

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

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IN THE MATTER OF THE APPLICATIONS OF THE NEVADA IRRIGATION DISTRICT TO APPROPRIATE FROM THE NORTH, MIDDLE, AND SOUTH FORKS OF YUBA RIVER, BEAR RIVER, DEER CREEK AND TRIBUTARIES, IN NEVADA COUNTY, CALIFORNIA, FOR AGRICULTURAL AND POWER PURPOSES

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DECISION NO. 1270, 2272, 2273, 2274, 2275
2276, 2277, 2278, 2372, 2373
2652, 2981, and 2982 D 55

APPEARANCES AT THE JOINT HEARING HELD BEFORE THE FEDERAL POWER COMMISSION AND THE DIVISION OF WATER RIGHTS ON FEBRUARY 20 - 21, 1922, AND ADJOURNED TO APRIL 7, 1922

For Applicant, Nevada Irrigation District,	Robert M. Searls and Carrol Searls
For Protestant, Yuba Development Company,	Roy H. Elliott, A. E. Chandler, and Arthur L. Erb
For Protestant, Excelsior Water and Power Company	Douglas Brookman
For Protestant, Eureka Lakes and Yuba Canals Consolidated and the River Mines Company,	McCutcheon, Olney, Williard, Mannon & Greene, By E. A. McCutcheon and A. Crawford Greene
For Protestant, Bear River Water and Power Company,	A. C. Lowell and J. L. Rollins
For Protestant, Arctic Mining and Power Company,	Anderson and Anderson, By J.A. Anderson
Examiner, (for Federal Power Commission)	F. H. Fowler, District Engr., U. S. Forest Service.
Examiner, (for Division of Water Rights)	H. A. Kluegel, Chief of Division

APPEARANCES AT HEARING HELD APRIL 18, 1923.

Room 519 Forum Building, Sacramento, California.

For Applicant, Nevada Irrigation District, A. L. Wisker, Manager
Fred H. Tibbetts, Engineer

For Protestants, Excelsior Water & Power Co., Douglas Brookman, Counsel,
W. G. Allen, Vice President
and General Manager,
Joseph Spink, Chief Engineer
Yuba Development Company, Arthur L. Erb, Counsel,
Mr. Hutton, Vice President,
Karl Brehme, Vice President
Lars Jorgenson, Engineer

St. Gothard Consolidated)
Gold Mining Company,)
Louis Nonnemann)
Sureka Lakes and Yuba)
Canals, Consolidated,)
River Mines Company,)

Peter tum Suden, counsel

J. D. Adams, for McCutcheon,
Olney, Lannon & Greene

Examiner,

H. A. Kluegel, Chief of
Division of Water Rights,
Department of Public Works,
State of California,
Assisted by Harold Conkling,
Hydraulic Engineer

APPEARANCES AT CONFERENCE HELD FEBRUARY 1, 1923

Room 707 Forum Building, Sacramento, California.

Applicant, Nevada Irrigation District, A. L. Wisker,
Fred H. Tibbetts

Protestant, Excelsior Water and
Power Company, W. G. Allen
J. E. Spink
E. E. Welch

Examiner,

H. A. Kluegel, Chief of
Division of Water Rights,
Assisted by Harold Conkling,
Hydraulic Engineer

APPEARANCES AT HEARING HELD JUNE 4, 1923

Room 707 Forum Building, Sacramento, California.

Applicant,	Nevada Irrigation District,	Carrol Searls, Counsel A. L. Wisker, Manager
Protestants,	Yuba Development Company, Louis Nonnemann, Bear River Water and Power Co. Excelsior Water and Power Co. Pacific Gas and Electric Co.,	Arthur L. Erb C. W. Faries Peter tum Suden J. L. Rollins Douglas Brookman W.G. Allen, General Manager George A. Hunt, Engineer
Examiner,		H. A. Kluegel, Chief of Division of Water Rights, Department of Public Works, State of California, Assisted by Harold Conkling Hydraulic Engineer

APPEARANCES AT HEARING HELD DECEMBER 23, 1924

Room 707 Forum Building, Sacramento, California.

For Applicant, Nevada Irrigation District,	A. L. Wisker Messrs. Hinsdale & Metteer
For Protestant, Excelsior Water and Power Company,	Messrs. Nilon and Nilon Douglas Brookman
For Protestant, Yuba River Power Company, (formerly Yuba Development Co.)	Mr. Culbert Faries
Examiner, for Division of Water Rights,	Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California, Assisted by E. N. Bryan, Office Engineer

The applications were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested were set for public hearings as follows:

- February 20-21, 1922, Joint hearing before the Federal Power Commission and the Division of Water Rights held in Board Room of Harbor Commissioners, Ferry Bldg., San Francisco.
- April 7, 1922, Continuation of above hearing at same place.
- April 16, 1923, Hearing before Division of Water Rights held at 519 Forum Building, Sacramento.
- February 1, 1923, Hearing before Division of Water Rights held at 707 Forum Building, Sacramento.
- June 4, 1923, Hearing before Division of Water Rights held at 707 Forum Building, Sacramento.
- December 23, 1924, Hearing before Division of Water Rights held at 707 Forum Building, Sacramento.

