STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 18410 of Yuba County Water District to Appropriate from Fall River and Rock Creek in Plumas County

Decision 1309

DECISION DENYING REQUEST FOR POSTPONEMENT OF HEARING AND DENYING APPLICATION

Application 18410 was filed in 1958 by the Yuba County Water District for a permit to appropriate 23,000 acre-feet per annum from Fall River, tributary to Middle Fork Feather River, and Rock Creek, tributary to South Fork Feather River. The water is to be diverted to off-stream storage for irrigation and domestic use within the district.

Between 1958 and 1962 the Board wrote a series of letters to the applicant in an effort to get the application properly completed and several times threatened cancellation. A satisfactory application was finally filed in 1962. Several protests were submitted, including one by Oroville-Wyandotte Irrigation District which was based upon alleged lack of unappropriated water and also pointed to the applicant's proposed use of the protestant's diversion facilities without the latter's consent.

In January 1963 the applicant requested a one-year extension of time within which to negotiate with the protestants and to explore the possibility of having a stream gaging station installed on Fall River to obtain better data as to water supply. This request was granted.

In January 1964 the applicant advised that the United States Geological Survey had installed a gage and that records were being obtained. A three-year extension was requested to accumulate streamflow data. The Board granted a one-year extension. In 1965 another extension of three years was requested "to collect hydrologic data and to negotiate protests." Again, one year was granted, as was an additional year in 1966. In the summer of 1967 applicant's attorney requested yet another extension to the end of the year upon the representation that negotiations with protestants showed promise of success. This request was also granted.

After the applicant had been notified that a hearing would be held on April 2, 1968, its manager wrote a letter to the Board requesting postponement of the hearing "to collect additional streamflow data." On March 20 the applicant was informed that the Board would proceed with the hearing as scheduled. The applicant's manager appeared at the hearing on April 2 and stated that he had not come "to make a case for issuance of a permit, but to request postponement of the matter for a year. I am unable to make a

presentation adequate for the board's granting of a permit at this time." (RT 6) The manager went on to state that the request was based on the fact that the gaging station on Fall River was installed in 1963 and there was not yet sufficient data concerning the amount of water that will be available.

No engineering testimony was offered by applicant to justify the need for further streamflow records nor does the manager's statement that "one more year is this much better" (RT 8) convince the Board that another year's record would be significant or that if the request were granted the applicant would not request another postponement to gather further data at the end of that time.

The previous representations by applicant that further time was needed to negotiate with protestants were not repeated at the hearing and no evidence of any serious attempts to negotiate or of any agreement with protestants was presented. A number of the protestants appeared at the hearing apparently prepared to support their objections to the application.

In response to questions by the board member who conducted the hearing and by the Board's attorney, the applicant's manager stated that he knew of no arrangements for financing the proposed diversion facilities from Fall River and Rock Creek, that the district's engineer had made preliminary studies only, which did not include "operational design studies", nor had the manager seen a feasibility

report (RT 14). The Fall River supply is proposed to be the second-stage project, the first being the New York Flat Dam. The manager had no estimate of when the second stage would be required (RT 17-18).

The applicant failed to explain why no effort was made to present any evidence in support of the application even though it had been notified that the hearing would proceed as scheduled.

Basic to the law of water rights is the principle that an appropriator of water must pursue the development of his project from its inception to completion with due diligence in order to claim priority over subsequent appropriators. Priority of right as of the date an application is filed continues only so long as the provisions of law and the regulations of the Board are followed by the applicant (Water Code Section 1450). Section 776 of the Board's regulations (23 Cal. Adm. Code 776) provides:

> "An application will be denied when it appears after hearing that (a) the applicant does not intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion, or (b) the applicant will not be able to proceed within a reasonable time, either because of absence of a feasible plan, lack of the required financial resources, or other cause."

ORDER

The applicant having failed to show good cause for further postponement of the hearing and having failed to

present any evidence in support of the application although having been given a full and fair opportunity to do so, the request for postponement of the hearing is denied and Application 18410 is denied without prejudice to filing a new application for the same project when the applicant is ready and able to proceed with diligence to appropriate the water.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Eureka, California.

Dated: JUL 18 1968

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ Norman B. Hume
Norman B. Hume, Member

/s/ E. F. Dibble
E. F. Dibble, Member