the Division of Water Rights.

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O P I N I O N

This application, filed February 15, 1924, proposes an appropriation of 17.1 cubic feet per second of direct diversion from the Middle Fork of the Cosumnes River for irrigation and domestic purposes on 1369 acres of land in Townships 8 and 9 North, Ranges 11, 12 and 13 East, M.D.B. & M. The period of diversion is from May 1st to November 1st of each year. The point of diversion is within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 12, T 8 N, R 14 E, M.D.B. & M.

The application was protested by the following:

<u>Protestant</u>	<u>Date of Filing Protest</u>
E. S. McCurdy for Emma Rose et al	7- 9-24
A. H. Bullock	7-17-24
Geo. J. Hanlon	7-17-24
Stanley Flint	7-17-24
A. H. Reid	7-17-24
J. D. Granley	7-17-24
Henry Sneider	7-17-24
A. S. Marquis	7-17-24
Elizabeth Mills	7-17-24
W. C. Sheldon	7-17-24
C. E. Hutchinsen	7-17-24
E. E. Hutchinsen	7-17-24
Staten Island Land Company	8-13-25

The application was 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 was set for a public hearing at Room 707 Forum Building, Sacramento, at 10:00 o'clock a.m. on March 31, 1926. Of this hearing applicant and protestants were duly notified.

E. S. McCurdy, as agent for Emma Rose, Anna G. Lane and the Hebart Estate Company, claims continuous use of water from the Middle Fork of the Cosumnes River, through the Enterprise ditch since 1865, the intake of said ditch being about 24 miles below the applicant's proposed point of diversion and alleges in effect that after July 15th of an average year of runoff there could be no water diverted by the applicant without depriving his constituents of the amount of water which the applicant would divert because in such average years all of the water of the stream up to the capacity (25 second feet) of their ditch is diverted into said ditch about July 15th; that the users of water from the protestants' ditch use such water continuously throughout the entire year; that the seepage loss in the applicant's ditch would be much greater than that in the protestants' ditch and that the number of possible

users from the protestants' ditch far exceeds the number of possible users of such amount of the applicant's proposed diversion as might reach them during the six months of each year when the ditch losses are the greatest.

Protestants A. N. Bullock, Geo. J. Haulen, Stanley Flint, A.M. Reid, J. D. Granless, Henry Snieder, A. S. Marquis, Elizabeth Mills, W. G. Sheldon, C. E. Hutchinson and E. E. Hutchinson claim rights based upon usage of water and riparian ownership and allege in effect that the proposed diversion of the applicant would reduce the amount of available flow of the Cosumnes River, thereby leaving less water available for use upon the lands to which they hold record title.

Protestant William K. Lindsay claims continuous use of water by himself and his predecessors in interest for the last seventy years and alleges in effect that during the dry season of 1923 he pumped until September 1st and that during the year 1924 owing to the shortage of water he was unable to pump since about June 1st; that he is only one of a number representing about 8,000 acres who pump from the Cosumnes River; that his point of diversion is at the lower or southeast corner of Lot 8 of the Sheldon Grant about 4 miles below the Slough House bridge on the Cosumnes River and that he irrigates 150 acres by means of a 15 inch centrifugal pump having a capacity of about 6,000 gallons per minute.

Protestant Staten Island Land Company claims vested rights to the waters of the Mokelumne River to which the Cosumnes River is tributary through use and riparian ownership and alleges in effect that the proposed appropriation would so reduce the natural flow of the Mokelumne River, particularly during dry seasons of the year and during all seasons of dry years as to cause the water of said river at the points of diversion of the protestant to become polluted with salt water; that the flow would be insufficient to

permit the irrigation of its lands or the use for domestic purposes; that the seepage from both forks of the Mokelumne River into and under the lands of the protestant would be greatly diminished thereby lessening the value of the land; that the flow past its points of diversion would be so diminished that it would have to abandon siphoning the water and resort to pumping; that the appropriation would similarly injure a large number of persons and corporations who have vested rights on the Mokelumne River and that therefore the approval of the application would not best conserve the public interest.

