

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Application 16154 )  
by Pacific Gas and Electric Company ) Source: Milk Ranch Creek  
County: Plumas

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Decision No. D 890

Decided: February 28, 1958

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In attendance at Investigation conducted by the staff of  
the State Water Rights Board on August 15, 1957:

Donald H. McCrea, Engineer ) Representing  
R. M. Conery, Division Land Supervisor ) Applicant  
A. N. Webb, Assistant Hydraulic Engineer) Representing State  
J. J. Heacock, Senior Hydraulic Engineer) Water Rights Board

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DECISION

Substance of the Application

The application seeks a permit to appropriate 1.7 cubic feet per second of unappropriated water from Milk Ranch Creek tributary to North Fork Feather River, year-round, for fire protection and domestic purposes. Water is to be diverted by gravity from a natural pond on Milk Ranch Creek at a point within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 2, T24N, R6E, MDB&M into a 6-inch welded steel pipe and conveyed some 3,100 feet along the left bank of the creek to the place of use. Total fall of the pipeline from intake

to outlet is 206 feet and the capacity of the diversion system, as estimated by the applicant, is 1.7 cubic feet per second.

The proposed appropriation is primarily for fire protection purposes for a permanent storage warehouse and related facilities at the applicant's Rodgers Flat Service Group Area within the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 2, T24 N, R 6E, MDB&M. According to the application it is intended that domestic use of water not to exceed 1,000 gallons per day, will be made only during such time as employees are working in the area.

### Protest

Miss Janice Butcher protests approval of the application upon the apprehension of "Ruination of value of property as a resort; loss of commercial value as a future trout farm; LOSS OF SALE OF PROPERTY NOW IN PROCESS under contract of sale; loss of water for future intended irrigation; loss of water for intended domestic, recreational and fire protection use". Protestant claims rights to the use of water from Milk Ranch Creek based upon riparian right and use from 1903 to 1951.

The protestant states that her point of diversion is "300 feet southerly to point of diversion of applicant within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 2, T24N, R6E, MDB&M", (southerly is upstream) and the protest may be disregarded and dismissed if: "Applicant gives written, legal assurance of present flow (approximately 2 cu. ft. per second) through Camp Rodgers (protestant's place of use) and agreement with present purchaser of access to property over applicant's property and bridge over Feather River; or

payment of \$2,500 for impairment of past and future use of property; or purchase of property by applicant at price equitable to parties under present contract of sale."

#### Answer to Protest

No formal written answer to the protest is of record.

#### Field Investigation

The applicant and protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on August 15, 1957, by engineers of the Board. Notice of investigation was given to applicant and protestant by certified mail. The applicant was represented at the investigation. The protestant was interviewed in the office of the State Water Rights Board on September 6, 1957.

#### Records Relied Upon

Applications 4453, 6241, and 16154 and all relevant information on file therewith, with particular reference to the Report of Field Investigation in connection with Application 16154; United States Geological Survey, Bidwell Bar, 30 minute series and Bucks Lake, 15 minute series quadrangles; Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951; Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923; United States Weather Bureau Climatological Data.

### Description of the Watershed

Milk Ranch Creek, the source of the proposed appropriation under Application 16154, rises on the westerly slopes of Mount Pleasant, and flows about three miles in a westerly direction; thence about one mile in a northwesterly direction to its confluence with North Fork Feather River. The watershed has an area of 7.4 square miles of which approximately 6 square miles are above the point of diversion of the applicant and 6.5 square miles are above the applicant's property. The watershed is steep and rough with a moderate to heavy covering of brush and timber. The applicant's point of diversion is about 0.5 mile upstream from the confluence of Milk Ranch Creek and North Fork Feather River. Protestant Butcher's property is located about 0.25 mile downstream from applicant's point of diversion, although her protest indicates that her point of diversion may have been a short distance upstream from the applicant's point of diversion.

### Information Obtained by Field Investigation

The project works described in Application 16154 were constructed in 1948. A loose rock and sandbag dam 12 feet long by 2 feet high is used to direct the main flow of the stream into a 6-inch pipe intake. From the intake a 6-inch pipeline extends about 3,100 feet to the place of use. Total fall of the pipeline from intake to outlet is 206 feet.

The place of use is at the applicant's Rodger Flat Warehouse. It is equipped with a washroom having a wash bowl and flush toilet and two  $1\frac{1}{2}$ -inch fire hydrants located at opposite

corners of the building. A 3/4-inch pipeline runs to an outside faucet at a small building used as a concrete testing laboratory. There are no permanent residences at the place of use and none is planned.

