

29 F.P.C. 1002, 1963 WL 4466

YUBA COUNTY WATER AGENCY,

PROJECT NO. 2246;

PACIFIC GAS & ELECTRIC COMPANY,

PROJECT NO. 187

ORDER ISSUING LICENSE AND ACCEPTING SURRENDER OF LICENSE

May 16, 1963*

****1 *1002** Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Application was filed on June 14, 1961, and amended on October 9, 1961, and February 14, 1963, by Yuba County Water Agency (Applicant) of Marysville, California, for license for a proposed project, known as Yuba River development and designated as Project No. 2246, to be located on the Yuba River and its tributaries, North Yuba River, Middle Yuba River, and Oregon Creek, in the Counties of Yuba, Nevada, and Sierra, California, and affecting lands of the United States within Plumas and Tahoe National Forests, and utilizing the existing Engelbright Dam and Reservoir pursuant to the Act of June 25, 1938 (52 Stat. 1040).

The proposed project would comprise a principal storage dam and reservoir with gross storage capacity of 930,000 acre-feet, three diversion dams, two diversion tunnels with aggregate length of about 5 miles, three power tunnels totaling about 4.8 miles in length serving three power plants having an installed generating capacity of 295,000 kilowatts, and an afterbay dam. According to the application, the project energy would be sold to Pacific Gas ***1003** and Electric Company (Pacific) at the powerhouses of the proposed project for transmission over Pacific's facilities for distribution within its service area.

The proposed project would affect certain hydroelectric facilities of Pacific, including the inundation of Pacific's licensed Bullards Bar Project No. 187. Because of this interference, Pacific petitioned to intervene in this proceeding, and was permitted to intervene by Commission order issued October 20, 1961. Intervention was permitted also to the State of California, acting through its Department of Fish and Game (California), by Commission order issued November 2, 1961.

On January 25, 1963, Pacific filed an 'offer to Surrender License' for its Project No. 187, on the conditions that Project No. 2246 be constructed under a Commission license and that Pacific receive just compensation for the inundation of its Project No. 187 by Applicant's proposed project. Applicant plans to construct a new power tunnel intake within the New Colgate Diversion Reservoir and a new segment of power tunnel to allow continued operation of Pacific's Colgate project. Applicant also proposes to negotiate with Pacific with respect to damages resulting from inundation of Pacific's Project No. 187.

By its order issued August 15, 1962, the Commission scheduled a public hearing on the application which was held on January 29, 1963. At the hearing, Pacific appeared in support of Applicant's request for a license for its proposed Project No. 2246. Intervener, California did not appear at the hearing, having announced at a prehearing conference held on September 6, 1962, that California and the Applicant had entered into an agreement which covers the major aspects of the project.

****2** In accordance with the provisions of Section 1.30(c) of the Commission's Rules of Practice and Procedure [18 C.F.R. 1.30(c)] counsel for Applicant requested that the intermediate decision procedure be omitted and such request was concurred in by all of the participating parties.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned; that special terms and conditions in the interest of navigation were not considered necessary; and requested that any license issued for the project

require the licensee to operate the project for flood control, to contract with the Corps for the use of the Engelbright Reservoir, as contemplated in the Act of June 25, 1938 (52 Stat. 1040), and to assume liability for any damage to the Engelbright project resulting from construction of Project No. 2246.

The Department of the Interior, in reporting on the application, recommended certain special conditions for inclusion in any license issued for the project to protect the interests of the Department. Several of the recommended conditions are included in a contract between Applicant and the Bureau of Reclamation dated December 6, 1962.

The Department of Agriculture, in reporting on the application, advised that the project would not interfere or be inconsistent with the purpose for which the Plumas and Tahoe National Forests were created or acquired, provided any license issued for the project contain certain special conditions in the interests of the Department. On April 13, 1962, a 'Memorandum of Understanding' was entered into between Applicant and the U.S. Forest Service covering: the conduct of work during the construction and operation of the project; a project fire plan; clearing and cleanup, including timber sales, debris disposal and stump removal; protection of forest lands and resources, replacement of forest facilities; *1004 construction of new roads; road maintenance; land acquisition; recreation; schedule of project operations; stream pollution; and certain general considerations. On September 17, 1962, Applicant and the Forest Service entered into a 'Cooperative Agreement' under which Applicant agrees to finance to an amount of \$3,000 (plus certain expenses) the study and preparation by the Forest Service of an 'Area Recreation Public Use Plan' to be completed by June 30, 1963.

The California Department of Fish and Game, in reporting on the application, recommended for inclusion in any license issued for the project certain conditions in the interests of fish and wildlife resources in the project area. The recommended conditions are essentially those agreed to by Applicant in its agreement with California dated November 28, 1962.