Of these hearings applicant and protestants were duly notified.

The Nevada Irrigation District project is primarily for the irrigation of land within the boundaries of the Nevada Irrigation District, in Nevada County, extending from the South Yuba on the north to the Bear River on the south and from a point slightly east of Banner Mountain on the east to the westerly boundary of Nevada County. The District has an area of approximately 209,000 acres of which the officials estimate approximately 154,000 acres are irrigable.

The District's plans involve the development of run-off of the watersheds tributary to the South Fork of the North Fork of the Yuba River (Haypress) under applications 2273 (agricultural) and 2274 (power), the development of the watersheds tributary to the Middle Fork of the Yuba River (Milton and Jackson) under Applications 2275 (power)

and 2276 (agricultural); the development of the watersheds tributary to the South Fork of the Middle Fork of the Yuba River under Applications No. 2272 (power) and 2277 (agricultural); the development of the watersheds tributary to Canyon Creek, Texas Creek, Fall Creek and the South Fork of Fall Creek under Applications Nos. 1270 (agricultural) and 2372 (power) and bringing this water with proper regulation and storage in Milton, Jackson, and Bowman Reservoirs to the lands of the District, the water from these sources to be passed enroute through a power plant to be constructed by the Pacific Gas and Electric Company near the edge of Lake Spaulding to be known as the "Spaulding Rim Power Plant". The District proposes as an initial step in its development to deliver 108,000 acre feet per annum through this plant during the period from July 1st to March 31st at a maximum rate of 220 cubic feet per second, in accordance with an agreement entered into on the 29th day of April, 1924, between the Nevada Irrigation District and the Pacific Gas and Electric Company and expects this to secure a revenue other than that from the sale of water for irrigation purposes.

In addition to the proposed diversion from the mountain sources as mentioned above the District contemplates the use of water from the South Fork of the Yuba River under application No. 1270, (agricultural), from Deer Creek under Application No. 2278 (agricultural), from Bear River under Application No. 2652 (agricultural) and from South Wolf Creek under Application No. 2373 (agricultural), the supply from Deer Creek to be regulated by storage in Scotts Flat Reservoir and

the supply from Bear River and ^{South} ~~Little~~ Wolf Creeks to be regulated by storage in South Wolf Creek Reservoir, the supply from all these sources to be used as a supplementary supply when the future irrigation demands of the district require it.

Entirely separate from the proposed project for ~~the~~ irrigation in Nevada County the Nevada Irrigation District also proposes to use water from the Bear River for power purposes under Applications Nos. 2981 and 2982.

The determination of the extent to which the applications of the District should be approved has been difficult and the problem made more complex due to the fact that two other large interests are in a large measure seeking the same waters for irrigation and power development. One of these interests, the Yuba River Power Company, formerly the Yuba ~~River~~ Development Company, proposes storage on the Middle Yuba River at Jackson Meadows with diversion to North Fork, its plan including various power plants along the North Fork of the Yuba River, storage at Bullards Bar and at the Narrows on the Main Yuba and irrigation of land in the Sacramento Valley, the proposed narrows Reservoir giving storage space for tailings from gravel mines on the North, South and Middle Forks of the Yuba River.

Excelsior Water and Power Company proposes storage at Jackson Meadows and Bowman Lake, diversion of Jackson Meadows to Bowman Lake, various power plants along Canyon Creek, and the South Fork and main Yuba River, storage in Deer Creek and the irrigation of areas in Nevada County and in the Sacramento Valley.

The applications of the Nevada Irrigation District now
being considered are shown in the following table:

NEVADA IRRIGATION DISTRICT APPLICATIONS

: Appl. No. :	: County :	: Source :	: A M O U N T S :		: Purpose :	: Filed :
			: C.F.S. :	: A. F. :		
: 1270 :	: Nevada :	: South Yuba River :	: 250 :	: :	: Agr. :	: 5-7-19 :
: :	: " :	: Canyon Creek :	: 200 :	: 100,000 :	: " :	: " :
: :	: " :	: Texas Creek :	: 30 :	: :	: " :	: " :
: :	: " :	: Fall Creek :	: 15 :	: :	: " :	: " :
: :	: " :	: S. Branch Fall Creek :	: 5 :	: :	: " :	: " :
** : 2272 :	: Nevada :	: S. Fk. of Middle Yuba R. :	: 250 :	: 25,000 :	: Power :	: 3-25-21 :
** : 2273 :	: Sierra :	: S.Fk.of North Fk.Yuba R. :	: 400 :	: 75,000 :	: Agr. :	: 3-25-21 :
** : 2274 :	: Sierra :	: S.Fk.of North Fk.Yuba R. :	: 400 :	: 75,000 :	: Power :	: 3-25-21 :
** : 2275 :	: Nevada :	: Middle Fork Yuba River :	: 400 :	: 75,000 :	: Power :	: (3-25-21)* :
** : 2276 :	: Nevada :	: Middle Fork of Yuba River :	: 400 :	: 75,000 :	: Agr. :	: (3-25-21)* :
** : 2277 :	: Nevada :	: S.Fk.of Middle Yuba River :	: 250 :	: 25,000 :	: Agr. :	: 3-25-21 :
** : 2278 :	: Nevada :	: Deer Creek :	: 150 :	: 75,000 :	: Agr. :	: 3-25-21 :
** : 2372 :	: Nevada :	: Canyon Creek :	: 250 :	: 100,000 :	: Power :	: 6-3-21 :
: :	: " :	: Texas Creek :	: 30 :	: :	: " :	: " :
: :	: " :	: Fall Creek :	: 15 :	: :	: " :	: " :
: :	: " :	: S. Branch Fall Creek :	: 5 :	: :	: " :	: " :
** : 2373 :	: Nevada :	: South Wolf Creek :	: 150 :	: 50,000 :	: Agr. :	: 6-3-21 :
: 2652 :	: Nevada :	: Bear River :	: :	: 100,000 :	: Agr. :	: 11-22-21 :
: 2981 :	: Nevada :	: Bear River :	: 500 :	: :	: Power :	: 8-12-22 :
: 2982 :	: Nevada :	: Bear River :	: 500 :	: :	: Power :	: 8-12-22 :

*The priorities of applications No. 2275 and No. 2276 are affected by an order of withdrawal under Section 2a of the California Irrigation District Act giving them a priority as of March 26, 1920.

**2272 - 250 c. f. s. added appx. 3 months after filing
 **2273 - 400 " " " " " " " " " "
 **2274 - 400 " " " " " " " " " "
 **2275 - 400 " " " " " " " " " "
 **2276 - 400 " " " " " " " " " "
 **2277 - 250 " " " " " " " " " "
 **2278 - 150 " " " " " " " " " "
 **2372 - 300 " " " " " 19 days " "

Including the whole of amounts from Texas and Fall Creeks.

**2373 - 150 c. f. s. added appx. 19 days after filing.

In its action upon the applications of the Nevada Irrigation District the Division of Water Rights is guided by the following fundamental considerations:

(1) The water supply study, submitted by the engineer of the Nevada Irrigation District and incorporated in his report of April, 1924, was made in accordance with good engineering practice and is considered to be a fairly accurate estimate of run-off of the various watersheds from which the proposed supply is to be obtained. The results of this water supply study agree very well with the results of the majority of studies made by other engineers and conclusions as to the amount of water available to the district are based upon this analysis.

(2) The irrigation demand of Nevada Irrigation District has been taken as 150,000 acre feet per annum based upon advices from the State Engineers office under date of February 24, 1925.

(3) The regular order of priorities on Middle Fork of Yuba River is affected by the withdrawal made in accordance with Section 2a of the California Irrigation District Act (Stats. 1917 p. 755) as requested by the State Engineer on March 25, 1920. This withdrawal has the effect of giving to applications No. 2275 and No. 2275 a priority as of March 26, 1920 and affects no other applications of Nevada Irrigation District.

The protest of the Yuba-Sutter Irrigators was filed on March 25, 1921.

The protestants allege that any water diverted to the Bear River from the Yuba River watershed would increase the flow in the Bear River during time of flood flow to such an extent that the overflow would

work injury to the reclamation districts contiguous thereto.

According to the contract between the Nevada Irrigation District and the Pacific Gas and Electric Company the latter will divert not to exceed 135 cubic feet per second, which shall be re-diverted by the District at or near the Bear River diversion dam of the company. If this amount was not diverted to agricultural uses but allowed to pass down the Bear River the amount would not affect appreciably the stage to which the flood waters might rise. Even the ultimate plans of the District in fact do not contemplate a sufficient diversion from Yuba River into the Bear River to appreciably affect the flood flow of that stream.

The Yuba-Sutter Irrigators did not make an appearance at the public hearings and since they failed to submit evidence in confirmation of their allegation they have failed to support the burden of proof appropriate to a moving party.

The protest of the Arctic Mining and Power Company was filed March 6, 1922, and a subsequent protest was filed on April 2, 1923, by the Arctic Trustees, successors to the Arctic Mining and Power Company.

The protests were directed against Applications 1270 and 2372, alleging that the proposed diversion from Canyon Creek would deprive the Company of the flow which has heretofore been appropriated by them and which is required to operate the electric plant and air compressor at the Arctic mine, located near Canyon Creek above the junction of the South Fork of the Yuba River and said Canyon Creek.