At the hearing it was agreed that the transcripts of the hearing before the Railroad Commission of the State of California, dated November 21, 1917, and November 6, 1919, "In the Matter of the Application of Emma H. Rose, Anna G. Lane and Hobart Estate Company, a corporation, for leave to discontinue operation of the Douglas ditch in Eldorado County, California" at which the Fairplay Water Users Association appeared as complainant and Emma Rose, Anna G. Lane and Hobart Estate Company, a corporation, appeared as defendants, be considered as evidence in the matter before the Division of Water Rights.

From information obtained from the various hearings the facts in the case appear as follows:

In 1853 the Cedarville and Indianville Water Company, a company organized for the purpose of selling water for agricultural, mining and mechanical purposes constructed what is commonly known as the "Douglas Ditch" which the applicant now intends to reconstruct and utilize as its main irrigation canal. The intake of this ditch is located on the Middle Fork of the Cosumnes River at a point in the NW $\frac{1}{4}$ of Section 12, T 8 N, R 14 E, M.D.B. & M. about 30 miles east of Fairplay.

In October 1857 this ditch was conveyed to one Joseph Douglas who in turn transferred it to the protestants Emma Rose et al who operated it

primarily for mining purposes, but as mining operations decreased and agricultural activities increased, water was sold for irrigation purposes, the ditch owners thereby becoming a public service utility. Such water as was not used through the Douglas Ditch was turned into the South Fork of the Cosumnes River, picked up again by the Tyler Ditch and conveyed to the South Fork of the South Fork of the Cosumnes River where it was again rediverted by the Simpson ditch thereby augmenting the supply for domestic and mining purposes in the vicinity of Plymouth besides serving a few irrigators en-route.

In 1911 there was a cessation of mining operations and the water was used in a desultory manner for irrigation purposes, practically no income being received from such use.

In 1916 a few farmers in the vicinity of Fairplay took over the operation of the ditch during the irrigation season but there were apparently only 6 acres of land irrigated that year. Since 1917 the Douglas Ditch has been abandoned.

Emma H. Rose, et al, the owners of the Douglas Ditch and protestants against Application 3853 then applied to the State Railroad Commission for permission to abandon the service, claiming that only surplus water had been served to certain individuals as an accommodation and that due to the excessive seepage losses in the ditch and the high cost of maintenance the ditch was operated at a loss.

Two hearings were held before the Railroad Commission and as a result of the final hearing Emma H. Rose, et al, were allowed to discontinue the operation of the Douglas Ditch.

The farmers in the vicinity of Fairplay then formed a mutual association under the name of the Fairplay Water Users Association and on July 8, 1917, filed Application Number 1365 with the State Water Commission which was practically identical with Application Number 3853. Application Number 1365

was cancelled by this office on October 22, 1923, on account of the failure of the applicant to secure right of access to the stream at the proposed point of diversion.

On February 15, 1924, Application Number 3853 was filed by Fairplay Mutual Water Company, a corporation which was virtually a reorganization of the Fairplay Water Users Association.

A condemnation suit was initiated by the applicant to condemn a right of way for the ditch but it is now proceeding under the assumption that it was incumbent upon the legal title holders of the Douglas Ditch to permit the persons beneficially interested to continue the operation of the property in the public service to which it was dedicated and has signified its intention to take the appropriate legal steps if necessary to clarify its rights to the Douglas Ditch insisting that it had an absolute right to the use of the ditch and expected to proceed with the work necessary to rehabilitate the ditch immediately upon the granting of the permit.

The water heretofore diverted through the Douglas Ditch now passes down the Middle Fork of the Cosumnes River to the intake of the Enterprise Ditch which is owned and controlled by the protestants Emma Rose, et al, where it has been used to supplement the supply to Plymouth and vicinity since 1916. The use of the water through the Enterprise Ditch is much more economical than through the Douglas Ditch as the seepage losses in the Enterprise Ditch are much less than those through the Douglas Ditch, it being but 18 to 19 miles in length and through more impervious material. The right to divert water from the Middle Fork of the Cosumnes River through the Enterprise ditch, to the extent of the capacity of the ditch appears to be well established. Just what the capacity of the ditch actually is is somewhat in question. A measurement made by an engineer of this office in September 1921 indicated that the capacity was about 16 second feet although the pro-

testants claim a capacity of about 25 second feet.