The California Department of Water Resources, in reporting on the application, recommended that Applicant assume any additional construction cost or loss of generation at Project No. 2246 by reason of construction and operation of the downstream Marysville Reservoir which might be constructed by either the United States or the State of California. In an agreement with the California Department, dated May 23, 1962, Applicant agrees to assume any such cost and loss.

The Commission finds:

**3 (1) Applicant is a 'municipality' as defined in the Federal Power Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The proposed project will affect a Government dam and lands of the United States.

(3) Public notice of the filing of the application has been given as required by the Act.

(4) Applicant having requested omission of the intermediate decision procedure, and all the requirements of the provisions of Section 1.30(c) of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

(5) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Plumas and Tahoe National Forests were created or acquired.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States, under the terms and conditions hereinafter imposed.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 393,000 horsepower.

(9) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, is reasonable as hereinafter fixed and specified.

***1005** (10) The amount of annual charges to be paid the United States under the license for the use, occupancy and enjoyment of its lands should be hereafter determined by the Commission as hereinafter provided.

(11) The exhibits hereinafter designated and described in ordering paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(12) Commission acceptance of Pacific's afore-mentioned 'Offer to Surrender License' for Project No. 187 is appropriate and in the public interest as hereinafter provided.

The Commission orders:

(A) This license is hereby issued to Yuba County Water Agency, of Marysville, California (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of May 1, 1963, for the construction, operation and maintenance of Project No. 2246, affecting lands of the United States within the Plumas and Tahoe National Forests and a Government dam and lands of the United States adjacent thereto; subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

****4** (B) Project No. 2246 consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

Exhibit FPC No. 2246 Title

J 1 (Amended) 30 'Yuba River Development-General Map;'

J 2 5 'Bullards Bar & Middle Yuba-Oregon Creek

Diversion Projects-General Map;'

J 3 (Amended) 31 'Colgate and Narrows Projects-General

Map;'

K 1 (Revised) 36 'Bullards Bar Project-Reservoir Map;'

K 2 through K 8 8 through 'Bullards Bar Project-Reservoir Map;'

14.

K 9 15 'Middle Yuba-Oregon Creek Diversion Project,

Log Cabin & Hour House Reservoir

Map;'

K 10 (Revised) 37 'Colgate Project-Detailed Map;'

K 11 17 'Narrows Project-Detailed Map;' and

K 12 (Amended) 32 'Timbuctoo Afterbay Dam-Reservoir Map'

(b) All project works consisting principally of:

1. An impervious core, rockfill dam; designated New Bullards Bar Dam and located on North Yuba River, about 633 feet high above streambed and about 1,800 feet long at its crest, with a gated side-channel spillway upstream from the left abutment, creating a reservoir with gross storage capacity of 930,000 acre-feet and water surface area of 4,600 acres at normal maximum operating surface at Elevation 1,995; a power pressure tunnel about 1,500 feet long *1006 in the left abutment; and a power plant located on the left river bank near the toe of the dam with total installed capacity of 132,000 kilowatts in two similar generating units;
2. A concrete arch dam, designated Hour House Diversion Dam and located on Middle Yuba River upstream from its confluence with Oregon Creek, about 90 feet high above streambed and about 370 feet long on the top axis, with an ungated, overflow type spillway centered on the dam, creating a reservoir with gross capacity of approximately 615 acre-feet and surface area of about 18 acres at normal maximum operating surface at Elevation 2,030 feet;
3. A concrete arch dam, designated Log Cabin Diversion Dam and located on Oregon Creek upstream from its confluence with Middle Yuba River, about 70 feet high above streambed and about 255 feet long at the top, with an ungated, overflow type spillway centered on the dam, creating a reservoir with gross capacity of approximately 220 acre-feet and surface area of about 8.5 acres at normal maximum operating surface at Elevation 1,970 feet;
- **5 4. A gravity-flow tunnel, designated Loham Ridge Tunnel and extending approximately 19,700 feet from Hour House Diversion reservoir to Log Cabin Diversion reservoir;
5. A gravity-flow tunnel, designated Camptonville Tunnel and extending approximately 6,750 feet from Log Cabin Diversion reservoir to New Bullards Bar reservoir;
6. A concrete gravity dam, designated New Colgate Diversion Dam and located on North Yuba River downstream from New Bullards Bar dam, about 50 feet high above streambed and about 230 feet long, with central ungated ogee spillway section having its crest at Elevation 1,350 feet, creating a reservoir with negligible effective storage capacity; a power pressure tunnel incorporating a surge chamber and extending about 22,400 feet from an intake structure at the diversion dam to the head of a 2,300 foot long double, steel penstock of New Colgate power plant; such power plant, located on the right bank of Yuba

River downstream from the confluence of North and Middle Yuba Rivers, with total installed capacity of 122,000 kilowatts in two similar generating units;

