

Assisting the Examiners - Gavin Craig, Senior Attorney, William R. Gianelli, Supervising Hydraulic Engineer, and Kenneth L. Woodward, Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works.

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DECISION

Substance of the Applications

Application 13707 initiates an appropriation of 100 cubic feet per second, year-round, also 41,000 acre-feet per annum without restriction as to time of collection, from Camp Creek and/or from Sly Park Creek, in El Dorado County. Diversion is to be effected from Camp Creek by means of a concrete dam 12 feet high by 74 feet long, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T10N, R13E, MDB&M, and from Sly Park Creek by means of an earth dam 178 feet high by approximately 1,500 feet long, located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 of the same township. The water is wanted for irrigation and domestic purposes. The project includes a reservoir designated "Sly Park Reservoir" which will flood some 650 acres and hold some 41,000 acre-feet. It also includes the so-called "Camp Creek to Sly Park Reservoir Diversion Tunnel", concrete lined, 7 feet in diameter by 2,800 feet long, and the so-called "Sly Park - Camino Conduit", some 9.3 miles long and made up of 28,800 lineal feet of lined and 800 lineal feet of unlined canal, 8,650 lineal feet of bench flume, a 400-foot concrete chute, 108 lineal feet of metal flume, 3,925 lineal feet of

6.5-foot diameter tunnels and 6,315 lineal feet of 30-inch or larger siphons. The estimated capacity of the Camp Creek diversion tunnel is 500 cubic feet per second, of the Sly Park-Camino Conduit 100 cubic feet per second. The water is to be used within El Dorado Irrigation District and, pending full development of that area, it is to be used temporarily "within service areas of water distribution organizations which enter into valid contracts for the purchase of Central Valley Project water". Irrigation is to extend from about March 1 to about November 1. According to a supplement to the application the described place of use contains an estimated irrigable area of 33,000 acres, portions of which are or will be supplied under rights already existing. Crops to be irrigated include orchards and vineyards, garden produce, cereals, hay and forage.

Application 13708 initiates an appropriation of 10 cubic feet per second, year-round, also 5,000 acre-feet per annum, without restriction as to time of collection, from the same sources, at the same points of diversion and by means of the same facilities as stated in Application 13707. The water is to be used in the same service area as described in Application 13707, but for municipal and industrial purposes.

Protests

The applications are both protested by Southside Mutual Water Company, by Cosumnes Irrigation Association and by one J. D. Granlees. The applications were also protested by California State Fish and Game Commission which however withdrew its protest in view

of an agreement reached with the applicant as to the bypassing of certain flows for fish conservation.

Southside Mutual Water Company describes its points of diversion as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T10N, R13E, MDB&M. Extracts from its protest are as follows:

"Corporation represents residents of the Southside of the American-Cosumnes watershed divide. The Reclamation Bureau desires to take all the water to the north side of the divide This move would deprive (our) people of all chance of developing a future water supply"

"... the residents ... are riparian to ... the water sought to be diverted."

"The people ... have made little use of the water up to the present time However the ... map ... shows as much (irrigable) land ... in this area as within the ... District to which this water is to be diverted."

"At present the water shortage (at) ... Diamond Springs, El Dorado and Shingle Springs is critical."

"This protest may be disregarded and dismissed if the Bureau ... will apply a fair proportion of the impounded water to the area south of the ... divide and will commit itself to a permanent recognition of the rights of the people represented"

Cosumnes Irrigation Association alleges that the proposed appropriation will diminish the already deficient summer flow and will interfere with its established rights and necessitates continuing expenditures for hydraulic data and litigation. It claims appropriative, riparian and prescriptive rights, states that it diverts 30 cubic feet per second during the irrigation season, states further that it benefits from flood flows which effect replenishment of ground waters. It describes its point of diversion as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T8N, R8E,

MDB&M, states that its protest may be disregarded and dismissed "if and when applicant enters into proper agreement with protestant" adequately protecting protestant's interests.

J. D. Granlee claims appropriative and riparian rights attaching to lands that he owns on North bank of Cosumnes River, states that he has utilized 2 cubic feet per second during the irrigation season of each year since 1922. His protest in other respects is practically identical with the protest by Cosumnes Irrigation Association.

Answers

Significant extracts from applicant's answers to the protests are as follows:

To protest by Southside Mutual Water Company:

"Camp Creek and Sly Park Creek yield each year ... unappropriated water that under present conditions is wasted to the ocean."

" ... the landowners ... do not claim rights ... based upon any appropriation or use. ... the riparian rights claimed ... appertain to a small portion of the land ownerships ... and ... these lands are for the most part situated in unirrigable river canyons."

"The area encompassed by ... Company lies in both the American and Cosumnes River watersheds"

" ... the water proposed to be conserved by the Sly Park Unit ... will be available for the benefit of some land within the boundary of the ... Company."

"The Sly Park Unit constitutes an initial stage of development to provide ... water for an established economy critically in need It will not deprive ... Southside ... of other existing sources of water."

"It is not economically feasible at this time to develop water resources adequate to the needs of the whole Placerville area. ... economically possible developments should proceed at this time with the expectation that further development will be made as conditions justify."

To protest by Cosumnes Irrigation Association and to protest by J. D. Granlees:

"Permits ... would be issued subject to all vested rights."

"Federal Reclamation law recognizes and respects existing water rights and those rights which are in the process of being perfected."

"Operation studies ... indicate that normal operations will not interfere with the water supply required to satisfy the rights of the protestant as well as the other water users taking water from the Cosumnes River"

"The United States is willing to enter into an agreement with the protestant expressly acknowledging the priority of protestant's water rights and agreeing not to take, restrict, impair or interfere with said rights."

Hearing Held in Accordance with the Water Code

Applications 13707 and 13708 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Monday, October 10, 1955 at 10:00 o'clock a.m. in the Senate Hearing Chamber, Room 414 State Capitol Building, Sacramento, California. Of the hearing the applicant and the protestants were duly notified. The hearing extended through later sessions convened on October 11, October 13 and November 17, 1955 in the same Senate Hearing Chamber. It was completed on the date last named.

