

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

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In the matter of the Petition of the El Dorado Irrigation District
to change the Points of Diversion and Place of Storage under
Application 2270, Permit 2631 to appropriate from North
Fork Cosumnes River, Camp Creek and Sly Park Creek,
Tributaries of Cosumnes River in El Dorado County
for Irrigation and Domestic Purposes.

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DECISION A. 2270 D - 283

Decided *March 31, 1931*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, FEBRUARY 24, 1931

For Petitioner

El Dorado Irrigation District

Thomas Maul
F. N. Hosling

For Protestant

C. E. Hutchison, et al.

Joseph W. Cross

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

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O P I N I O N

On September 30, 1926, Application 2270 of the El Dorado Irriga-
tion District was approved by the issuance of Permit 2631 allowing the
District to appropriate as follows:

(1) From North Fork Cosumnes River

50 c.f.s. to be diverted from April 15th to June 15th at a point within SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T 9 N, R 14 E, M.D.M.

14,000 A.F. to be diverted from November 15th to June 15th of which amount 6,000 A.F. were to be diverted at a point within SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T 9 N, R 14 E, M.D.M. to storage in Hazel Valley Reservoir at a maximum rate of 70 c.f.s. and 8,000 A.F. were to be diverted at a point within SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T 9 N, R 14 E, M.D.B. & M. to storage in Capps Crossing Reservoir and rediverted from the North Fork Cosumnes River at a point within SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T 9 N, R 14 E, M.D.M.

(2) From Camp Creek

70 c.f.s. to be diverted from April 15th to June 15th at a point within NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T 10 N, R 13 E, M.D.M.

15000 A.F. to be diverted from November 15th to June 15th of which amount 8,000 A.F. were to be diverted at a point within SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T 10 N, R 14 E, M.D.M. to storage in Granite Basin Reservoir and 7,000 A.F. were to be diverted at a point within NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T 10 N, R 13 E, M.D.M. to storage in Hazel Valley Reservoir at a maximum rate of 95 c.f.s.

(3) From Sly Park Creek

30 c.f.s. to be diverted from April 15th to June 15th at a point within SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T 10 N, R 13 E, M.D.M.

7,000 A.F. to be diverted from November 15th to June 1st at a point within SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T 10 N, R 13 E, M.D.M. to storage in Hazel Valley Reservoir.

On December 30, 1926, the El Dorado Irrigation District filed a petition with the Division seeking permission to make the following changes:

- (1) To change the location of the Hazel Valley Reservoir dam to a site about one mile downstream, at a point within NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T 10 N, R 13 E, M.D.M.
- (2) To transfer the place of storage from Granite Basin Reservoir to Hazel Valley Reservoir site.
- (3) To change the location of the intake of Camp Creek canal some 3 miles downstream to a point within NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T 10 N, R 13 E, M.D.M.

The changes did not contemplate any increase in the amounts of water to be diverted.

The petition was protested by C. E. Hutchison and 23 others.

PROTESTS

The petition to change the points of diversion under Application 2270 was protested by Joseph W. Gross on behalf of the following:

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|---------------------|---------------------------|
| (1) C. E. Hutchison | (13) F. W. Grimshaw |
| (2) A. S. Marquis | (14) W. S. Grimshaw |
| (3) Jauch Bros. | (15) W. F. Pierson |
| (4) Flint Bros. | (16) Arch Riley |
| (5) J. D. Granlees | (17) Chas. Colquhoun |
| (6) Geo. J. Hanlon | (18) Orelli Bros. |
| (7) Elizabeth Mills | (19) E. A. Palm |
| (8) Earl Desmond | (20) Paul E. Peterson |
| (9) H. C. Muddox | (21) Avalino Signorotti |
| (10) H. D. Owens | (22) Bert Granlees |
| (11) A. D. Murphy | (23) Wm. E. Lindsay, M.D. |
| (12) W. C. Sheldon | (24) Helen L. Hayes |

The protestants' properties are located on the Cosumnes River in the vicinity of Bridge House, Slough House and Elk Grove in Sacramento County. Right to the use of water from the Cosumnes River is claimed by virtue of riparian ownership. Although not set forth in the protest, certain of these protestants have filings before this office as follows:

Under Application 1858, Permit 1050, License 537 J. D. Granlees has acquired the right to appropriate 2.0 cubic feet per second from about March 15th to about September 1st of each season from the Cosumnes River for irrigation purposes.