The protestant bases its claim of right upon a notice posted May 17, 1910, claiming 2,000 miner's inches (under 4" pressure) of the

waters of Canyon Creek to be used for mining and milling purposes in connection with the Arctic Mine and the consolidated claims forming the same, for electric purposes and for furnishing power to other mines, and for general use and sale.

It is stated that the works at the Arctic Mine were completed in 1916 and since the completion the protestant has used continuously the 2,000 miner's inches, except in seasons of inclement weather, and except from the latter part of 1917 to the spring of 1922, during which period the mine was not worked on account of high prices and scarcity of labor; that if the entire flow of Canyon Creek be diverted, the compressor plant, electric power plant, flume and ditches of the Company would be of no value beyond their salvage value, and that there is no other source of power existing at present, and that if electricity should be furnished by applicant the cost thereof would be vastly in excess of the cost of furnishing power from the present plants of the protestant for such purposes.

At the joint hearing before the Water Commission and the Federal Power Commission Mr. Anderson, representing the Arctic Mining Company, presented the claims to 2,000 miner's inches (measured under a 4" pressure) as brought out in the protest, but stated that the Company fully realized that in itself its development would not and should not properly interfere with the great enterprise looking to irrigation, but that it also fully realizes it is entitled to protection as far as it can be done and to full compensation for all injury that may be done to it. (Vol. 1, Transcript, page 16).

At the hearing above mentioned, the facts were developed that the sources of the water which the protestant receives in Canyon Creek were, springs at the base of Bowman Dam, partial flow from Texas Creek and a 9 mile leakage from the North Bloomfield Ditch; that no actual use of the power plant had been made in a commercial way; that they were not equipped for the use of electricity; that the power plant was tested out when it was completed for several weeks to get its efficiency, but that it had not been used outside of that. (Transcript Vol. 1, p. 166).

It would appear from evidence submitted that the Arctic Mining and Power Company had at one time a valid claim to fifty cubic feet per second from Canyon Creek and Texas Creek, but whether this right has been weakened by periods of non use it is not within the province of the Division to say, but what rights the protestant may have must be respected by the applicant, as any permit which may be issued is subject to prior vested rights.

The protest of the Eureka Lakes and Yuba Canals Consolidated, and the River Lines Company was filed on April 4, 1922, supplemented by a protest filed March 30, 1923.

The protest is directed against Applications Numbers 2272, 2275, 2276, and 2277 in particular, and any applications insofar as they may cover the waters of the Middle Fork of the Yuba River, but the intent is plain to protest applications upon Canyon Creek also.

The protestants claim that the Eureka Lakes and Yuba Canals Consolidated is the owner of the Eureka Lake System originating in

French, Faucherie and other lakes and constructed over forty years ago, that the River Mines Company is the owner of hydraulic and other mines which formerly received water from the Eureka Lakes System and from the water system known as the Bloomfield System (now owned by the Northern Water and Power Company) and from the water system known as the Milton System, the source of which is the headwaters of the Middle Fork of the Yuba River flowing through Jackson Meadows; that the value of the mines is between \$80,000,000 and \$100,000,000 and that it is necessary that they receive and use waters which were formerly received by them and to which they are entitled.

Prior to the rendering of a decree by the California Debris Commission over thirty years ago, enjoining the deposit of debris into the stream, in the vicinity of the mines, the hydraulic mining interests along the San Juan Ridge were supplied with water from Canyon Creek, a tributary of the South Fork of the Yuba River by two systems; one of these being the North Bloomfield System, the reservoir being Bowman Lake, and the ditch having a capacity of 3,000 miner's inches; the other system was the Eureka Lakes System, having as its reservoirs French and Faucherie Lakes and having a ditch of a capacity of 2500 miner's inches. The mining interests were also supplied from a third system known as the Milton System, having its source of supply from the headwaters of the Middle Yuba River and storing in English Reservoir. The ditch capacity of this system was 3,000 miner's inches.

In 1883 the English Dam was destroyed and although the natural flow of the streams which supplied the English Reservoir was used for mining purposes from time to time after the destruction of the dam, the waters impounded in that reservoir were not thereafter used for hydraulic mining.

For many years the canal which formerly constituted a part of the Sureka Lakes System has been out of use and during that time the water formerly diverted through that system has been flowing into Bowman Reservoir and part has been diverted through the North Bloomfield Ditch.

The ditches of the three systems are in poor condition. That portion of the Milton Ditch extending from Milton diversion to the the South Fork of the Middle Fork of the Yuba River has been used since 1883 for mining purposes in Sierra County, but at the present time the portion below the diversion of the South Fork of the Middle Fork is not being used due to a lack of demand for water. (Transcript of Joint Hearing, Vol. II, p. 306).