Hearing Testimony

Relevant testimony by witnesses at the hearing of October 10, 1955 and extensions thereof was in substance as follows:

Leland K. Hill, an engineer of the United States Bureau of Reclamation, testified (pages 15 to 133 of Volume I of transcript) in explanation of the applicant's project and hearing exhibits. He testified further to the effect that deliveries of project water to El Dorado Irrigation District began in June 1955, that the District took over project maintenance the following month, that by agreement, for maintenance of fish life, one cubic foot per second or the natural flow, whichever is least, is to be bypassed at Sly Park Dam and two cubic feet per second or the natural flow, whichever is least, are to be bypassed at Camp Creek Diversion Dam, that El Dorado Irrigation District under prior rights may divert 12 cubic feet per second or the natural flow, whichever is least, at Crawford diversion weir, that in his opinion there is enough unappropriated water in Sly Park and Camp Creeks for full development under the applications at issue without injury to downstream users.

James Sweeney testified (pages 133 to 136 of Volume I of transcript) to the effect that he is the County Recorder of El Dorado County, that he owns 1,307 acres of land in El Dorado County, that about 500 acres of that holding are within the boundary of El Dorado Irrigation District, that he irrigates 25 acres of pears and 25 acres of pasture and would irrigate more if the District would supply more water.

Harry Jasperson testified (pages 138 to 141 of Volume I of transcript) to the effect that he owns 588 acres of which about one-half lies within El Dorado Irrigation District, that he irrigates about 45 acres and will irrigate more when and if water is obtainable from the District.

Harry J. Dunlop testified (pages 141 to 186 of Volume I of transcript) to the effect that he is Secretary-Manager of El Dorado Irrigation District, that before the Sly Park project came into operation El Dorado Irrigation District obtained water from Pacific Gas and Electric Company to the extent of about 11,500 acre-feet per annum, that it also obtains 1,400 to 1,600 acre-feet per annum from Webber and Hangtown Creeks, that El Dorado Irrigation District purchased Diamond Ridge Water Company in 1938 thereby securing an additional supply of some 1,700 acre-feet per annum, that more water might be obtained from Pacific Gas and Electric Company but at a price which the District considers excessive. He testified further to the effect that losses in amounts diverted through Diamond Ridge system are about 50%, that improvements may be expected to materially reduce such losses, that total supply from all available sources was estimated to be 13,191 acre-feet in 1953 and 14,548 acre-feet in 1954, that some 5,600 acres within the District are irrigated, that Sly Park water became available in 1955 and some 1,900 acre-feet from that source were delivered, that even with the Sly Park supply the District will be able to serve only about 9,000 acres out of the approximately 17,000 acres of irrigable land within the District. He testified further to the effect that Sly Park water is more expensive than water supplied by Pacific Gas and Electric Company.

Roy Marks testified (pages 186 to 190 of Volume I of transcript) to the effect that he is president of El Dorado Irrigation District, that he has held that office for the last eight years, that demand for water to irrigate district lands consistently exceeds supply, that he could not until 1955 himself obtain water for 110 acres that he owns personally within the district and has wanted for many years to irrigate.

Stephen G. Sardon testified (pages 10 to 23 of Volume II of transcript) to the effect that he is a consulting engineer in the field of water rights, hydraulics and sanitation, that the boundaries of Cosumnes Water District and Cosumnes Water Association are substantially coincident, that said boundaries include 1,086.64 acres of which 874.5 acres are irrigated under Licenses 2629 and 537, and 935 acres are regarded as irrigable, that the ditch serving the irrigable area is 31.75 cubic feet per second in capacity, that all lands within Cosumnes Water District are riparian, that there are 2 reservoirs within that district, that one such reservoir is of unknown capacity and the other holds 250 acre-feet, that water is diverted to Cosumnes Water District by Granlees Dam on Cosumnes River.

J. D. Granlees testified (pages 24 to 30 of Volume II of transcript) to the effect that he is President of Cosumnes Irrigation Association, that he has held that office nearly 30 years, that he irrigates about 160 acres, that when flow in the ditch drops to 15 cubic feet per second it becomes necessary to allocate to the individual Association members and to rotate, that there is

usually enough water to mature crops but that in 4 different years crops have been sacrificed. He testified further to the effect that in his opinion the operation of the Sly Park project would interfere with his irrigation supply, that Sly Park dam would prevent the passage of "regular" flow and reduce underflow at points downstream, that high river stages in winter time help summer irrigation by their influence on ground-water levels, that any permit issued to the applicant should contain provisions to insure bypassing enough water to meet irrigation needs within Cosumnes Irrigation District.

George W. Mills testified (pages 30 to 45 of Volume II of transcript) to the effect that he is a tenant farmer within the Cosumnes Water Association and has acted as an informal manager of the water of the Association, regulating diversions from Cosumnes River and allocating water to irrigators, that about 680 acres of Association members' lands were irrigated in 1954 and 595 acres in 1955, that the acreage undertaken to be irrigated depends upon the expected water supply, that the soil of the locality is a firm, sandy loam, 20 to 30 feet deep, underlain by gravel. He testified further to the effect that the lands of the Association require a total of about 20 cubic feet per second throughout the irrigation season, that the latter extends normally from May 15 to October 15, that the texture and depth of the soil necessitate use of large irrigating heads, that Sly Park Dam lessens the water supply available for lands of Association members, that irrigators of the locality are dependent upon surface flow because there is no underground water that might be pumped. As to permit terms, if the applications are

approved, he testified that in his opinion members of the Association are being damaged and water should be released by applicant to offset such damage.

David Augustine testified (pages 45 to 48 of Volume II of transcript) to the effect that he was a tenant farmer for about 22 years on the land that Witness Mills now farms, that he used to regulate the flow in the ditches as Mr. Mills does now, that the capacity of the ditch is about 30 cubic feet per second, that when flow in the ditch falls to about half capacity it is necessary for the water users to take turns in diverting, that the entire flow of the river is diverted during July and August which are the critical months, that any reduction of flow in such months would definitely hurt the irrigators.

