

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

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In the matter of Application 7846 of John Dennis for  
Magalia Water Users Association to appropriate  
from Empire Creek in Butte County for  
Domestic Purposes.

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DECISION A. 7846 D - 367

Decided

*January 15, 1935*

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APPEARANCES AT HEARING HELD AT OROVILLE, OCTOBER 29, 1934.

For Applicant

John Dennis

In propria persona

For Protestants

California Water Service Company  
Almon E. Smith  
Pacific Gas & Electric Company  
Thermolito Irrigation District )  
and )  
Table Mountain Irrigation District )

H. K. Griffin  
George F. Jones  
George A. Hunt  
Raymond A. Leonard  
and  
Hubert Townsend

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of  
Water Resources, Department of Public Works, State of California.

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OPINION

GENERAL FEATURES OF APPLICATION

Application 7846 was filed on February 10, 1934, by John Dennis  
for Magalia Water Users Association. It proposes an appropriation by di-  
rect diversion of 0.22 of a cubic foot per second from Empire Creek tribu-  
tary to West Branch of North Fork of Feather River in Butte County, to be  
diverted throughout the entire year for domestic purposes in the unincor-

porated town of Magalia. The point of diversion is described as being at the center of the SE $\frac{1}{4}$  of Section 20, T 23 N, R 4 E, M.D.B.&M. The application was protested prior to the hearing by California Water Service Company, Almon E. Smith, and Pacific Gas and Electric Company and at the hearing by Thermolito Irrigation District and Table Mountain Irrigation District.

#### PROTESTS

The Pacific Gas and Electric Company claims a right to divert and use the first 65 cubic feet per second of the natural flow of the West Branch of the North Fork of Feather River at its Miocene head dam which is located in said river within the S $\frac{1}{2}$  of Section 30, T 23 N, R 4 E, M.D.B.&M., about one mile below the junction of Empire Creek and the West Branch of North Fork of Feather River, which right is based upon appropriations initiated February 21, 1875, and June 13, 1876, and continuous use thereafter of water for power purposes at protestant's Lime Saddle and Coal Canyon power plants and for supplying water for domestic and irrigation and/or mining uses both above and below said plants.

The California Water Service Company receives its water at the tail race of the Coal Canyon power house under contract with the Pacific Gas and Electric Company.

Both the Pacific Gas and Electric Company and the California Water Service Company allege in effect that should Application 7846 be approved, they would be deprived of water to which they are entitled under prior rights.

Almon E. Smith initiated an appropriative right under Application 6723 which application was approved by the issuance of Permit 3634 granting him the privilege of diverting 3 cubic feet per second from Empire Creek for mining purposes. His point of diversion is below that proposed by

the applicant and he alleges in effect that there is already insufficient water in Empire Creek to satisfy his requirements under Permit 3634.

Although not record protestants, the Thermolito and Table Mountain Irrigation Districts were represented at the hearing and objected against any proposed diversion which would decrease the amount of water available at the Miocene Head-dam of the Pacific Gas and Electric Company as they received their water supply from this source indirectly from the California Water Service Corporation.

HEARING SET IN ACCORDANCE WITH SECTION 1a  
OF THE WATER COMMISSION ACT

Application 7846 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on October 29, 1934, at 10:00 o'clock A.M. in Supervisors Room, Court House, Oroville, California. Of this hearing applicant and record protestants were duly notified.

SOURCE OF SUPPLY

Empire Creek the source of the proposed appropriation is a small mountain stream which apparently originates from springs in the foothills about two and one-half miles northeasterly of the unincorporated town of Magalia. It flows in a general westerly direction to its junction with the West Branch of the North Fork of the Feather River. The proposed point of diversion of the applicant is located about one mile above the junction in a flat which is heavily wooded. This flat extends about one-half or three-quarters of a mile below the proposed point of diversion and then the stream courses through a steep rocky ravine to its junction with the West Branch. Through both the flat and the canyon the stream flows through a well defined channel.

Very little information is available concerning the runoff from the Empire Creek watershed. L. H. McLain a witness called on behalf of the applicant testified that "about" September 1934 he had inspected the stream and "judged" that the flow before it entered the West Branch of the North Fork of the Feather River was about one miners inch, that there was no water at Smith's mine and that the flow at the proposed diversion point of the applicant "was probably 10 inches of water" or "something like that". No actual measurements were made by him and his apparent lack of experience in measuring water would tend to disqualify him as a reliable witness in such matters. He frankly admitted that the amounts were guessed.