7. A power pressure tunnel, designated New Narrows Power Tunnel and extending about 1,600 feet from an intake structure on the right bank of Yuba River immediately upstream from existing Englebright dam of the California Debris Commission to the head of a 230-foot long steel penstock of New Narrows Power Plant; such power plant, located on the north bank of Yuba River downstream from Englebright dam, with installed capacity of 41,000 kilowatts in one generating unit;

8. An impervious core, rockfill dam, designated as Timbuctoo Afterbay Dam and located on Yuba River downstream from Englebright dam, approximately 83 feet high above streambed and about 750 feet long, with an independent ungated spillway and ogee weir in the left abutment and with a by-pass tunnel, creating a reservoir with gross storage capacity of 5,700 acre-feet and water surface area of 200 acres at normal maximum operating surface at Elevation 305 feet;

9. A substation at each power plant; and appurtenant hydraulic, mechanical and electrical facilities and miscellaneous project works-the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed *1007 part of the application for license and which are designated and described as follows:

Exhibit FPC Entitled

No.

2246

L 1 19 'Bullards Bar Project-New Bullards Bar Dam-General

Arrangement;'

L 5 23 'Bullards Bar Project-New Bullards Bar Power

Plant-Plans & Cross Section;'

L 6 24 'Middle Yuba-Oregon Creek Diversion Project-Log

Cabin Dam & Camptonville Tunnel;'

L 7 25 'Middle Yuba-Oregon Creek Diversion Project-Hour

House Dam & Lohman Ridge Tunnel;'

L 8 26 'Colgate Project-Diversion Dam, Tunnel & Power

Plant-General Arrangement;'

L 9 27 'Colgate Project-New Colgate Power Plant-Plans

& Cross Section;'

L 10 (Amended) 33 'Narrows Project-General Arrangement;'

L 11 29 'Narrows Project-New Narrows Power Plant-Plans

& Cross Section;'

L 12 34 'Colgate Project-New Colgate Diversion Dam-General

Arrangement;'

L 13 35 'Narrows Project-Timbuctoo Afterbay Dam-General

Arrangement;' and

Exhibit M Comprised of two typewritten pages entitled 'General

Description of Mechanical, Electrical, and

Transmission Equipment' filed June 14, 1961.

****6** (c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-6, December 15, 1953, entitled 'Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States' (16 FPC 1121) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof, except for Articles 9, 14, 15, 16, 17, 23 and 24 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall commence construction of the project works within one year of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction within 4 1/2 years from the effective date of this license.

Article 29. The Licensee shall within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary in accordance with the rules and regulations of the Commission.

Article 30. The Licensee shall submit, in accordance with the Commission's rules and regulations, final design Exhibit L drawings for the finally adopted ***1008** New Bullards Bar Dam and Spillway and shall not begin construction of these or any project works contingent thereon until the Commission has approved the Exhibit L drawings.

Article 31. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the California Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further*, That subsequent to approval of the final design drawings prior

to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

****7 Article 32.** Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order or permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 33. The Licensee shall maintain the following minimum streamflow schedules for maintenance of fishlife in the several streams listed:

(a)

Flow (cfs)¹

Stream April 15 to June 16 to

June 15 April 14

Middle Yuba (below Hour House Diversion) 50 30

Oregon Creek (below Log Cabin Diversion) 12 8

North Yuba (below New Colgate Diversion) 5 8

(b)

Flow (cfs)²

Stream January 1 July 1 to October 1 to

to June 30 September 30 December 31

Yuba River (below Timbuctoo Dam) 245 70 400

***1009** (c) Water releases for fishlife as specified in paragraph (a) and (b) of this article shall be subject to the following reduction in any critical dry year, defined as a water year for which the April 1 forecast of the California Department of Water Resources predicts that streamflow in the Yuba River at Smartville will be 50 percent or less of normal:

Yuba River at Reduction in water

Smartville releases for fishlife,

streamflow forecast percent

percent of normal

50 15

45 20

40 or less 30

However, in no year shall releases below Timbuctoo Afterbay Dam be reduced to less than 70 cfs. The critical dry year provisions herein shall be effective from the time the aforesaid forecast is available until the April 1 forecast of the following year.

Article 34. The Licensee shall maintain the following minimum pools: at New Bullards Bar Reservoir at Elevation 1,730 feet; and at Timbuctoo Afterbay Dam as high as possible under the power and irrigation demand schedule.

****8** *Article 35.* The Licensee shall so regulate releases from Timbuctoo Afterbay Dam during normal operation that they shall not fluctuate at an hourly rate of more than 300 cfs, such fluctuations to be measured within one-half mile below Timbuctoo Afterbay Dam.

Article 36. The Licensee shall construct and maintain at Timbuctoo Afterbay Dam such facilities for trapping and removing salmon and steelhead trout as have been approved by the Commission.