The water at the present time^{which} is being supplied to the mines along San Juan Ridge is obtained from Canyon Creek and is served by combining the three systems, the North Bloomfield Ditch being used from Bowman Lake to Graniteville, the Sureka Lakes System, from Graniteville to Columbia Hill and the Milton System from Columbia Hill to French Corral.

The Bloomfield ditch has ample capacity to deliver such water as is needed along the Ridge unless hydraulic mining is again resumed.

At the present time the owners of Bowman Lake are required by the Railroad Commission to furnish the San Juan Ridge interests with 10,000 acre feet per annum.

After the English Dam went out there was some small mining along the ridge, (Transcript Vol. II p. 382) and there appears to have been some water used through the Milton system for the supply of some miners in Sierra County, (Transcript Vol. II, p. 306). Just what amount was used it is impossible to say.

This is not a proceeding to determine the exact extent of these various rights. The applicant understands that there are certain priorities which must be respected. Either the applicant or the claimants of prior rights may seek an adjudication of these rights by appropriate court procedure if the same becomes necessary and the District is subject to injunction and damages if it is guilty of trespass upon these prior rights. There is an undoubted surplus of water in the sources over and above that needed to satisfy the probable rights of these claimants.

The protest of the Knightsen Irrigation District was filed February 17, 1923.

It is directed against all of the applications of the Nevada Irrigation District, on the grounds that any further or additional storage or direct diversion of water from the San Joaquin or Sacramento

Rivers or their tributaries will probably increase the salinity of the Delta waters to such an extent that they will become unfit for irrigation, because the beneficial effect of the flood waters in flushing out the Delta channels and establishing a reservoir of fresh water in the deep channels of the Delta for summer use will be eliminated. The lands of the protesting district are situated in Contra Costa County, and irrigated from the waters of Indian Slough and Old River, tributary to the San Joaquin River, near the center of Section 24, T 1 N, R 3 E. M. D. B. & M.

In answer to this protest it may be said that during the period in which the waters of the Delta are subject to salinity, there is at present very little flow from the sources named in the application which would find its way to the Sacramento River and the condition of the Delta would remain unaffected by the approval of such proposed diversions as are necessary for the purposes of the Nevada Irrigation District.

The representatives of the Knightsen Irrigation District made no appearance at the public hearings and since no evidence was submitted in confirmation of their allegation, they have failed to support the burden of proof appropriate to a moving party.

The protest of the Bear River Water and Power Company was filed March 27, 1923, and is directed against Applications Numbers 2273, 2277, 2652, 2373 and 2982.

The protestant company alleges that the above applications conflict with their applications No. 1416 and No. 1417, for the use of water for the proposed Placer Irrigation District, and that certain phases of the applications were physical impossibilities.

Under date of December 12, 1923, the Placer County Water Users Association organized for the purpose of investigating water supplies for the county, advised the Division of Water Rights to the effect that it refused to endorse the project of the Bear River Water and Power Company and was not in favor of attempting to form an irrigation district at that time, and following this announcement the applications of the Bear River Water and Power Company were cancelled on December 28, 1923, for failure to complete. The protest of this company is therefore relieved.

The protest of H. L. Berkey and J. C. Mills as assignees of George W. Peer under Applications Numbers 2003 and 2355, was filed and is directed against Application Numbers 1270 and 2372 of the Nevada Irrigation District for diversion from Canyon Creek. The protestants claim that the proposed diversions would conflict with their rights initiated by the filing of their applications for mining purposes and that those filings were prior to those of applicant.

Examination of the above applications made by protestants reveals the fact that the Canyon Creek named in applications 2003 and 2355 is an entirely different stream from the Canyon Creek named in the applications of this applicant and any action taken upon these applications would not interfere in any way with the proposed diversions of the protestant.

The protest of the Excelsior Water and Power Company was filed February 16, 1923, and was directed against all of the applications of the Nevada Irrigation District, on the grounds that if the applications were approved they would materially conflict with the existing and prior rights of the protestant. Protestant claims it is already engaged as a public utility in the service ~~area~~ ^{to} a portion of the same area proposed to be served by this applicant; that Railroad Commission, after an investigation in 1920, practically directed the company to enter into further development in order to more adequately meet the demands of this community; that in order to comply with such direction protestant has gone to considerable expense in continuing the plans of the project described in its applications which are now before the Division; that the project contemplates a complete utilization of the waters from Jackson Meadows Dam to the Timbuctoo Power House and beyond; that throughout the entire sixty miles protestant intends to make the highest possible use of the water to generate power; that the project also contemplates making available water in sufficient quantities to work out the gold bearing gravels of the mines and that all water is used finally for purposes of irrigation; that protestant has already acquired 90% of Scotts Flat Reservoir wherein 40,000 to 45,000 acre feet may be impounded; that the irrigation of lower lands in Yuba County is contemplated; that protestant is well able to finance the project; and that protestant's project will benefit the greatest number and will be the best project for the development of the State.