Oscar A. Jones testified (pages 48 to 50 of Volume II of transcript) to the effect that he has lived in the Diamond Springs area for about 55 years, that after about 1905, when mining operations ceased, flow in Diamond Ditch was discontinuous, that after an absence of 8 or 9 years he noted that the ditch was dry, that that condition continued until the Irrigation District came into control, that he doesn't think the ditch system was prosperous, that he observed the ditch many times between 1905 and 1930 but cannot recall exactly when.

John C. Forni testified (pages 63 to 67 of Volume II of transcript) to the effect that he has lived in El Dorado for 65 years, that he is Chairman of the Board of the Southside County Water District, that said District was formed May 3, 1954, that he is also Chairman

of the Southside Mutual Water Company, an organization formed mainly to protect water rights of the locality, that the Southside County Water District includes two unincorporated towns, that there is no public water system or source of water supply within that District, that there is a great and acute need for water, that the protest by Southside Mutual Water Company against the applications at issue has been adopted by Southside County Water District. Cole McClure testified (pages 71 to 84 of Volume II of transcript) to the effect that he is an engineering geologist with the State Division of Water Resources and that as such he has conducted geologic and hydrologic studies in various counties and areas of the State including the Cosumnes River area. He testified in explanation of Examiners' Exhibits 22 and 23 with particular reference to percolation from Cosumnes River.

John M. Haley, Supervising Hydraulic Engineer, Division of Water Resources, testified (pages 26 to 40 of Volume III of transcript) in explanation of the California Water Plan.

Myer Samuel, Senior Hydraulic Engineer, Division of Water Resources, testified (pages 40 to 69 of Volume III of transcript) in explanation of plans developed during the course of the American River Investigation, by Division of Water Resources personnel, for the State Water Resources Board, insofar as such plans relate to supplying water to the so-called South Fork Service Area. His testimony included statements to the effect that the South Fork Service Area includes both the El Dorado Irrigation District and the Southside Water District, that in his opinion the most feasible sources of water for the South Fork Service Area lie within the

American River watershed, that the projects based on diversions from such sources will provide a supply in excess of estimated requirements and that in his opinion the operation of Sly Park Reservoir as described by other witnesses will not interfere with the California Water Plan.

Exhibits

Exhibits were introduced at the hearing as follows:

By the Examiners

1. "Report on Water Right Applications 13707 and 13708" - Division of Water Resources, August, 1955.
2. Division records relating to the applications mentioned in Examiners' Exhibit No. 1.
3. State Water Resources Board Bulletin No. 1 - "Water Resources of California" - 1951.
4. State Water Resources Board Bulletin No. 2 (in two volumes) - "Water Utilization and Requirements of California" - June, 1955.
5. State Department of Public Works Bulletin No. 5 - "Flow in California Streams" - 1923.
6. State Department of Public Works, Division of Engineering and Irrigation Bulletin No. 12 - "Summary Report on the Water Resources of California and a Coordinated Plan for Their Development" - 1927.
7. State Water Resources Board Bulletin No. 21 (in two volumes) - "American River Basin Investigation - June, 1955.
8. State Department of Public Works, Division of Water Resources Bulletin No. 23 - "Report of Sacramento-San Joaquin Water Supervisor for the Period 1924-1928" - 1930.
9. State Department of Public Works, Division of Water Resources, Annual Reports of Sacramento-San Joaquin Water Supervision for the years 1929 to date.
10. State Department of Public Works, Division of Water Resources Bulletin No. 25 - "Report to Legislature of 1931 on State Water Plan" - 1930.

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10. State Department of Public Works, Division of Water Resources Bulletin No. 25 - "Report to Legislature of 1931 on State Water Plan" - 1930.

11. State Department of Public Works, Division of Water Resources Bulletin No. 51 - "Irrigation Requirements of California Crops" - 1945.
12. United States Geological Survey Water Supply Papers, Part 11 - Pacific Slope Basins in California.
13. State Department of Public Works, Division of Water Resources - "Report on Applications Made and Filed by the State Department of Finance to Appropriate Waters" - August, 1939.
14. State Department of Public Works, Division of Water Resources - "Supplemental Report on Applications Made and Filed by the Department of Finance to Appropriate Waters" - August, 1941.
15. State Department of Public Works, Division of Water Resources report - "Water Right Applications by State Department of Finance, Assignments Thereof, Reservations for Counties of Origin, and Other Related Matters" - February, 1955.
16. United States Bureau of Reclamation, Region 2 - "Factual Report El Dorado Irrigation District Central Valley Project" - September, 1952.
17. State Department of Public Works, Division of Water Resources report covering a reconnaissance in 1927 of lands riparian to Cosumnes River, their suitability for irrigation and their future irrigation requirements.
18. United States Department of Commerce, Bureau of the Census publication designated Volume III part 3, Census of Agriculture - 1950 - "Irrigation of Agricultural Lands (in) California".
19. United States Geological Survey topographic maps as applicable.
20. State Department of Public Works, Division of Water Resources Bulletin No. 29 - "San Joaquin River Basin" - 1931.
21. State Water Resources Board Bulletin No. 11 - "San Joaquin County Investigation" - June, 1955.
22. United States Geological Survey map - "Geologic and Hydrologic Map of the Mokelumne River, California" - 1938.

23. Photostat of United States Bureau of Reclamation map - "Central Valley Project American River Division Folsom South Unit - California Sacramento County Lines of Equal Elevation of Ground Water, Spring 1953" - January, 1955.