From data submitted by the protestants Emma Rose et al on November 8, 1921, the mean date during the years 1916 to 1921 inclusive at which all the water of the Middle Fork of the Cosumnes River was diverted into the Enterprise Ditch was July 26th. As the period was one of rather low rainfall it is probable that the average over a longer period of time would be about August 1st and so far as these protestants are concerned it would appear that water could be diverted up to this date without interfering with these rights.

No data were presented either at the hearing or in the protests filed against the application by which the extent of the right of the lower users in the river could be definitely determined.

At the hearing in applications Nos. 2270 and 4888 of the El Dorado Irrigation District, testimony was presented which indicated that the diversion capacity approximated 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 means of constructed work and the available water supply. Irrigated areas on the upper watershed and those irrigated from wells are included in this figure but the major portion of these lands were undoubtedly those irrigated or to be irrigated from the Cosumnes River below the Michigan Bar Gaging Station of the United States Geological Survey.

In ordinary irrigation practices, diversion works and particularly pumps which compose the principal means of diversion from the Cosumnes are not operated continuously to capacity.

Undoubtedly there has been some increase in the irrigated area in the lower Cosumnes River Basin since 1919 and in the absence of a

more definite presentation of the facts by the interested parties it is concluded that a continuous flow of 100 to 125 cubic feet per second or 60 to 65% of the present diversion capacity should amply provide for the present uses on 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 18 seasons 1909 to 1926 is shown by the following table:

Date	Flow (C.F.S.)	Date	Flow (C.F.S.)	Date	Flow (C.F.S.)
June 1	465	June 11	329	June 21	192
2	454	12	312	22	181
3	445	13	296	23	162
4	431	14	278	24	155
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	330	20	209	30	107

During this eighteen year period the flow in the Cosumnes River on the 30th day of June varied from a minimum of one second foot in 1924 to a maximum of 340 second feet in 1911.

From the above table it would appear that in a year of normal runoff diversions could be made by the applicant up to and including June 30th without infringing upon the right of the lower users.

Relative to the protest of the Staten Island Land Company, it may be said that the proposed diversion of the applicant would have little if any effect upon the quantity of water passing Staten Island as during the irrigation season there is practically no water from the Middle Fork of the Cosumnes River which would find its way to contribute to the source of supply of the protestant. Records of stream flow clearly show that during the months of May and June there has been an excess of water available to Staten Island for its irrigation needs from the sources which also

supply the Delta channels and therefore the water from the Middle Fork of the Cosumnes is not normally needed at this time for irrigation purposes.

We have heretofore fully set forth in Decision 1452 etc. D. 100 our position relative to the claim of the Sacramento-San Joaquin Delta land owners that appropriations from Sacramento and San Joaquin Rivers and their tributaries are an infringement of other rights because of the increased salinity which results therefrom in the Delta River Channels. We are convinced that in the case of Cosumnes River as in the case of Mokelumne River described in the above opinion "relatively a small amount of the total available supply which is used for irrigation is required for saline protection and there is at least over and beyond that necessary for saline control, if properly handled, a vast quantity of water here available".

We are not fully persuaded that the project proposed by these applicants is a feasible one without storage. The season of diversion will of necessity be very short if prior rights upon the stream are respected and the transmission loss will apparently, judging from past experience, be very great. It appears, however, that the share holders of the Mutual Water Company applicant propose to do the construction work themselves and no plan of public financing is involved. The use proposed is a beneficial one and we believe the applicant is now fully advised as to the period during which a water supply from Cosumnes River may be expected under the priority of this application. There appears, therefore, no reason why Application No. 3853 should not be approved to allow appropriations thereunder when there is unappropriated water available which in normal years under this application is from about May 1st to about June 30th.

ORDER

Application Number 3853 for a permit 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 Application Number 3853 of the Fairplay Mutual Water Company be approved subject to the usual terms and conditions and subject to the following special terms and conditions, to-wit:

"The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed seventeen and one tenth (17.1) cubic feet per second from about May 1st to about November 1st of each season when there is unappropriated water available at the proposed point of diversion, the season of unappropriated water being in years of normal flow from about December 1st to about June 30th."

Dated at Sacramento, California, this day of

1926.

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

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