

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

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In the Matter of Application 8577 by Levee District No. 1  
of Sutter County and Application 8708 by California  
Lands Inc., to appropriate from Feather River  
For Irrigation Purposes.

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Decision A 8577 - 8708 D - 397

Decided

February 4, 1937

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APPEARANCES AT HEARING HELD OCTOBER 22, 1936.

For Applicants

Levee District No. 1 of Sutter County by Floyd E. Hewitt  
California Lands Inc. by Richard R. Fudge

For Opponents

Sutter Basin Corporation Ltd., Geo. C. Fallock, Garden Highway  
Mutual Water Co., and Grover C. Shannon by Arthur C. Huston.

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 DESCRIPTION OF PROJECTS

Application 8577 by Levee District No. 1 of Sutter County is to appropriate 15,000 acre feet per annum from Feather River for irrigation purposes by means of underground storage, the diversion to be made within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 14, Township 15 North, Range 3 East, M.D.B. & M. by gravity or by pumping. The water will be diverted into Gilsizer Slough, a natural channel, from which it will percolate to the ground water basin underlying the 19,973 acres which are to be served and it is to be recovered by the individual land owners within the District.

Application 2732 by California Lands Inc., is to appropriate 2 cubic feet per second from Feather River within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 11, Township 14 North, Range 3 East, N.D.R. & M. for the irrigation of 45 acres. A permit previously issued by the Division for this project was revoked because of lack of diligence and this application is therefore a re-filing.

#### PROTESTS

Both applications were protested by Geo. G. Pollock, Sutter Basin Corporation Ltd., and Garden Highway Mutual Water Company, and Application 2777 was protested also by Greyer C. Shannon and Sutter Delta Canal Company, but the last named protest was dismissed heretofore on the grounds that it failed to state a cause of action.

Sutter Basin Corporation Ltd., claims not only an appropriative right based upon Application 2304, Permit 2178 of this office but also a riparian right at a point downstream and alleges that the appropriation proposed will reduce an already inadequate water supply, citing the records of this office as to the amount of water used by it in recent years. These records show the following as to its use in the years 1931 to 1935:

Year	Season of Diversion	Amount of Water Diverted in Acre Feet	Area Irrigated in Acres	
			General	Rice
1931	April to Sept., Incl.	9,936 (1)	889	1,072
1932	June to Sept. Incl.	1,789	389	--
1933	April to Sept., Inc.	18,587	381	2,013
1934	May to Sept. Incl.	5,836	1,839	--
1935	July to Sept. Incl.	3,672	1,833	--

(1) During a period when there was no flow in Feather River supplemental water was diverted from Sacramento Slough and West Borrow Pit of Sutter Bypass.

Geo. G. Pallack protests upon the basis of a riparian right at a point downstream, states that he has used water since 1911, and alleges that the appropriation proposed will reduce an already inadequate water supply. The records of this office show as follows with respect to his use in the years 1931 to 1934:

Year	Season of Diversion	Amount of Water Diverted Acre Feet	Area Irrigated Acres	
			(General)	Rice
1931	May to October, Incl.	2,721	-	255 (1)
1932	April to October, Incl.	4,625	575	250
1933	" " "	1,700	432(2)	-
1934	July to October, Incl.	835	232(2)	-

- (1) Total acreage planted but due to shortage of water in July only 135 acres matured and were harvested.  
 (2) Includes acreage on adjoining land as follows: Anderson 30 acres; Albright 32 acres.