This protestant has certain undoubted vested rights to appropriate from South Yuba River through the Excelsior Canal and from Deer Creek at several points for the service of the irrigated area which it serves as a utility.

Protestant has also a permit under Application No. 1614 to appropriate 60,000 acre feet per annum from Deer Creek at a point near where this applicant would appropriate under its Application No. 2278, and also several pending applications on Deer Creek which are prior to any rights of the District on that stream.

In so far as the pending applications of these two parties to appropriate from South Yuba and Canyon Creek are concerned the District has priority with its agricultural application No. 1270. Application No. 1616 of Excelsior Company for agricultural purposes is next in priority, then follow applications (No. 2131, No. 2203, No. 2205, No. 2207, No. 2243, No. 2246, No. 2250) then Application No. 2372 of the District for power purposes which application is a companion one to No. 1270, and lastly applications No. 2616, No. 3554, and No. 3616 of Excelsior Water & Power Company.

Excelsior water and Power Company has the priority on South Fork of Middle Fork under its application No. 2206, but on Middle Fork the District has priority under its applications No. 2275 and No. 2276 over Application No. 2244 of Excelsior Water & Power Company by reason of the withdrawal of these waters referred to above.

Approximately one half the area served by the Excelsior Water & Power Company is within Nevada Irrigation District. At popular elections the people within the District have now spoken twice in a

decisive manner to the effect that it is their wish that the project of the District be carried out. The priorities of the applications of these two parties are confused. However upon the admission of the Excelsior Water & Power Company itself the two projects cannot proceed simultaneously, and as the District holds the key to the situation with priority for agricultural use on Canyon Creek and South Yuba and for both power and agricultural purposes on the Middle Fork at Milton and Jackson Reservoir sites it must be considered that it is entitled to first consideration in the matter of pending applications in so far as the use of water from the upper Yuba River sources is concerned.

The conditions on Deer Creek are reversed. The Excelsior Water & Power Company holds the priority. However the District has entered suit to condemn the rights of the company under Application No. 1614 which has been approved. It therefore appears in order that action upon Application No. 2278 of the District to appropriate from Deer Creek should be withheld pending the outcome of this suit and awaiting the development proposed by the present permittee.

The protest of Yuba Development Company was filed April 2, 1923 and is directed against all applications of the Nevada Irrigation District, claiming that the project as proposed by applicant will conflict with the project proposed by protestant under its applications numbered 1680, 1703, 1899, 2004, 2124, 2196, 2197 (Permit 1154), 2198, 2199, 2200, 2306, 2493, 2601, 2693 (since cancelled) 2767, 2776, 2820, 2966, 2986, 3026, and 3222, which latter applications are all units in a single development or project.

Protestant maintains that the plan of applicant is not the most efficient one to serve the intended purpose of applicant and that the most economic and practical way to serve such purpose is through the development of local water supplies on Wolf Creek and Deer Creek with initial storage development at Scotts Flat; that there is additional feasible storage amounting to 26,000 acre feet at Rattlesnake on the South Yuba, and that additional water, if any is required can be obtained from Canyon Creek at Bowman and Texas and Fall Creeks.

Protestant further urges that the head waters of Middle Yuba River and storage at that point are necessary to its own very comprehensive scheme of power and agricultural development on the North Yuba and that loss thereof will greatly cripple its proposed development; also that its own plan of development is the only one which gives satisfactory assurance of being capable of furnishing water to work out the mining gravels on San Juan Ridge.

The facts appear to be that the District has examined these local sources of supply and has reached out for the mountains supply (Milton, Jackson, and Bowman) in the thought that not only are the local sources of supply inadequate to satisfy the ultimate irrigation demand of the district but that also an income from the sale of by-product power generated enroute between the point of diversion of the mountain water and its point of application to the irrigable lands within the district is imperatively necessary in order to finance the original construction plans of the district.

A contract has been negotiated and signed with the Pacific Gas & Electric Company providing for the purchase of this by-product power and a very considerable revenue is thus assured to the district. This plan of development has received the approval of the Bond Certification Commission and the office of State Engineer which are charged by law with the responsibility of passing upon the feasibility of the financial and construction plans of irrigation districts. The taxpayers within the district have by a substantial majority endorsed the plan. We feel therefore that in the absence of any evidence of gross miscalculation and error we should accept the judgment of the district's engineers, the Bond Certification Commission, the State Engineer and taxpayers of the district as to the economic soundness and practical feasibility of the district's plans.

We have no doubt that the loss of the Milton and Jackson sites and the headwaters of Middle Yuba is a blow and a hardship to the development proposed by the Yuba Development Company because these are desirable sites and this water when led into the North Yuba and fed through the succession of power plants proposed by protestant on that stream and at the Narrows would yield a very considerable revenue. It appears also clearly established that the headwaters of Middle Yuba would produce a somewhat larger amount of power when passed down the North Yuba rather than as proposed to be routed by the District.