Under Application 2296, Permit 1520 Charles E. Hutchison, Jauch Bros., A. S. Marquis, Bert Granlees, Annie L. Parker, Jennie Fassett, Elizabeth Mills, Carlton E. Flint, E. Daniel Flint and George J. Hanlon have the privilege of diverting 16 cubic feet per second from about March 1st to about July 10th of each season from the Cosumnes River for irrigation purposes.

The points of diversion under both projects are located below Michigan Bar within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, T 8 N, R 8 E, M.D.B. & M.

The protestants allege that the proposed changes

- (1) Constitute the initiation of new rights.
- (2) Constitute a change in source.
- (3) Constitute a vital change in the original project and application.
- (4) Will operate to the injury of a legal user of water.
- (5) Will operate to the injury of an appropriator.
- (6) Will not best conserve the public interests.
- (7) The application, permit, and petition are inconsistent, indefinite, ambiguous, contradictory and do not now constitute a statement of fact and therefore cannot constitute the basis of additional permit or granting of petition.

HEARING SET IN ACCORDANCE WITH SECTION 16 OF THE
WATER COMMISSION ACT

The petition was duly completed and advertised in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 16 of the Water Commission Act on February 24, 1931, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing, petitioner and protestants were duly notified.

CHANGES REQUESTED SUBSEQUENTLY TO FILING OF PETITION

As the petition filed December 30, 1926, did not state the rate of diversion of the waters of Camp Creek to storage in the Hazel Valley Reservoir the District informed this office under date of February 3, 1931, that the maximum rate of such diversion would be 120 cubic feet per second. The capacity of the Camp Creek conduit according to information presented at the hearing is to be 200 cubic feet per second. Under date of February 3, 1931, the District advised this office that it had abandoned the proposed Capps Crossing Reservoir and the 8,000 acre feet of storage heretofore contemplated to be stored therein. At the hearing held February 24,

1931, the District definitely abandoned the 50 second feet of direct diversion from the North Fork of the Cosumnes River (Transcript of Hearing, page 44).

PROVISIONS UNDER THE LAW FOR CHANGES PROPOSED

Section 16 of the Water Commission Act expressly provides that changes in points of diversion may be applied for and allowed provided that such changes will not operate to the injury of any legal user of water.

Regulation 13 of the Rules and Regulations of this office compiled in accordance with the Water Commission Act provides that before petition for change in points of diversion may be granted, the petitioner must first establish to the satisfaction of the Division of Water Resources that the allowance of the proposed change will neither in effect constitute the initiation of a new right nor operate to the injury of any other appropriator or legal user of water and that petitions contemplating a change in source or any vital change can not be considered.

THE CHANGES PROPOSED NEITHER CONSTITUTE THE INITIATION OF A NEW RIGHT NOR CONSTITUTE A CHANGE IN SOURCE

Application 2270 as approved by the issuance of Permit 2631 provided for the storage of 8,000 acre feet per annum in the proposed Granite Basin Reservoir on Camp Creek. As the Granite Basin Reservoir was to have been constructed on the stream from which the water was to have been diverted to storage, the District was not required to specify the maximum rate of diversion to storage. As it is now proposed to convey this 8,000 acre feet by conduit to storage in the Hazel Valley Reservoir on Sly Park Creek, the District has, in compliance with the Rules and Regulations of this office, specified a certain maximum rate of diversion to storage, this rate not to exceed 120 cubic feet per second. Obviously this limitation

of the rate of diversion to storage will have a tendency to diminish rather than to increase the amount of water diverted to storage from Camp Creek as the season of diversion remains unchanged and the District may only divert such water as would have been available for storage at the old point of diversion.

