

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 4699 )  
(Application 11596) )  
YUBA INVESTMENT COMPANY, INC. )  
Licensee )

Order: WR 80-4  
Source: Dry Creek  
County: Yuba

ORDER DESIGNATING LICENSEE AND AMENDING  
QUANTITY, POINT OF REDIVERSION AND PLACE  
OF USE

BY BOARD VICE CHAIRMAN MILLER:

On May 1, 1975, Yuba Investment Company, Inc., (hereafter Yuba) informed the State Water Resources Control Board (hereafter Board) that it is the sole owner of License 4699 and that S. A. Coolidge's name should be removed as co-owner of the license. On December 23, 1975, Roy St. Martin and James Watkins, Yuba customers and successors in interest to Coolidge, requested a Board hearing to show cause why they and other assignees of Coolidge should not be named as owners of the license.

A hearing was held on July 10, 1978 before Board Member W. W. Adams and Vice Chairman William J. Miller to determine the ownership of the license, the use of water under the license, and whether the license should be partially or fully revoked. The parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the License

1. License 4699, Application 11596, is in the name of Yuba Investment Company, Inc., and S. A. Coolidge, Jr., in Board records. Eighteen other persons also appear in the records as purported assignees of Coolidge's alleged interest. The license authorizes direct diversion of 16 cubic feet per second (cfs) from Dry Creek, Yuba County, during the period

May 1 to December 1 for irrigation of 1,100 acres within Sections 13 and 24, T17N, R4E; Sections 1, 2, 11, 12, 13, 14 and 24, T17N, R5E; and Sections 7, 18 and 19, T17N, R6E, MDB&M.

2. Yuba also holds a pre-1914 water right covered by Application 12-2406 for storage of 2,300 acre-feet per annum (afa) in Lake Mildred on Dry Creek and for direct diversion of 2.6 cfs from Dry Creek at a diversion dam about one mile below Lake Mildred. The diversion dam and ditch and place of use are all the same as License 4699.

#### Background

3. Yuba was incorporated in 1935 and came under control of one Frank Carmichael several years prior to his filing Application 11596 in 1946. It is a public utility regulated by the California Public Utilities Commission (hereafter PUC). It serves nine customers, delivering water for irrigation, and leases Lake Mildred and a surrounding game preserve for recreational purposes. Yuba is owned by three stockholders, Lawrence A. Santi, Harold W. Gates and Royal Pines Lake Company.

4. A complicated series of transfers, assignments, claims and counter-claims since 1962 has resulted in a cloud upon the ownership of the license. In addition, staff field investigations and investigations by the PUC have revealed the need to review the diversion quantity and use of water by Yuba. We shall examine the two issues separately.

#### Ownership of License 4699

5. "Section 767, Title 23, California Administrative Code, provides:

*"The board will not undertake to determine contests as to ownership of rights initiated by applications to appropriate water, its only concern being to maintain such a record of ownership as will facilitate communication with owners when necessity demands. The board will ordinarily accept any claim which is asserted to ownership of an application, permit or license unless the record title holder, or an asserted successor in interest, objects. When a contest develops as to ownership, the board will not ordinarily change its record until the matter is either determined by a court or adjusted to the mutual satisfaction of the parties, unless evidence of continued occupation, use, or control justifies a different course."*  
(Emphasis added)

6. We do not, therefore, in making our findings below, attempt to determine the validity of the various assignments of License 4699. Our holding and order shall be based upon the record titles and evidence of occupation, use and control which are in the hearing record.

7. On October 28, 1946, Frank Carmichael, reputedly the sole owner of Yuba Investment Company, Inc., filed Application 11596 (License 4699) for the diversion of water which would be distributed and sold to customers of the corporation. He was the record owner until August, 1961, at which time divorce proceedings resulted in a decree of the Superior Court, County of Yuba (Action No. 14797), by which his former wife, Doris Carmichael, was awarded as her separate property all stock of Yuba, including the water rights, together with certain other real property of the parties. The water rights apparently were appurtenant at the time to the stock of Yuba and to Yuba itself as a corporate entity.

8. Doris Carmichael submitted incomplete Reports of Licensee for 1963, 1964, and 1965. However, according to contracts and Deeds of Trust entered into evidence, along with correspondence to the Board appearing in the Board files, all shares of stock in Yuba, the water rights and licenses "appurtenant to" Yuba, along with certain real property, were sold in 1964 by Frank and Francis Carmichael to Lawrence Santi and Earl Gates. The purchase price was \$100,000.00.

The contract of sale purported to transfer interests held by Doris Carmichael as well. We believe it important to note that a broker named Don Shinkle allegedly handled the sale. Shinkle is, and was, the owner of River Valley Land Co., a later claimant to ownership of the license.

9. On or about December 9, 1968, Doris Carmichael notified the Board that she and her son, Francis Carmichael, were the owners of the license. On January 27, 1969, she assigned whatever interest she may have held at that time to River Valley Land Company; thereafter, on February 18, 1970, it assigned the water rights to S. A. Coolidge Jr., who had repeatedly been told by Board staff that there were questions as to ownership. On March 19, 1975, Coolidge assigned his rights to 18 different persons. Two of the present claimants, Roy S. Martin and James Watkins, claim title as his successors in interest. Both are customers of Yuba.

10. Correspondence in the files between the staff and the asserted owners reveals that on March 11, 1969, prior to its assignment to Coolidge, in response to an inquiry, River Valley Land Co. stated that it had no interest in the water rights and that its sole interest was a deed of trust. At about the same time, Doris Carmichael responded that she "thought the project had been abandoned".