It is felt however, that the Division may properly stand in this matter strictly on the order of priorities. Application No. 1270

of the District to appropriate from South Yuba River Canyon, Texas and Fall Creeks for agricultural purposes is first in time and therefore first in right. There follows next Application No. 1680 of the Yuba Development Company to appropriate 700 cubic feet per second and 20,000 acre feet per annum for power purposes at the Narrows below the junction of three forks of Yuba River. On account of the order of withdrawal under the provisions of Section 2a of the California Irrigation District Act Applications No. 2275 and No. 2276 of the District to appropriate 75,000 acre feet from Middle Yuba for irrigation and power purposes are next, then follows Application No. 2004 of the Yuba Development Company to appropriate 20,000 acre feet per annum at the Narrows for agricultural purposes, then follow Applications No. 2272 and No. 2277 of the District to appropriate for agricultural and power purposes from South Fork of Middle Fork and lastly there is Application No. 2372 of the District to appropriate from Canyon, Texas and Fall Creeks for power purposes.

Therefore in so far as Application No. 1270 is necessary to fulfill the purposes of the applicant the objections of protestant cannot be sustained because the rights of protestant are subsequent in time and inferior.

A study of the United States Geological Survey records of stream flow indicates that from about July 15th to about December 1st of a normal year the entire flow of Yuba River at the Narrows will be required to satisfy the claims of protestant under Application No. 1680

and therefore appropriations by applicant under Applications No. 2276 and No. 2277 which are for agricultural purposes should be limited to the season from about December 1st to about July 15th. The use for power purposes under Applications No. 2272, No. 2275 and No. 2372 will return the water to the river above the point at which it would be appropriated by protestant under its Applications No. 1680 and No. 2004 and therefore use of direct flow without storage may be made throughout the year without injury to protestant. Storage, however, should be limited to the period from about December 1st to about July 15th.

In so far as the waters of South Fork of North Fork of Yuba River (Haypress) are concerned the Yuba Development Company holds priority under its applications No. 1703 and No. 2196 over the District's applications No. 2273 and No. 2274. Neither the immediate construction plans nor the bond issue voted by the District contemplate development of this source and our present view is that these waters are not needed to satisfy either the ultimate irrigation demand of the District or the exigencies of its present financial program. It therefore appears in order that action on applications No. 2273 and No. 2274 should be withheld pending action on the prior applications of Yuba Development Company.

In the matter of working out the mining gravels on San Juan Ridge neither party has presented any definite plan or initiated any rights to the use of water therefor and if dependence is to be placed upon the claimed existing rights of the owners of the old mining ditches or the owners of these gravel deposits then it appears immaterial which of these projects receives preference at this time, and the priorities of the several applications should govern.

The original protest of Louis Nonnemann was filed on April 3, 1923, supplemented by another protest filed June 4, 1923.

The original protest is directed against Applications 1270, 2272, 2275, 2276, 2277 and 2372 of the Nevada Irrigation District.

Protestant alleges that the granting of the applications would diminish the flow of water in the Middle Yuba River, thus interfering with his prior rights which he claims are as follows:

- (1) Right of way for a ditch taking out from the Middle Yuba River, six miles above Delhi Mill and extending to the Delhi Mine.
- (2) Water right acquired by Hamilton Eddy, consisting of 500 miner's inches, (measured under a 4 inch pressure) of the waters of Grizzly Canyon.
- (3) Lower Bloody River Ditch, or Lower Grizzly Ditch, with a right to divert 200 miner's inches (measured under a 4 inch pressure) there through.
- (4) Water right acquired by Hamilton Eddy, consisting of 5,000 miner's inches (measured under a 4 inch pressure) of the waters of the Middle Yuba River to be taken out at the head of the Old San Juan Ridge and conducted to the Delhi Mill owned by the St. Gothard Gold Mining Company.

Protestant alleges that he now uses various amounts according to the needs of the mine; that improvements are contemplated and are now being made which will require the full amount of water so appropriated, and that the amount of water so appropriated is necessary to the use and development of the Delhi mine.

A supplemental protest was filed on June 4, 1923, which is directed against Applications 2278, 2372, 2373, 2652, 2981 and 2982, insofar as the applications in any way will impair the riparian right of the protestant. Protestant claims the ownership in fee of about 11,000 acres

of land lying on the northerly bank of the Bear River in Nevada County, being portions of Secs. 3, 4, 8, 9 and 17, Township 16 North, Range 11 East, M. D. B. & L.

The protestant's alleged water right on Grizzly Canyon and Blood River, tributaries of the Middle Fork of the Yuba River below the applicant's proposed point of diversion, can in no way be affected by the proposed diversions of the applicant.