On the other hand, E. N. Murphy, a professional engineer and experienced as an hydrographer testified on behalf of the Pacific Gas and Electric Company that on September 21, 1934, he actually measured the flow in Empire Creek at its junction with the West Branch of the North Fork of the Feather River and found that it was 1.8 miners inches. He then followed Empire Creek up to the approximate location of applicant's proposed point of diversion where the flow was again measured and found to be 2.4 miners inches. Mr. Murphy also observed that from the mouth of the creek to the applicant's proposed point of diversion the flow was continuous on the surface of the stream bed with the exception that at one point in the channel the water disappeared in the gravels of the stream bed for a distance of approximately 50 or 75 feet. By the use of coloring matter however Mr. Murphy was convinced that the water disappeared only to return to the surface again and contributed to the flow of the West Branch above the Miocene head-dam.

USE OF WATER BY PROTESTANTS

The testimony presented at the hearing indicated that the Miocene canal through which water is now diverted by the Pacific Gas and Electric Company from the West Branch of the North Fork of the Feather River has been in continuous use since the year 1875 under an appropriative right initiated that year. It was originally used for the purpose of conveying water to the vicinity of Oroville and the Cherokee Mine for mining purposes but as mining operations diminished water not used for these purposes was dedicated to irrigation and domestic purposes and was also used through the Lime Saddle power house constructed in 1906 and located approximately 8 miles below the Miocene head-dam and through the Coal Canyon power house constructed in the year 1907 and located about 16 miles below the Miocene head-dam.

The normal service capacity of the Miocene canal at the intake is about 65 cubic feet per second diminishing to about 48 cubic feet per second at the tail race of the Coal Canyon power house.

In 1917 the Pacific Gas and Electric Company acquired the canal system and was obligated to serve about 12 irrigation and domestic consumers above the Coal Canyon Plant using approximately 15,000 miners inches (37.5 c.f.s.) during the months of maximum demand which are July to November of each season and was also obligated to deliver 9.1 cubic feet per second to the Thermolito Irrigation District; 3.0 cubic feet per second to the Berkeley Olive Association and 10.0 cubic feet per second to the City of Oroville from the canal below the Coal Canyon power house.

In the year 1926 the Pacific Gas and Electric Company transferred to the California Water Service Company that portion of the Miocene Canal designated as the Powers canal and its obligation to serve the Thermolito Irrigation District, Berkeley Olive Association and the City of Oroville

were assumed by the latter company. While the California Water Service Company and the interests which it serves have no direct diversion rights from the West Branch they are concerned lest the water supply made available directly or indirectly under contract with the Pacific Gas and Electric Company be diminished by the proposed appropriation of the applicant.

Although an appearance was entered at the hearing on behalf of protestant Almon E. Smith, he, himself, was not present at the hearing nor was any testimony presented in his behalf.

#### WATER SUPPLY LIMITED

At the hearing, the Pacific Gas and Electric Company presented an exhibit (Exhibit No. 2 P. G. & E.) indicating the average mean daily discharge for each month from January, 1924, to December, 1933, and another exhibit (Exhibit No. 3 P.G.&E.) indicating the mean daily diversions for each month during the same period into the Miocene canal at the Miocene head dam. These exhibits indicate that on the average there are approximately five months of the year during which the flow in the West Branch is insufficient to fill the Miocene canal to its operating capacity. This five month period normally extends from about June or July to about October or November. Testimony presented at the hearing indicates that the demands of the consumers during the summer months are greater than the supply available and that the Pacific Gas and Electric Company is not able to fulfill its contractual obligations with the California Water Service Company.

#### CONCLUSION

While the amount of water which applicant proposes to appropriate is small compared to the capacity of the Miocene Canal and the need for same is apparently urgent, nevertheless it has been clearly shown that any water flowing into the West Branch from Empire Creek contributes to the supply

available at the Miocene Head-dam and is part of the water dedicated to the present users below. Such being the case this office has no alternative but to deny the approval of Application 7846 upon the grounds that there is not sufficient unappropriated water to justify the approval of the application.

While unquestionably there is unappropriated water during certain months of the year, the applicant stated unless he could appropriate the water during the summer time he would have no interest whatever in the application.

ORDER

Application 7846 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7846 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 15th day of January, 1935.

EDWARD HYATT, State Engineer

BY Harold Conbeling  
Deputy