In order to divert these waters to storage in Hazel Valley Reservoir at the rate of 120 cubic feet per second and at the same time to re-divert the waters from the North Fork of the Cosumnes to storage in the Hazel Valley Reservoir at a maximum rate of 70 cubic feet per second, the District proposes to construct the Camp Creek diversion tunnel to a capacity of 200 second feet which is some 50 second feet in excess of the capacity of the diversion canal originally proposed. Such increased capacity will not however entitle the District to divert any waters either by direct diversion or diversion by storage in excess of the amount to which it is already entitled to divert. The District may however during the period from about April 15th to about June 15th divert simultaneously waters by storage and waters by direct diversion as the season of diversion to storage overlaps the season of direct diversion during this period.

In the event that the petition is approved, the intake of the Camp Creek tunnel will be below the junction of Stonebreaker and Diamond Creek whereas now these streams enter Camp Creek below the intake of the Camp Creek conduit. The increase in area of watershed tributary to the proposed intake is obvious and while it is true that the runoff from a watershed of increased area would be available to the District and consequently the District would be in a position physically to divert water which otherwise would not have been available, yet the petition expressly

states that the changes do not contemplate any increase in the amount of water to be diverted and the burden will be upon the District to divert only such waters at the new points of diversion as would have been available with proper development at the original points of diversion. That the District is aware of its responsibility in the matter is evidenced by the fact that at the hearing, Mr. Maul, attorney for the District stipulated that the flow in Stonebreaker and Diamond Creeks should always be permitted to flow past the intake of Camp Creek tunnel and if necessary measuring devices would be installed to insure this condition. (Page 82 of Transcript)

The possibility of an increase in daily diversions brought about by the changes in points of diversion was brought up at the hearing. In this connection the District's attorney stipulated as follows:

"We will not take any more water on any particular day than we could have been permitted to take under the old permit having reference to the storage at Granite Basin as well as the diversion tunnel because the water that would have been stored at Granite Basin will be allowed to go on down Camp Creek to our point of intake and then diverted in addition to our other right."

It appears entirely clear that the District intends to comply with the law insofar as it relates to the diversions which are to be made in accordance with the proposed changes and there is no ground for assumption that the District intends to do otherwise. We may therefore conclude that the changes if approved will neither constitute the initiation of a new right nor a change in source.

THE CHANGES PROPOSED DO NOT CONSTITUTE A VITAL CHANGE
IN THE ORIGINAL PROJECT AND APPLICATION

On September 30, 1926, Application 2270 was approved allowing the District to appropriate from three branches of the Cosumnes River,

namely, North Fork of Cosumnes River, Camp Creek and Sly Park Creek, as set forth above. The District now proposes to appropriate from these same three sources but from Camp Creek and Sly Park Creek it is proposed to divert at lower elevations and also to store the 8,000 acre feet from Camp Creek in the proposed Hazel Valley Reservoir instead of in Granite Basin Reservoir, a privilege which the District would have had without first seeking permission from this office provided that a change in point of diversion was not involved. The abandonment of the storage of 8,000 acre feet in Capps Crossing Reservoir and the abandonment of the fifty second feet of direct diversion from the North Fork of the Cosumnes River has no bearing whatever upon the issues before this office. While no increase in the amount of water may be allowed over and above the amount permitted, an appropriator may at will, abandon all or a portion of his project without first seeking permission from this office. Certainly such abandonment will inure to the benefit of, rather than to the injury of the lower users.

The contention of the protestants that the total direct diversion from the North Fork of Cosumnes River and Camp Creek was limited to 120 cubic feet per second in Permit 2631 is correct. There was some confusion of expression in this connection at the hearing but Application 2270, Permit 2631 is clear on the point that the District could appropriate by direct diversion an amount not to exceed 50 second feet from North Fork of Cosumnes River, 70 second feet from Camp Creek and 30 second feet from Sly Park Creek. Since the District has abandoned the 50 second feet of direct diversion from the North Fork of Cosumnes River as stated above the total amount of direct diversion which the District may appropriate is 100 second feet of which amount 70 second feet may be diverted from Camp Creek and 30 second feet from Sly Park Creek.