By the United States Bureau of Reclamation

1. Map - Sly Park Unit of Central Valley Project on Cosumnes River System - September 14, 1955.
2. Hydrographs of mean daily flows - Cosumnes River at Michigan Bar for the year 1924 and for the period 1931 through 1954; the hydrographs also showing mean daily combined flows of Sly Park and Camp Creeks originating above Sly Park damsite during the years 1947 through 1954.
3. Tabulation - Summary of Surface Water Supply at Various Locations on Cosumnes River System.
4. Tabulation - Diversions from Cosumnes River between Michigan Bar and Mouth of River.
5. Tabulation - Estimated Diversions from Camp Creek at Crawford Diversion Weir, 1947 through 1954.
6. Contract between the United States and the El Dorado Irrigation District for water service and for operation and maintenance by the District of the Sly Park Unit of the Central Valley Project.
7. Tabulations - Operation Study of Sly Park Reservoir, 1921-22 through 1953-54.
8. Tabulation - Summary of water quantities from operation study of Sly Park Reservoir and quantities passed Crawford diversion weir, period 1921-1954.
9. Tabulation - Flows at Michigan Bar, McConnell and near El Dorado on day combined flows of Camp and Sly Park Creeks at the project works dropped to 15 c.f.s., period 1947-1954.
10. Streamflow Diagram - Relationship of Sly Park Unit Water Supply to Cosumnes River Watershed: Runoff Period 1947-1954.
11. Tabulation - Months when direct diversions were made for Project uses during hydrologic period 1921-54, as presented in operation study of Sly Park Reservoir.

By El Dorado Irrigation District

1. Agreement between Western States Gas and Electric Company and El Dorado Water Company, dated May 31, 1919; also amendment of Paragraph 7 of same agreement, effective March 26, 1924.

By Cosumnes Irrigation Association

1. Map of Cosumnes Water District.
2. Chart - Measurements of Flow at Various Points on Diamond Ditch System - 1950.
3. Map showing soil and gravel depths and bearing notation "Thurman and Wright (Hanlon-Marquis properties)".

By South Side County Water District

1. Boundary Map of South Side County Water District.

1 (revised). General Map of South Side County Water District, depicting original boundary, exclusions and 1955 inclusions.

By State Water Resources Board

1. Resolution of State Water Resource Board relative to the applications for appropriation of water for the Sly Park Project.

2. Excerpt from minutes of regular meeting of the State Water Resources Board on October 7, 1955.

Briefs

Opening briefs were submitted by all of the parties, reply briefs by the applicant and by all of the protestants.

The applicant in its opening brief asserts in effect that it has met all known requirements in tendering its applications for approval, that it is in the public interest that its applications be approved, that it is also in the public interest that Application 5645 be committed to the Sly Park development.

It asserts further that since its applications are limited to unappropriated water its proposed operations cannot interfere with the exercise of downstream rights. It asserts that its intention to desist from diverting to storage or otherwise when the combined flow of Camp and Sly Park Creeks falls below 15 cubic feet per second guarantees that sufficient flow will reach Michigan Bar to satisfy protestants' requirements, and that such flow as may be lost from Cosumnes River by percolation underground between Michigan Bar and McConnell is more than offset by inflow to Cosumnes River from surface and underground sources in the same reach. It argues that inasmuch as the project will accomplish invaluable water conservation and relieve serious water deficiency in the proposed service area, the project is in the public interest and is consistent with the declaration of Section 100 of the Water Code and in harmony with the California Water Plan. Its position as to permit terms and conditions is that it expects to be treated in the same manner as any other applicant and without the exercise of discrimination. As to the watershed of origin and county of origin aspects it quotes Water Code Sections 10505 and 11460 and argues that no bases exist for the employment in that connection of permit terms or conditions. It also mentions Water Code Section 11128, argues that that section may not be interpreted as applying retroactively and therefore does not apply to the Sly Park project. It argues further that the application of Code Section 11460 is limited to water conservation described in Part 3 of Division 6 of the Water Code, within which part the works constituting the Sly Park Project

are not described. It cites evidence that the Sly Park Project may be integrated into the California Water Plan without conflict therewith, that the State Water Resources Board disclaims objection to the assignment in part of Application 5645 to Applicant, urges that such assignment be made and that no permit terms or conditions for protection of county of origin in connection therewith would be appropriate. It emphasizes that the El Dorado Irrigation District's requirements exceed the supply that it can realize from its present sources and from the Sly Park Project, combined. It argues that the actual area with valid legal claims to utilize water from Cosumnes River under riparian rights aggregates less than 24,000 acres. It argues against the employment of terms for protection of riparian and/or other prior vested rights because, it alleges, evidence establishes that operation of the Sly Park Unit will not interfere with the exercise of such rights. It contends that because no hydrologic cycle exactly repeats itself limitations as to length of diversion seasons should not be imposed.

The protestant Southside County Water District in its opening brief asserts that the Sly Park Project, in taking water from an area of deficient to an area of plentiful supply, exemplifies poor planning, bad usage; and that it results in an expensive supply for the lands benefited, deprives lands within Cosumnes River watershed of water from those lands' natural source of supply and necessitates eventual replacement of the water exported. It questions the authority of the federal government to build works transporting water from one watershed to another

and/or contracting for its sale without sanction from the State. It asserts that El Dorado Irrigation District has never made full use of the water supply to which it is entitled under contract with Pacific Gas and Electric Company, thus negating the claim that said District is short of water or that the Sly Park Project as planned is actually necessary; it contends that said District should make full use of its own water resources and that surpluses should be made available to agricultural areas and to towns requiring same within Cosumnes River watershed. It asserts that it is physically possible for Southside County Water District to be supplied by El Dorado Irrigation District but that the cost of works necessary for that purpose is only justifiable if a permanent, continuous supply is assured. It asserts that while American River water might be imported for use within Cosumnes watershed as envisioned by the State there is no immediate expectation of such development and the cost of water made available in that manner, to users, would be prohibitive.

