

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

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In the Matter of Applications 2608 and 3357 of
the American River Water and Power Company to appropriate
from the Middle Fork of the American River,
Tributary to the American River
in Placer County, for
Power Purposes.

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Decision No. A 2608 - 3357 D 139

Decided February 14, 1927

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APPEARANCES AT HEARING HELD October 27, 1925.

For Applicant:

American River Water & Power Company

Fred P. Tuttle

For Protestants:

California Hawaiian Development Company

Carl E. Day

Power Timber Company

Harold T. Power

Stephen E. Kieffer

A. J. Cleary

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights, assisted by
Everett H. Bryan, Deputy Chief.

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O P I N I O N

Under Application 2608 filed October 24, 1921, it is proposed to appropriate 88,000 acre feet per annum throughout the entire year from the Middle Fork of the American River, at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, T 15 N, R 13 E, M.D.B. & M. by storage in the French Meadows reservoir which will be enlarged to a capacity of 88,000 acre feet. This water will then be conveyed

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at the maximum rate of 140 cubic feet per second to Power Plant No. 1 to be constructed in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T 14 N, R 13 E, M.D.B. & M., where it will be used for the development of 31,818 theoretical horsepower through a 2000 foot drop, and returned to the Middle Fork of the American River at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T 14 N, R 13 E, M.D.B. & M.

Under Application 3357 filed April 12, 1923, it is proposed to appropriate 88,000 acre feet per annum throughout the entire year from the Middle Fork of the American River, at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, T 15 N, R 13 E, M.D.B. & M. by storage in the French Meadows Reservoir, which will be enlarged to a capacity of 88,000 acre feet and to appropriate 140 cubic feet per second of direct diversion, without storage, from the same source throughout the entire year at a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T 14 N, R 12 E, M.D.B. & M., about one-half mile below the point of return under Application 2608, this latter point being also the point of rediversion of the stored water. The water appropriated will be conveyed at the rate of 140 cubic feet per second to Power Plant No. 2 to be constructed in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T 13 N, R 11 E, M.D.B. & M., where it will be used for the development of 27,555 theoretical horsepower through a 1732 foot drop, and returned to the Middle Fork of the American River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T 13 N, R 11 E, M.D.B. & M.

The applications were protested by the California Hawaiian Development Company, Harold T. Power and Stephen E. Kieffer.

These two applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested were set for a public hearing at 707 Forum Building, Sacramento, at 1:30 o'clock P.M. on October 27, 1925. Of this hearing, applicant and protestants were duly notified.

The protest of the California-Hawaiian Development Company against application 2608 was filed February 17, 1925. Protestant claims a right to the use of 4000 miner's inches of water from the Middle Fork of the American River at French Meadows, based upon appropriations made in 1872 and 1908 and use of water thereafter and alleges in effect that if applicant's proposed appropriation is approved, there will not be sufficient water left in the stream to satisfy its prior appropriation of 4000 miner's inches; that the construction of a restraining dam by the applicant would submerge its present dam and a portion of its ditch and intake, and that there would be possible damage or interference with its ditch and flumes by the construction of applicant's ditches and flumes in proximity thereto.

The protest of Harold T. Power, president of the Power Timber Company, a corporation, against Application 2608 was filed March 13, 1925. The protestant alleges in effect that the Company is the owner in fee of the dam site as well as the major portion of the land which it is proposed to overflow and that the flooding of said lands would destroy the timber standing thereon.

The protest of Stephen E. Kieffer against Applications 2608 and 3357 was filed April 1, 1925. Protestant stated that his protest applied only insofar as the storage of water under the applications would interfere with the summer flow which he proposes to use under Applications 2580, 2642 and 3014 and in the event of other use or diversion being made of the water after it left the designated point of return to the Middle Fork of the American River.

At the hearing Mr. Cleary acting in behalf of protestant Kieffer, on being informed that all claim to the water would be relinquished upon its return to the stream below Power Plant No. 2 withdrew his opposition to the granting of the permit.

On November 17, 1926 Applications 2580, 2642 and 3014 of Mr. Kieffer were cancelled at the request of the applicant.