Article 37. The Licensee shall take whatever steps are required to prevent entry into any streams or waters in or below the project area of any clay, silt, fines, sand, gravel, detritus, oil, or other substance deleterious to fish and aquatic life and/or their habitat, resulting from construction or operation of the project.

Article 38. The Licensee shall construct and operate the project in a manner to provide for minimum possible alteration of natural fish and wildlife habitat, consistent with reasonable economic practices.

Article 39. Mitigation of damages to wildlife resulting from project activities shall be made by the Licensee as directed by the Commission based upon investigations by the California Department of Fish and Game and the Licensee as to the extent of such damages and means of mitigation, or upon recommendation of the Secretary of the Interior or of the Secretary of Agriculture.

Article 40. The outlet works at the New Bullards Bar Dam shall be so located as to provide water temperatures at New Colgate Diversion Dam at least comparable to existing temperatures with respect to the salmon and shad fishery resources.

Article 41. The Licensee shall, prior to impounding water, clear the area of the project reservoirs as follows: *New Bullards Bar Reservoir*-All vegetation between Elevations 1,700 feet and 1,955 feet and *Other Project Reservoirs*-All lands in the bottoms and margins up to high-water level; shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins

of reservoirs which may die from operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall *1010 be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 42. The Licensee shall strip and stockpile top soil from all borrow areas prior to borrow operations, and shall regrade these areas as practicable and replace top soil upon completion of borrow operations. Additionally, all borrow areas on lands of the United States shall be revegetated with browse species. This stipulation does not apply to areas to be inundated by reservoirs.

Article 43. All construction activity shall be carried on with the least possible erosion damage and least possible disfiguration of the landscape. Insofar as practicable, spillways from dams and conduits shall be located in natural stream channels and/or on relatively stable material.

****9** *Article 44.* During construction of the project, the Licensee shall keep a road open across the North Yuba River in the vicinity of Bullards Bar, at all times, for National Forest use and protection.

Article 45. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 46. The Licensee shall operate the project reservoirs for flood control in accordance with rules prescribed by the Secretary of the Army, such rules to be specified in a formal agreement between the Licensee and the District Engineer, U.S. Army Engineers District, Sacramento, California, and said agreement to be subject to review from the time to time as requested by either party.

Article 47. The Licensee shall enter into contractual arrangements with the District Engineer, U.S. Army Engineer District, Sacramento, California, pursuant to the River and Harbor Act of June 25, 1938, with respect to supplying storage for water in the Corps' Englebright Reservoir for power development at the New Narrows Power Plant, upon such conditions of delivery, use and payment as the Secretary of the Army may approve, such payments to be deposited to the credit of the Englebright Reservoir.

Article 48. The Licensee shall assume liability for any structural damage to the U.S. Corps of Engineers' Englebright Project incurred as a result of construction of the proposed New Narrows power facilities.

Article 49. The Licensee shall operate the project in such manner as will not conflict with future depletion of the water of the Yuba River and its tributaries or prevent or interfere with the future diversion and use of such water for the irrigation of lands or other beneficial consumptive uses.

Article 50. The Licensee shall enter into a formal agreement with the Bureau of Reclamation on river operations within the Yuba Basin which agreement shall be subject to the approval of the Commission.

Article 51. The Licensee shall negotiate with the National Park Service for archeological survey and salvage within project reservoir sites to be accomplished prior to inundation and to be financed by the Licensee in an amount not to exceed \$60,000.

Article 52. The Licensee shall not commence construction of any of the project works of the New Colgate Development until the Commission has approved the final design for New Bullards Bar Dam.

***1011** *Article 53.* The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

****10** *Article 54.* The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 55. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 56. The Licensee shall, within one year from the effective date of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 57. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulation. The authorized installed capacity for such purpose is 393,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.

(D) Pacific's afore-mentioned 'Offer to Surrender' its license for Project No. 187, filed January 25, 1963, is hereby accepted, effective upon agreement for payment by Applicant of just compensation for properties of Pacific in Project No. 187 needed for Project No. 2246 and the occurrence of conditions which make discontinuance of the operation of Project No. 187 necessary to avoid interference with the construction or operation of Project No. 2246 by Applicant.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license for Project No. 2246, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

(F) In acknowledgment of the acceptance of the foregoing paragraph (D) of this order, the attached form of acceptance shall be signed for Pacific Gas and Electric Company and returned to the Commission within 60 days from the date of issuance of this order.

FEDERAL POWER COMMISSION

Footnotes

* Modified upon rehearing, [30 FPC 1610](#).

1 Or natural flow, whichever is less, measured at a point not more than 500 feet downstream of dam Maximum 24-hour fluctuations of plus or minus 10 percent are permitted except for the flows below New Colgate Diversion.

2 Measured at a point not more than one-half mile downstream from the Irrigation Diversion Weir and *provided* that these flows shall be in addition to releases made to satisfy existing downstream water rights.

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