The protestant Cosumnes Irrigation Association and Protestant J. D. Granlees in their joint opening brief argue that Applications 13707 and 13708 should be denied, the combined flow of Camp and Sly Park Creeks being apparently no more than enough to satisfy the appropriation initiated by the filing of Application 5645. It is their position however that Application 5645 should be assigned to the applicant, approved and permit issued, subject to appropriate terms and conditions. It is their position also that the Sly Park unit is subject to Section 11460 of the State

Water Code and they quote as an allegedly binding interpretation of and/or legislative declaration construing that section a passage from resolutions of the State Legislature adopted in 1952, as follows:

"... and that no transfer of water of one watershed or area of origin to another watershed or area shall be consummated unless or until provision is made to meet such reasonable requirements of the former"

These protestants next discuss the relationship between flows of Cosumnes River at Michigan Bar with flows of Camp and Sly Creeks, arguing that while recorded flows at Michigan Bar are impaired flows, further impairment due to increased use by upstream riparians and appropriators may be expected, arguing also that the arresting of flood flows in spring at Sly Park Reservoir will reduce late summer flows down-river by eliminating unmeasured accretions, lowering ground-water levels and incurring channel losses. They emphasize having long operated their ditch system to capacity in irrigating to the extent supply has permitted, that supply is sometimes insufficient, that efficient irrigation requires large irrigating heads, that other projected upstream developments, including storage developments will diminish further their available supply. As a safeguard to their claimed rights they propose specifically the inclusion of a clause in any permit issued in connection with the Sly Park project, as follows:

"No water shall be stored or diverted under this permit when the flow of the Cosumnes River at the Michigan Bar gaging station is less than 30 cubic feet per second; and during such time the flow of the Cosumnes River below Crawford Diversion Weir shall not be less

than five cubic feet per second in addition to any release made for preservation of fish life."

Protestants disavow knowledge of any rights to the use of Cosumnes River waters other than rights mentioned at the hearing except those listed in a division memorandum of February 8, 1952, the riparian claims shown in Examiners' Hearing Exhibit 17 and the Arroyo Ditch Company's claims set forth in State Engineer's Decision No. 684 in the matter of Application 13159. They emphasize that if the Sly Park project operates as proposed in Applicant's Hearing Exhibit No. 7 all downstream rights will be injured and that the injury will be intensified as inchoate rights become active. As to plans for a supplemental supply they state that about 60 acre-feet may be impounded behind Granlees Dam, that there are also two small reservoirs in which 30 acre-feet and 260 acre-feet respectively may be stored, that no suitable sites for offstream dams are known. They state that they would be interested in using water stored in Sly Park Reservoir on an interim basis during the irrigation season when the flow otherwise available at Michigan Bar falls below 30 cubic feet per second and would be willing to pay a reasonable storage charge provided a firm supply for a particular season can be so obtained.

The El Dorado Irrigation District in its opening brief declares that the Sly Park project has been a goal of each succeeding Board of Directors of El Dorado Irrigation District for some 30 years, that early engineering studies indicated the project is feasible, that applications to appropriate necessary waters were duly filed, that the damsite was purchased, that upon Congressional

authorization of construction of the Sly Park Dam project by the Bureau of Reclamation, District transferred its reservoir site and certain water rights to that agency and contracted with it for water deliveries, that project works were duly built and water deliveries begun. It asserts that the protests by Cosumnes Irrigation Association and J. D. Granlees are without adequate foundation, that those protestants unsuccessfully protested District's earlier applications and have since sought consistently to prevent and delay construction of the Sly Park project. It asserts that those protestants cannot show that the Sly Park project will injure them, the fact being that the project will benefit them as never before in guaranteeing the release for fish conservation of 3 cubic feet per second during even the driest spells. With regard to protest by Southside County Water District it alleges that the district was organized solely to protest Application 13707 and 13708 and to obtain water from the completed Sly Park project as a "free loader". It asserts that it has offered to take in all or any of Southside County Water District's lands if the owners concerned so desire, alleges that the majority of the people in Southside County Water District feel that they may more quickly and cheaply obtain water from El Dorado Irrigation District than by locating and developing a different source and distribution system. It asserts that the Sly Park project as constituted requires less than 40% of the waters originating above Sly Park dam and that sufficient water is therefore available for independent development if Southside County Water District so desires. It argues that Southside County Water District has made

no showing of injury that it would sustain in the event of approval of the subject applications and that the protest by that district should therefore be disregarded. With respect to the conditioning of any permits issued the brief contains the following passages:

"The District realizes that paragraphs a and b of Recommendation No. 2 (of Chapter VIII of Examiners' Hearing Exhibit No. 1) would be greatly beneficial to the El Dorado Irrigation District, but would very much like to see any language proposed by the Division ... for inclusion in the Permit that would cover these two sub-paragraphs. It is felt that if such conditions are put in the permit, perhaps the language thereof could be worked out to the mutual satisfaction of those parties concerned"

"Sub-paragraph c of the proposed conditions is desirable and necessary for the development of the economy of areas wherein the water originates; however, in the particular case at hand, it is felt that issuance of the Permit applied for would not violate the proposed condition As heretofore stated ... the area of use is immediately adjacent to the watershed of origin. It appears that the proposed condition has in mind meeting the requirements of areas of origin and areas immediately adjacent to watersheds of origin before transporting water elsewhere."

The State Water Resources Board in its opening brief states in part:

"The position and recommendations of the ... Board with respect to the issuance of permits on Applications 13707 and 13708, and particularly the Board's position and recommendations as to the partial assignment of Application 5645 held by the Department of Finance, are set forth in Resolution 257 of the Board. This Resolution is State Water Resources Board Exhibit No. 1 The position and recommendations of the State Water Resources Board are also contained in the minutes of the meeting of the State Water Resources Board on October 7, 1955, pertinent excerpts of which are State Water Resources Board Exhibit No. 2."

"... The Examiners' attention is particularly invited to the final WHEREAS clause and the first RESOLVED clause of Resolution No. 257"

"The Examiners' attention is also particularly invited to the statement at the hearing on November 17, 1955, by counsel for the Board concerning the recommendations of the Board on the partial assignment of Application 5645."

The passages referred to in the two last preceding quotations are as follows:

"WHEREAS, it appears that ... the Sly Park Project ... will not be in material conflict with the contemplated California Water Plan, but to the contrary may be of use and assistance in the fullest development of the water resources of the State by offering possibilities of integrated operation with units of the California Water Plan."