Mr. Power, president of the Power Timber Company, who represented that company at the hearing stated that when the applicant was able to show that it is going ahead with the project and is able to finance the same, he would be willing to negotiate with it relative to the use of that portion of his lands which would be needed for the project. It appears therefore that this protest may be disregarded.

The protest of the California-Hawaiian Development Company however was actively pressed at the time of the hearing and the testimony was of such a conflicting and uncertain nature that at the request of the applicant action upon the applications was withheld until a field investigation of the matter could be made.

Accordingly at the first opportunity (June 15th and 16, 1926) a field investigation was made of the properties of this protestant and its use of water. Based upon this investigation and the testimony introduced at the hearing our conclusions are as follows relative thereto:

In 1872, Milton Lambert, acting for one William Ralston, the former owner of the property now in the name of the California-Hawaiian Development Company, made an appropriation of 4000 miners inches of water from the Middle Fork of the American River and immediately thereafter constructed a ditch from French Meadows to the Pennsylvania Flat mining claims on the Ralston Divide, where hydraulic mining operations were carried on at both the Ralson and Goggins mines until 1884, about the time the California Debris Commission Act went into effect. When the Debris Commission Act went into effect it became necessary to discontinue hydraulic mining at the Ralston Mine but the work appears to have been continued at the Goggins mine as the law did not interfere

the hydraulic work at that mine. Just how long this work at the Goggins mine continued is not certain.

Apparently with the idea of making the rights under the old appropriation more secure, on July 3, 1908 Mr. J. A. Shields filed a notice of appropriation, dated June 26, 1908 for 4000 miners inches of water measured under a four inch pressure (80 cubic feet per second) to be diverted at French Meadows on the Middle Fork of the American River, to be used for mining purposes "at various points along the Ralston Divide". By subsequent conveyances this water right appears to have become vested in the protestant on October 17, 1911.

Steps were then taken to resume mining operations and in 1911 and 1912 over \$100,000 appears to have been spent in reconstructing and enlarging the old Lambert ditch from French Meadows to the Goggins and Ralston Mines and hydraulic mining operations were continued at the Goggins Mine until 1914 the debris being stored in Long Canyon.

About \$669,000 has been expended on the Goggins and Ralston mining claims since 1911 but since hydraulic mining had to be abandoned in 1914, on account of the fact that Long Canyon had been filled with debris, the company has derived but little return from its investment. According to records submitted to this office, less than \$24,000 in gold had been taken from the mine prior to 1917 and from 1917 to 1924 no gold had been recovered.

The testimony presented at the hearing indicated that the construction work and use of water since the time of the appropriation by Mr. Shields has been as follows:

- 1908-1911 - Reconstruction of Lambert Ditch and repairing dam at French Meadows.
- 1911-1913 - Hydraulic mining at Goggins, ditch flowing to maximum capacity.
- 1914 - Hydraulic mining and washing gravels at Goggins.
- 1915-1917 - Washing gravels and cuts - no mining.
- 1918 - No use made of water.

- 1919 - Washing cuts, operating sawmill. Installation of air compressor which was never used.
- 1920-1921 - Washing cuts - no mining.
- 1922 - Sluicing operations by Fletcher Hamilton.
- 1923 - No use of water.
- 1924 - No use of water - new concrete dam constructed.
- 1925 - Washing gravels.

The washing out of the cuts mentioned above appears to have been for maintenance purposes only as no gold was taken out.

As to the capacity of the Lambert ditch, the testimony presented at the hearing was conflicting. The protestant claimed that the capacity was sufficient to take care of its appropriation of 4000 miners inches and the applicant maintained that the capacity was limited by the minimum section of the canal or flume to not more than 40 cubic feet per second.

Our own conclusions, based upon measurements made at the time of the field investigation, are that the contention of the applicant is correct and that the diversion works of the protestant have a capacity of less than 40 second feet. In fact Flume 2 of the protestant situated about $\frac{3}{4}$ of a mile below the diversion dam in the condition as found at the time of the investigation will carry only approximately $37 \frac{1}{2}$ cubic feet per second when running full and without freeboard. In view of the length of time which has passed since this appropriation was initiated and the intermittent and uncertain character of use we feel that this is the maximum amount to which protestant can successfully lay any claim of right under the notices of appropriation cited as the basis of its right.