Garden Highway Mutual Water Company claims both a riparian right and a right by use under Application 1879, Permit 1725, at a point downstream and makes a similar allegation/<sup>as</sup> to the effect in reducing an already inadequate water supply. The records of this office show as follows as to its use during the years 1931 to 1935:

Year	Season of Diversion	Amount of Water Diverted Acre Feet	Area Irrigated Acres	
			(General)	Rice
1931	March to Sept, Incl.	3,640	1,127(1)	-
1932	April to Sept, Incl.	3,528	1,121(2)	-
1933	" " "	4,354	1,052(3)	-
1934	" " "	3,875	957(4)	-
1935	June to October, Incl.	3,152	1,120(5)	-

- (1) Includes 270 acres of Brown and Parlington  
 (2) " 255 " " "  
 (3) " 192 " " "  
 (4) " 128 " " "  
 (5) " 240 " " "

### HEARING SET

The two applications having been completed and duly noticed and having been protested, a hearing was called under the provisions of Section 1a of the Water Commission Act on October 22, 1936, of which hearing applicants and protestants received due notice.

### DISCUSSION

Since 1924 the Division of Water Resources in cooperation with the Water Resources Branch of the U. S. Geological Survey has maintained a record of the summer flow in Feather River at Nicolson and the Division has maintained also a record of the discharge of Feather River into Sacramento River and a record of the diversions from Feather River between the confluence with Sacramento River and the point at which applicant seeks to divert. From these records the attached table has been prepared showing for the months of July, August and September of each year 1924 to 1935, both inclusive, (1) the discharge of Feather River at Nicolson, (2) the discharge of Feather River into Sacramento River, and (3) the diversions between Nicolson and the confluence with Sacramento River. This table indicates that on the average during these three summer months 94 to 99 per cent of the flow at Nicolson is discharged into Sacramento River; that in only one month has there been no discharge from Feather River into Sacramento River and that in only four months has less than 90 per cent of the flow at Nicolson been discharged into Sacramento River. This discharge into Sacramento River is water which has flowed past the diversion points of the protestants who are here involved and inasmuch as these twelve years include the driest cycle of record it appears clear that under ordinary circumstances and normal conditions there is surplus water in Feather River subject to appropriation under this application.

If future applications to appropriate water in California were to be denied whenever a showing was made that during certain periods there was no surplus there could be little further development of the water resources of California because it is only in rare instances that the low flow of streams during dry cycles at least, except on the north coast, is not fully appropriated. It is not a function of the Division in connection with supervision of new appropriations to adjudicate and determine the rights of protesting prior appropriators and riparian owners. The Division is accustomed however to place a clause substantially as follows in permits to appropriate from Sacramento River and its tributaries within the valley floor:

"As there is a possibility that there will not be sufficient water in Feather River during the latter part of the irrigation season to satisfy all requirements this permit is issued subject to the express condition that the use hereunder may be regulated by the Division of Water Resources during periods of water scarcity to the end that such use will not interfere with rights under prior applications."

It appears appropriate that such a clause be incorporated in any permit which may be issued in this case.

#### CONCLUSION

Occasionally during the summer months present diverters from Feather River below these applicants have experienced a shortage of supply. The records however indicate that even during the extremely dry cycle 1924 to 1935, both inclusive, the average monthly discharge of Feather River into Sacramento River in July, August and September has been approximately three times the annual amount of the proposed combined diversions under these two applications. The fact that during occasional periods there is no surplus is not sufficient cause to deny these applications as demanded by protestants. They should be approved subject to prior and existing rights and subject to the usual special condition attached to all permits issued involving diversions from Sacramento

River and tributaries on the valley floor which condition provides for regulation by the Division of Water Resources during periods of water scarcity to the end that there be no interference with rights under prior applications. Such approval will give no color of right to interfere with present users under some valid claim of prior and existing right.

ORDER

Applications 8577 and 8708 having been filed seeking appropriations from Feather River; these applications having been completed and duly noticed as prescribed by the Water Commission Act and the Rules and Regulations of the Division of Water Resources; said applications having been protested and a hearing having been held on said protests after due notice to the parties in interest; and the Division of Water Resources being now fully advised in the premises.

IT IS HEREBY ORDERED that said Applications 8577 and 8708 be approved and that permits thereon be issued subject to the usual terms and conditions and such special terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *Fourth* day of *February* 1937.

EDWARD HYATT, State Engineer

By HAROLD CONKLING  
Deputy

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(Seal)