"NOW, THEREFORE, BE IT RESOLVED that the Department of Finance be informed that the State Water Resources Board has no objection to the Department of Finance assigning the portion of Application 5645 covering Sly Park Creek and Camp Creek to the United States subject to such terms and conditions as the Department of Finance deems advisable;"

"Mr. Examiner, I would like to particularly call your attention to one aspect of Resolution Number 257 ... so that there can be no misunderstanding It is not our intention that we separately transmit this Resolution to the Department of Finance. We rely upon the statements made here earlier by the Examiner that this hearing was being held in part for a consideration of what recommendations would be made concerning the assignment of the Department of Finance filings, and we trust that you will take this Resolution and the ... excerpts from the Minutes that we have transmitted ... and further, transmit them to the Department of Finance along with your recommendations."

The applicant in its closing brief argues that the objections of Southside County Water District stem from local differences with El Dorado Irrigation District which concern neither the Division of Water Resources nor the applicant and therefore are not a bar to approval of the applications. It

argues further that the action urged in the opening brief on behalf of Granlees and Cosumnes Irrigation Association, i.e. the assignment of Application 5645 to the United States and the rejection of Applications 13707 and 13708, and the maintenance of a constant flow of 5 cubic feet per second for the exclusive benefit of those protestants, is unwarranted. It contends that Applications 13707 and 13708 should be approved without special terms and/or conditions since, it alleges, flows are sufficient for the Sly Park project and may be diverted without injury to any holder of vested rights. It imputes that the real reason underlying the proposal by Granlees and Cosumnes Irrigation Association that the one application be assigned and the others rejected is to effect delay. It argues that since an appropriation is not complete until the water applied for has been diverted and put to beneficial use the pendency of Applications 2270 and 5645 does not preclude the existence of unappropriated water at this time. It concedes that the amounts specified in its filings aggregate more than enough to supply the Sly Park project but it argues that since all diversions under those filings will be used on that project no other conservation project in the Cosumnes River area can be adversely affected by its proposed operations nor can legal injury be sustained by any downstream user. It suggests that the time to adjust quantities is when licenses are issued, citing in that connection the standard permit condition reading, "The maximum amount herein stated may be reduced in the license if investigation so warrants." It argues that since the issuance of permits is not an adjudication

and that a legal attack on a permit's validity is possible, Applications 13707 and 13708 should be approved to assure availability of sufficient supply for the Sly Park Unit. As to the conditioning of permits the applicant argues that since the Constitution relegates adjudications concerning water rights to the courts the Division is without authority to so condition permits as to require one diverter to bypass water for use by another. It argues that since the protestants Granlees and Cosumnes Irrigation Association irrigate some 600 acres and 1 cubic foot per second to 80 acres is generally considered to represent reasonable beneficial use the claim of those protestants that they require 30 cubic feet per second is excessive. It contends that the claim by the same protestants that injury would result from the effect of the Sly Park development upon ground-water runoff, channel losses and unmeasured accretions is not competently supported. It argues that neither Water Code Section 11460 nor the legislative resolutions (Examiners' Exhibit No. 1) give a preference to the area of origin over the area immediately adjacent thereto that can conveniently be served therefrom. It argues in conclusion that the employment of permit conditions on the bases discussed by any of the protestants is unjustified by the facts.

Southside County Water District in its closing brief asserts that El Dorado Irrigation District does not seek the good of the people as a whole but desires to preserve a monopoly for a certain area; that it seeks to exclusively control water that it cannot possibly use, even in the future, at the price it must charge for water. It asserts that Witness Hill's hearing testimony

to the effect that the Sly Park project will require less than 40% of the tributary runoff is misleading, the facts being that in 12 of the past 30 years there was no runoff beyond project needs and that 7 of those deficient years were consecutive. It argues that irrigated lands mean lands of higher value, a better tax structure for the County, more inhabitants, better living for all. As to the Sly Park project it asserts that the government has spent millions of dollars on a scheme which is contrary to sound water planning and distribution, that approximately half the project cost lies in a tunnel which takes the water north through Diamond Ridge, that with a sound plan of water distribution for the entire district the tunnel would have been unnecessary and the money used for the development of an adequate water supply for the whole area. The closing paragraphs of the brief are as follows:

"It is respectfully suggested that this Commission make adequate allowances for water for the Southside area from their own watershed. Long before the El Dorado District will be in need of water, further facilities will be developed in the area, particularly in the water-rich American River Basin. ... the Cosumnes Basin ... is by comparison a water-poor district. Unless adequate provision is made for the Cosumnes watershed now, there will be an uncared for region in the future, inadequately watered, and suffering from the mistakes of poor government planning. The evidence shows that the highest price a farmer can pay for water in this area (is) \$6.00 per acre-foot. Under the State's alternative plans for bringing water to this area in the future, and even with the profits of hydroelectric power to aid, the cheapest water under the State plan will be \$10.00 per acre-foot, an impossibly high price for water."

"It is respectfully requested therefore that adequate provisions be made for the watershed of origin in the distribution of Sly Park water."

The protestant Cosumnes Irrigation and Protestant

Granlees in their closing brief reassert that their lands are riparian, argue that the absence of signature and date on the digests of abstracts produced by Witness Sardon does not invalidate the testimony of that witness and that the applicant would have disputed protestants' claims by affirmative testimony if it had considered such claims deficient. They argue that the applicant's denial that State laws relating to the Central Valley Project are applicable to the Sly Park unit is inconsistent with the directive given the Secretary of the Interior by the Act of October 14, 1949, that Congress in its authorizing legislation manifested every intention to respect, rather than to defeat, State water law, and that the resolutions of the legislature which bind the State Engineer and which indicate that no water may be exported by an applicant to another watershed without satisfying the watershed of origin were enacted prior to the start of construction on the Sly Park unit. They term applicant's rejection of the suggestion as to the employment of permit terms an absurdity, remark in that connection that the power granted to the Division through legislation over many years to deal with the public interest in granting permits has frequently expressed itself through conditions in permits and licenses and that almost every major project is subject to them, remark further, "To say that the protection of the public interest reduces a permittee to a 'second class status' is to attempt to make the administration of state water law ineffective." They question the El Dorado Irrigation District's

assertion as to having exercised the greatest diligence and assert in that connection:

"From the time the permit ... was issued ... in 1926 until authorization of the works for federal construction as a part of the Central Valley Project in 1950 ... no serious attempt was made to construct the project, and to this date the district has done nothing but to agree to accept the favors of the federal government."