The watershed tributary to the French Meadows reservoir site has an area of 46.3 square miles, varying in elevation from about 5000 to about 9000 feet above sea level. The area is subject to extremely heavy precipitation during the winter months and the high elevation together with the growth of timber which covers a large portion of it tends to delay the runoff and equalize the stream flow.

Mr. Fred H. Tibbetts consulting engineer of San Francisco has estimated the average seasonal runoff to be 148,160 acre feet and the minimum seasonal runoff for the past 50 years as 72,080 acre feet. He also has estimated the seasonal runoff for three consecutive seasons of minimum runoff during the past 50 years (1886-1889) as being 88,900 acre feet. Mr. Jerome Barrieau, engineer for the applicant, estimates the runoff in a minimum year such as 1912 to be 89,425 acre feet, and Mr. J. A. Shields, engineer for the protestant estimates that the probable runoff from this area for such years as 1920 to 1925 averages about 74,000 acre feet.

Assuming that the protestant diverts 40 cubic feet per second continuously throughout the entire year (which is highly improbable) the maximum amount of water diverted would be only 29,200 acre feet per annum or perhaps one-third of the estimated average minimum yield of the watershed or one-fifth of the average seasonal runoff and it would therefore appear that there is unappropriated water in the Middle Fork of the American River at French Meadows which is subject to appropriation.

Action upon these applications has been long delayed due to other causes than uncertainty as to water supply. The first of these two applications has been pending since October 24, 1921 and the second since April 12, 1923. They were two of a group of applications by the same applicant proposing a rather ambitious coordinated irrigation and power development of Rubicon River and North, Middle, and South Forks of American River. After repeated extensions these two applications were completed sufficiently for advertising in December 1924 and the remaining applications were all either withdrawn or cancelled for failure to complete.

The plans of the applicant have from the first been nebulous and incomplete both in connection with the physical features of the project and in connection with financing. At the time of the hearing upon the project on October 27, 1925, applicant testified that the company was capitalized

.. \$25,000 but no stock had been sold. Neither were there any definite plans for acquiring capital, necessary rights of way and those existing properties at French Meadows which must be acquired either by negotiation or condemnation before construction could proceed.

It appears that since the date of the hearing the applicant company has been reorganized, or at least the management has passed into other hands. No progress has however been made in the way of acquiring reservoir lands or the existing works of the protestant California Hawaiian Development Company which must be abandoned or reconstructed if this project is to proceed according to the plans which are before us. While applicant hitherto held a preliminary permit from the Federal Power Commission covering the project this permit was recently revoked.

Applicant on November 22, 1926, filed Application 5278 covering the same project as that described in Applications 2608 and 3357 and including some additional features. This application is under a present extension to May 1, 1927. Since the hearing on October 27, 1925, repeated continuances have been allowed the applicant to the end that plans for financing the project could be worked out, a market found for the power and necessary rights of way acquired. There has however been no progress manifested in these matters and we can no longer withhold action. It would appear in order that permits be granted and permittee held to a rather strict accountability in the matter of diligence in view of the generous extensions which have heretofore been allowed permittee to arrange such matters as are ordinarily taken care of prior to the issuance of permit.

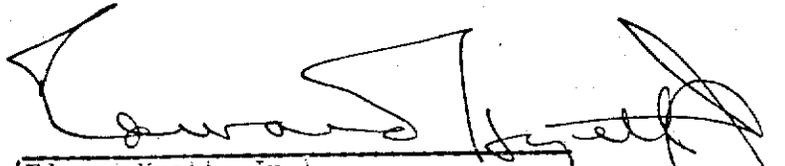
O R D E R

Applications 2608 and 3357 of the American River Water and Power Company to appropriate water having been filed with the Division of Water

Rights as above stated, protests having been filed, a public hearing having been held, a field investigation having been made and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Applications 2608 and 3357 be approved and that permits be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 14th day of February 1927.



(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

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February 10, 1927