The protestant's property consists of approximately 2.5 acres which is traversed by Milk Ranch Creek and which is located approximately one-quarter mile downstream from the applicant's point of diversion. Prior to 1951, a lodge building and scattered cabins were situated on the property and apparently about 3/4 of an acre was landscaped and irrigated. The lodge was destroyed by a forest fire in 1951, and it does not appear that there has been any material use of water on the property since that time. Remnants of a water system were noted but were unoperative.

Flow in Milk Ranch Creek at the time of the investigation on August 15, 1957, was determined to be about 4.5 cubic feet per second. According to the applicant's representative, the only previous measurement of the flow of the creek insofar as applicant's records reveal, was made on November 3, 1937, at which time the flow was 6 cubic feet per second.

#### Other Information from Office Files

License 1922 (Application 4453) and License 1926 (Application 6241) are held by the applicant and allow diversions from Milk Ranch Creek as follows:

License 1922 confirms a right to store 736 acre-feet per annum from January 1 to June 15 of each year in Three Lakes Reservoir in Sections 4 and 5, T24N, R6E, MDB&M. Water is

diverted out of the watershed to Lower Bucks Creek Reservoir through a conduit of a capacity of 65 cubic feet per second which heads on Milk Ranch Creek at a point within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 5, T24N, R7E, MDB&M, approximately 2.5 miles above the applicant's point of diversion.

License 1926 confirms a right to divert a total of 65 cubic feet per second from January 1 to December 31 of each year from 14 surface sources, including Milk Ranch Creek and four of its tributaries. The conduit is the same as used under License 1922, and the water is diverted out of the watershed to Lower Bucks Creek Reservoir.

Bulletin No. 5 of Department of Public Works, "Flow in California Streams", gives the mean and minimum seasonal runoff for the Feather River watershed as 1,456 and 572 acre-feet per square mile, respectively, with a distribution of runoff by months varying from a maximum of 18.87% in April to a minimum of 1.5% in September.

The watershed above the point of diversion of Application 16154 from Milk Ranch Creek contains approximately six square miles of steep, rough mountain side of which about one-half, in the higher elevations, are above the points of diversion under License 1926. The unimpaired portion of the watershed, above the point of diversion under Application 16154 rises from about elevation 2,500 feet at the point of diversion to over 6,600 feet.

The Feather River watershed has an area of about 3,627 square miles, ranging in elevation of 61 feet at Marysville to a crest ranging from 6,000 feet to 7,500 feet along most of the boundary and rising to elevation 10,437 feet at Lassen Peak.

Assuming that the runoff of Milk Ranch Creek is representative of that occurring in the Feather River watershed and that the flow reaching applicant's point of diversion consists of only the runoff from the area of Milk Ranch Creek watershed below the points of diversion under License 1926 (namely, three square miles), on the basis of Bulletin No. 5 estimates, the minimum monthly flow during a year of normal runoff at the applicant's point of diversion will average 1.1 cubic feet per second and during a year of minimum expected runoff the minimum monthly flow will average 0.43 cubic foot per second.

#### Discussion

The protestant's land appears to be riparian to the stream and may also have had an early appropriative right at one time but there is little evidence of any use of water on the property since 1951. Under the circumstances neither claim of right would act as a bar to approval of this application. A latent riparian right is not considered a sufficient cause to deny an application and non-use of available water for a consecutive period of five years would result in loss of an appropriative right acquired prior to 1914. In any event, permit issued to applicant will be subject to such vested rights as protestant owns.

The protestant's concern regarding an agreement with the applicant for right of access over applicant's property and bridge over the Feather River is a matter over which this Board has no jurisdiction.

### Conclusions

The information indicates and the Board finds that unappropriated water usually exists in Milk Ranch Creek, that the intended uses under Application 16154 are beneficial and that said application may be approved, subject to the usual terms and conditions without injury to any lawful user of water. It is further concluded that to the extent the application seeks water for fire-protection purposes, diversion therefor should be allowed as against a subsequent appropriator only during such time as there exists an actual need of water for fire-fighting use.

### ORDER

Application 16154 for a permit to appropriate unappropriated water having been filed, a protest having been submitted, proceedings in lieu of a hearing having been taken by stipulation of the parties, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16154 be, and the same is hereby approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 1,000 gallons per day for domestic purposes or 1.7 cubic feet per second for domestic and fire-protection purposes to be diverted from January 1 to December 31 of each year; provided, however, that nothing herein contained shall be construed as confirming in permittee any right as against a subsequent appropriator, to water for fire protection except when there exists an actual need for fire-fighting use.



2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Construction work shall be completed on or before December 1, 1959.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 28th day of February, 1958.

/s/ Henry Holsinger

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Henry Holsinger, Chairman

/s/ W. P. Rowe

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W. P. Rowe, Member