The brief concludes:

"Applicant's attempt to obtain a permit which recognizes no downstream rights, except that of the beneficiaries of its project, is wrong in principle and effect. Any reduction in the summer flow of the Cosumnes River in dry years will seriously injure protestants, who have used this water diligently in their farming operations for 30 years, and who have built an economy around it. To deprive protestants of water for the benefit of undeveloped areas in El Dorado County is not in the public interest. The conditions sought by protestants, described in detail in their opening brief, should be inserted in any permits issued to the Applicant.

Discussion

The records contained in Reports of Sacramento-San Joaquin Water Supervision (Examiners' Hearing Exhibit No. 9) indicate that substantial excesses over the requirements of Granlees, Cosumnes Irrigation Association and all users below those protestants on Cosumnes River have existed in all months of record from November to June, both inclusive. Such excesses evidently can be taken and used beneficially in the manner proposed by the applicant without injury to those protestants or to other users below them. Significant in the same connection is Applicant's Hearing Exhibit No. 11, according to which direct

diversion as proposed in the applications might have been made during every month of December, January, February, March and April of the 33 years therein considered, during nearly every month of November, May and June, but during only 5 months of July and 2 months of October. In view of the indicated existence, all or nearly all of the time from November inclusive through June, of flow beyond present users' requirements, the objections by Granlees and Cosumnes Irrigation Association as expressed in their protests and in their presentation at the hearing do not qualify as a bar to the approval of Applications 13707 and 13708 insofar as those applications relate to diversions in those particular months. It must be presumed that the applicant, if the applications are approved, will abide by the terms of such permits as it may receive and will refrain from diverting when its diversions would prevent the exercise of valid rights downstream. To deny a permit because of a possibility that permittee might attempt to disregard terms thereof could prevent all upstream development and would be clearly contrary to the intent expressed in Section 100 of the Water Code.

The Southside Mutual Water Company, while asserting that its boundaries include riparian lands, asserts neither any specific water right nor any actual diversion anywhere or for any purpose. If, as appears, it does not divert currently and has no definite plan for diverting in future it cannot be injured currently and may not be injured ever, by the diversions proposed under Applications 13707 and 13708. Its protest evidently stems

from a desire, when circumstances permit, to obtain a water supply for the irrigable lands, and from apprehension that if Applications 13707 and 13708 are approved no means of realizing that desire will remain. Neither its desire nor its apprehension is recognizable as sufficient grounds for the rejection of applications duly filed and pressed.

The possible assignment to the United States of Application 5645, presently held by the State Department of Finance, was made a collateral issue at the hearing upon Applications 13707 and 13708.

Application 5645 initiated appropriations of various amounts from various streams, including Camp and Sly Park Creeks, for utilization within Townships 8, 9, 10 and 11 North, Ranges 8, 9, 10, 11, 12 and 13 East, MDB&M, an area lying almost entirely within El Dorado County and including both El Dorado Irrigation District and the proposed service area of Southside Mutual Water Company. Application 5645 is higher in priority than any other pending application to appropriate from Camp Creek or Sly Park Creek whereas Applications 13707 and 13708 are of lower priority than Applications 12512, 12813, and 12832, held by the County of El Dorado. The El Dorado Irrigation District appears to be wholly and the Southside Mutual Water Company service area partly, within the American River watershed.

Sly Park dam and appurtenant works having been constructed and the Sly Park Unit, carrying waters of Camp Creek and Sly Park Creek to El Dorado Irrigation District having come into

operation, it appears advantageous that Application 5645 insofar as it applies to diversions from Sly Park and Camp Creeks be assigned to the agency that built and retains title to the project works and has entered into a long term contract covering deliveries of project water to El Dorado Irrigation District. It does not however appear advantageous to assign at this time such elements of Application 5645 as do not relate to diversions from Camp and Sly Park Creeks, the assignment of such elements being better deferred until a plan is arrived at for applying them to other specific areas within El Dorado County. Hearing testimony and exhibits indicate that partial assignment to the United States of appropriate elements of Application 5645 would neither hinder future development under the California Water Plan nor deprive the county in which the water sought under said application originates of any water necessary for the development of that county. In view of the circumstances it is now in order for the State Engineer to recommend to the Department of Finance (in response to that agency's request for recommendation) the partial assignment to the United States of Application 5645, insofar as that application pertains to the Sly Park Project.

Since the amounts of water sought under Applications 13707 and 13708 aggregate 110 cubic feet per second to be diverted for immediate use and 41,000 acre-feet per annum to be diverted to storage and those amounts appear to be as much as if not more than the project works will accommodate or the project will need, any permit issued in response to those applications should be so conditioned as to limit amounts diverted thereunder, together with

amounts diverted under permits issued pursuant to Applications 2270 and 5645 (insofar as the latter application benefits the Sly Park Project) to totals not in excess of 100 cubic feet per second plus 41,000 acre-feet per annum.

Since unappropriated water plainly exists in Camp and Sly Park Creeks during nonirrigation and early irrigation months but appears seldom to exist in significant amounts during July, August, September or October, it is in order that diversions under any permits which may be granted pursuant to Applications 13707 and 13708 be limited to periods extending from about November 1 to about July 1.

It is the right and duty of the State Engineer under Section 1253 of the Water Code to insert conditions in permits when required in the public interest. The State Legislature, as set forth in Chapter VIII of Examiners' hearing Exhibit No. 1, has memorialized the State Engineer as follows:

"1. That, in issuing permits and licenses to appropriate water for federal reclamation projects, due consideration be given to the possibility and desirability of issuing such permits and licenses to appropriate water for irrigation purposes to the contracting public agencies of the State rather than the United States.