THE PROPOSED CHANGES WILL NOT OPERATE TO THE
INJURY OF AN APPROPRIATOR OR ANY OTHER LEGAL USER OF WATER

This fact is obvious, from the discussion above. Unlawful diversion on the part of the District is not contemplated. The fact that the rate of diversion to storage of 8,000 acre feet from Camp Creek will be limited should the petition be approved whereas formerly it was unlimited will undoubtedly inure to the benefit of the protestants. Not only this— but the abandonment of 8,000 acre feet of storage and 50 second feet of direct diversion from the North Fork of the Cosumnes will provide a greater amount of available unappropriated water than heretofore.

CLAIM THAT THE PROPOSED CHANGES WILL NOT
BEST CONSERVE THE PUBLIC INTEREST

The Water Commission Act does empower the Division to speculate upon what might or might not prove to be of general public welfare and then act according to its best estimate as to what the future development of the State may prove to be in the public interest. Outside of a manifest and indisputable certainty as to what is against public welfare, we would hesitate to deny an application or petition as not best conserving the public interest.

In this instance Application 2270 has already been approved by the issuance of a permit and we cannot see how conditions will be changed by the allowance of the proposed changes, except that more water will be available for future appropriators.

The protestants claim that the original permit and the proposed changes do not truly represent the ultimate project proposed by the District, that the District is not proceeding in good faith and that the approval of

the petition would have the effect of putting into cold storage water which could be beneficially appropriated by others. In view of the fact that the Hazel Valley Reservoir site has been acquired and that about \$150,000 has been expended on the project, \$77,000 of which has been spent since December 20, 1928, (see pages 76 and 77 of transcript) it would appear that the District is proceeding in good faith. Whether or not the District is to proceed with the project as proposed by the permit and petition is a matter for future consideration and is not involved at this time. A definite request has been made for certain changes to be made and the hearing thereon was held under the provisions of Section 16 of the Water Commission Act to determine whether or not the changes proposed would operate to the injury of the protestants. Should the petition be approved and the District not proceed with diligence with the project, Application 2270, Permit 2631 will then be subject to revocation under Section 18 of the Water Commission Act.

That the application, permit and petition were inconsistent, indefinite, ambiguous, contradictory and did not constitute a statement of fact was not shown at the hearing. On the contrary the facts are clearly set forth in the petition and the subsequent requests for abandonment and there can be no doubt as to the interpretation thereof.

CONCLUSION

It is the opinion of this office that the changes proposed will neither operate to the injury of any legal user of water, constitute the initiation of a new right nor involve a vital change in the project as approved by the Division and therefore the changes proposed and applied for should be approved and the permit amended accordingly.

O R D E R

Permit 2631 having heretofore issued in approval of Application 2270, a petition having been filed on December 30, 1928, for the purpose of changing in certain respects the project as described thereunder, protests against the approval of said petition having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that the aforesaid petition for change in points of diversion and places of storage under Application 2270, Permit 2631 be granted, and

IT IS FURTHER ORDERED that all reference to Capps Crossing Reservoir and storage of 8,000 acre feet therein be stricken from said application and permit, and

IT IS FURTHER ORDERED that all reference to the direct diversion of 50 cubic feet per second from North Fork of Cosumnes River be stricken from said application and permit.

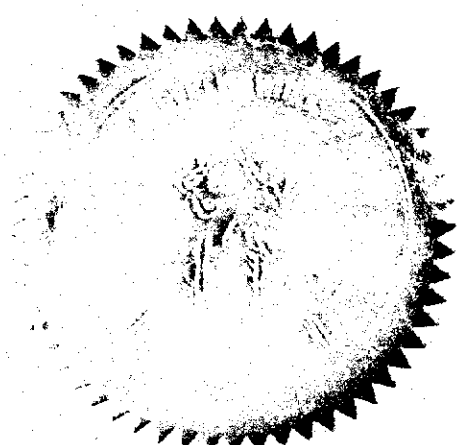
WITNESS my hand and the seal of the Department of Public Works of the State of California, this 31 day of *March*, 1931.

EDWARD HYATT, State Engineer

BY

Harold Conkling
Deputy

WES:MP



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