11. There have been no claims of ownership of Yuba stock conflicting with Santi since he acquired the property. According to the records, Yuba has maintained full control of the water rights, has exercised all of the rights of ownership and has undertaken all of the liabilities and responsibilities of the license in maintenance and repairs in distributing and selling the water to its nine customers. Yuba has further contested the

claims of all other parties since it became aware of the disputes sometime in 1969 and has defended the company in PUC actions. All reports of licensee have been submitted by Yuba.

12. The Board records further reveal that, during his period of alleged ownership, Coolidge reported that he had not commenced use of the water right (1970 to 1975), that he intended to purchase water from Yuba and that he failed to exercise any claims of ownership of the license. Coolidge's assignees are all purported customers of Yuba and exercise no rights of ownership of the license; neither have they used water under the license, other than amounts sold to them within the discretion and control of Yuba. Claimants appearing at the hearing were James Watkins, Richard McCullough, Charlene Adams, Dorothy St. Martin and Richard Vieira. All are customers of Yuba. Only Watkins and Vierra testified. Watkins gave no evidence other than to assert the validity of the assignments and state that he was "chasing water". Vieira asserted his claim of interest solely as a user and dependent upon the irrigation ditch.

13. We find that License 4699 is appurtenant to Yuba ownership and the exercise of its liabilities and duties as a public utility. We agree with Yuba that License 4699 has been an integral part of the company at all times, and that except for the various assignments, which may or may not have been valid, no one other than Yuba has ever attempted to exercise any other dominion or control.

14. Public Utility Code, Section 851, provides, in part, that any sale, assignment, disposal or encumbrance of any of the property of a utility, including licenses or permits, other than by an order of the Public Utilities Commission authorizing it, is void. There is no record that any of the purported

assignments or transfers were authorized by the commission. Although we do not believe it binding upon our decision, it is persuasive to our findings above.

15. We further find that even if it were successfully argued that the assignments of License 4699 were valid and binding upon us, appropriative rights, if any, which Coolidge may have had were lost through non-use.<sup>1/</sup> His assignees would take nothing. At the same time we recognize that Coolidge's interest, if any, was of an individual interest as a co-owner, thus a pro-rata partial reduction of the license would be in that order if the extent of interest could be determined. We do not so conclude. We find that at all times Yuba has solely exercised the full rights to the license and within the capabilities of its system (to be discussed below) has put the water to which it is entitled under the license to beneficial use, and that at no time did Coolidge exercise incidents of control or comply with the conditions of the license.

#### Extent of Beneficial Use by Licensee

16. Testimony by Yuba's representative during the hearing disclosed that the actual place of use under the license had been reduced from 1,100 acres to 220 acres. It was further stated that the capacity and condition of the irrigation ditch was creating loss of an undetermined but large quantity of water. A field inspection in 1969 revealed that the capacity of the ditch was no more than 6 cfs, although the licensed quantity was 16.0 cfs. Large losses were

<sup>1/</sup> When the person entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of three years, such unused water reverts to the public and shall be regarded as unappropriated public water. Water Code Section 1241.

observed throughout the length of the ditch. A further field inspection on August 24, 1978, (conducted by order of the Board) disclosed current leakage and losses. However, it was found that much of the water which leaks from the ditch returns to Dry Creek.

17. Yuba has experienced financial difficulties in maintaining and repairing the ditch, and was unable to supply the full quantities of water requested by its customers during the recent drought. A PUC hearing on July 15, 1975, resulted in an expanded clean-up and maintenance program.

18. We find that whereas the licensed place of use covers 1,100 acres, the most recent reports and testimony at the hearing (RT 36, 37, 38) show irrigation use on 220 acres gross in Sections 12 and 13, T17N, R5E, MDB&M. The place of use should therefore be amended accordingly.

19. No water has been rediverted from the point on South Honcut Creek for more than five years, and that point should be deleted from the license.

20. We further find that the licensed diversion amount should be reduced to six cfs.

### Conclusions

21. From the foregoing findings, the Board concludes that Yuba Investment Company, Inc., is the sole licensee, that the quantity of water to be diverted should be reduced to six cfs; that the place of use should be reduced to 220 acres, and the point of rediversion on South Honcut Creek should be deleted, as set forth in the order following.

### ORDER

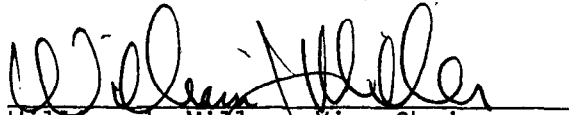
IT IS HEREBY ORDERED that License 4699 be, and is hereby, amended as follows:

1. The name of S. A. Coolidge, Jr., is deleted and Yuba Investment Co., Inc., is inserted as the sole licensee of License 4699.
2. The licensed quantity of diversion of 16.0 cubic feet per second is amended to read 6.0 cubic feet per second.

3. The point of redirection within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 13, T17N, R4E, MDB&M is deleted from the license and the total acreage of the place of use is amended to read 220 acres within Sections 12 and 13, T17N, R5E, MDB&M.


Dated: JAN 24 1980

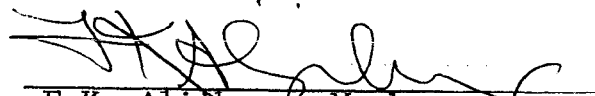
WE CONCUR:

  
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William J. Miller, Vice Chairman

  
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Carla M. Bard, Chairwoman

  
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L. L. Mitchell, Member

  
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Jill B. Dunlap, Member

  
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F.K. Aljibury, Member