"2. That licenses issued to the United States for irrigation purposes in connection with federal reclamation projects be limited to water subject to contracts between public agencies of the State and the United States which the State Engineer finds to be in the public interest and to conform to state law and that any permits and licenses issued for such purposes contain, in the public interest, the following conditions among, but not to the exclusion of, other conditions:

"(a) That the beneficiaries of each permit and each license are and shall be the public agency or agencies of the State together with the owners of land within such agency or agencies to be served with the water appropriated under the permit and license.

"(b) That the rights of the agencies and owners of land within the agencies to be served with the water appropriated under the permits and licenses are, subject to continued beneficial uses, permanent and appurtenant to the lands upon which the water is used.

"(c) That the use of water appropriated under the permits and licenses are subject to the reasonable requirements of the watershed or area wherein the water originates or area immediately adjacent thereto and that no transfer of water of one watershed or area of origin to another watershed or area shall be consummated unless and until provision is made to meet such reasonable water requirements of the former . . ."

The federal agency which holds Applications 13707 and 13708 has assumed responsibility for construction of works and delivery of water but its activities evidently do not extend to the application of the delivered water to beneficial use. The public interest is therefore deemed to require the conditioning of permits issued pursuant to Applications 13707 and 13708 to ensure that while the right to construct works and to divert and beneficially utilize water is granted to the United States as trustee, all rights acquired under the permits are appurtenant to the lands benefited and upon completion of the project and of the application of water to beneficial use any licenses issued shall be issued to the public agencies of the State within whose boundaries are located the lands benefited.

Any permits issued pursuant to Applications 13707 and 13708 should also be conditioned in accordance with agreement

reached between the applicant and the Department of Fish and Game prior to the hearing (Examiners' Exhibit No. 2) with respect to the bypassing of waters for the maintenance of fish life.

Conclusion

The evidence indicates that unappropriated water ordinarily exists from about November 1 to about July 1 in the sources from which the applicant seeks to appropriate, that it does not ordinarily exist in significant amounts at other times, and that such unappropriated water as exists between November 1 and July 1 may be taken and used beneficially in the manner proposed in the applications, without injury to any downstream users. It indicates that the applicant proposes only to provide a certain water supply but not itself to apply that water to beneficial use. It indicates that the protestants' objections are insufficiently supported to bar partial approval of the applications and that the applications warrant approval provided that diversions thereunder are limited to periods extending from about November 1 to about July 1 and that amounts diverted thereunder together with amounts diverted under other permits issued and which may be issued for the benefit of the Sly Park Unit do not aggregate more than 110 cubic feet per second of direct diversion plus 41,000 acre-feet per annum of diversion to storage. It indicates that the pending request that Application 5645 be assigned to the United States insofar as that application relates to diversions from Camp and Sly Park Creeks may be granted without adverse effect

upon future development under the State Water Plan and without injury to any county of origin. In view of the foregoing circumstances it is the opinion of this office that Applications 13707 and 13708 should be approved subject to the usual terms and conditions but subject also to terms and conditions limiting diversions under those applications to seasons extending from about November 1 to about July 1, limiting amounts diverted under permits issued pursuant to Applications 2270, 5645, 13707 and 13708 to amounts aggregating not more than 110 cubic feet per second plus 41,000 acre-feet per annum, providing that rights under the permits are granted to the applicant as trustee for the benefit of the public agency or agencies of the State and the landowners to which the water is supplied, providing that upon completion of the project and the application of the water to beneficial use any resultant licenses shall stand in the name of the said public agency or agencies of the State, and providing for the bypassing of designated amounts of water at designated points as agreed upon between the applicant and the Department of Fish and Game for the maintenance of fish life.

It is the State Engineer's intention to recommend partial assignment of Application 5645 to the United States, insofar as that application relates to diversions to or retention in Sly Park reservoir of the flows of Camp and Sly Park Creeks.

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ORDER

Application 13707 and 13708 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 13707 and 13708 insofar as those applications relate to diversions between November 1 of each year and July 1 of the next be approved and that permits be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms and conditions, to wit:

1. The total amount of water to be appropriated under permits issued pursuant to Applications 13707, 13708, 2270 and 5645 for the benefit of the Sly Park project shall not exceed 110 cubic feet per second diverted for direct application to beneficial use and 41,000 acre-feet per annum diverted to or accumulated in storage for later application to beneficial use.

2. The right to divert and store water, and apply said water to beneficial use as provided in this permit is granted to the United States as trustee for the benefit of the public agencies of the State, together with the owners of land and water users within such agencies, to be supplied with the water which is the subject of this permit.

3. Any and all rights acquired or to be acquired pursuant to this permit are and shall be permanent and, except where water is distributed to the general public by an agency in charge of a public use, shall be appurtenant to the land to which said water shall be applied, subject to continued beneficial use and the right to change the point of diversion, place of use and purpose of use as provided in Chapter 10 of Part 2 of Division 2 of the Water Code of the State of California, and further subject to the right to dispose of a temporary surplus.

4. Upon completion of the project contemplated under this permit and the application of the water to beneficial use, any license or licenses which may be issued pursuant to Chapter 9 of Part 2 of Division 2 of the California Water Code shall be issued to the public agencies of the State within which the water has been found by inspection by the State Engineer to have been applied to beneficial use.

5. Permittee shall at all times bypass at Sly Park Dam a minimum of 1 cubic foot per second or the natural flow of Sly Park Creek, whichever is less, and shall at all times bypass at Camp Creek Diversion Dam a minimum of 2 cubic feet per second or the natural flow of Camp Creek, whichever is less, to maintain fish life.

IT IS FURTHER ORDERED that Application 13707 and 13708 insofar as those applications relate to diversions between July 1 and November 1 of each year be, and they are, denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of June 1956.

/s/ Harvey O. Banks

Harvey O. Banks
State Engineer