Just what rights the protestant may have to the waters of the Middle Fork of the Yuba River are not definitely known. A right is consummated by the actual beneficial use of water and it is not a function of the Division to adjudicate these rights at this time. It certainly appears that the approval of Applications 1270 and 2372 on Canyon Creek would not effect the protestant in any way. If the protestant has rights that might be interfered with under Applications 2272, 2275, 2276, and 2277 these rights will of necessity have to be respected by the applicant.

Applications No. 2278, No. 2372, and No. 2373 have no relation to any stream in which protestant has claimed rights to use water. Applications No. 2981 and No. 2982 are to use natural flow for power and there has been no showing that the use of water as proposed by applicant would interfere with the rights claimed by protestant, nor that protestant has made any use of water which would be interfered with if these applications and No. 2682 also were approved.

In its studies of water supply the Nevada Irrigation District has conceded the prior right of the Pacific Gas and Electric Company to the first forty second feet of natural flow in Texas and Fall Creeks.

An investigation of the available supply from Milton and Jackson watersheds, Canyon Creek, and Texas and Fall Creeks, limited by the right of the Pacific Gas and Electric above mentioned, the priority of the Yuba Development, (by which the period of diversion is limited) and by the allowable maximum amount of diversion from Milton and Jackson watersheds, shows that there is a gross yield available to the district of approximately 179,000 acre feet per annum during an average year, and that it would require storage to the amount of 84,000 acre feet to fully develop this amount.

This amount is ample to supply the present demands of the District and take care of its agreement with the Pacific Gas and Electric Company. With further restorage it should supply the ultimate demands of the District.

It is a well established practice with this Division to refuse to allow an application to be amended by increasing the amounts of diversion named in the original application (except in so far as may be needed to clear up the original purpose). For this reason the Division can take no cognizance of the amounts of direct diversion which have been added to Applications Nos. 2272 to 2278 inclusive, subsequent to filing.

While it may be a fact that the District was misled by the letter from the Division under date of August 3, 1921 into the belief that the direct diversion feature added to No. 2276 had been accepted and the District was thereby induced to withdraw its application No. 1736 there has been no satisfactory showing that the added amount is necessary--in fact our present view is that the District does not

require more than 75,000 acre feet per annum from Middle Fork of Yuba River. If an additional amount is required we are convinced it cannot properly be allowed under Application No. 2276.

The amendments to applications No. 2372 and No. 2373 appear to have been made for the purpose of clearing up the original purpose, were made almost immediately after the applications were filed, and do not affect intervening applications so these changes have been allowed.

Records of Spill at Lake Spaulding show that during certain periods of the year there is unappropriated water on the South Yuba River, but it is not thought that a diversion from this source as proposed in Application No. 1270 is necessary for the needs of the District with the available mountain supply, and action on this feature of application No. 1270 can await a further showing in the matter.

The proposed diversion from Bear River under Application No. 2652 is also considered unnecessary at the present time, as the District appears to have an ample supply to meet the needs as outlined by the State Engineer's office without it, and action upon this application can await a further showing in the matter.

It appears that the watershed tributary to ^{South} ~~North~~ Wolf Creek Reservoir will yield not to exceed 12,500 acre feet during an average season and therefore the amount of proposed diversion to storage named in Application No. 2373 should be reduced accordingly. As the District has the priority on the source and as the watershed lies entirely within the boundaries of the Nevada Irrigation District it would appear that the district should have that supply available for its own use.

In the matter of Applications No. 2272 and No. 2277 it appears that the contributing watershed will yield not to exceed 5,000 acre feet in a normal year and this therefore seems the maximum amount for which it is reasonable to approve these applications.

In the matter of Applications No. 2981 and No. 2982 it is noted that the District has no immediate plans to proceed with the development proposed. This work is not a part of the plan approved by the Bond Certification Commission and the State Engineer nor have bonds for the work been voted. Neither is this development considered a unit in the general project or plan such that it can be included in the order which has been requested by the District declaring its several applications a single unit and enterprise in accordance with the provision of Section 11 of the Water Commission Act. It therefore appears proper that the Division withhold action upon Applications No. 2981 and No. 2982 awaiting the formulation of definite plans to proceed promptly with the development therein proposed.

O R D E R

Applications Nos. 1270, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2372, ²³⁷³~~2273~~, 2652, 2981 and 2982 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, public hearings having been held and the Division of Water Rights now being fully informed in the premises,

IT IS HEREBY ORDERED as follows with respect to these several applications:

That Application No. 1270 insofar as it relates to appropria-

tion from Canyon Creek, Texas Creek, Fall Creek and South Branch of Fall Creek, be approved subject to the usual terms and conditions;

That Application No. 2272 be approved subject to the usual terms and conditions for a total of 5,000 acre feet per annum and that the direct diversion feature of this application which it was sought to add subsequent to the date of filing the original application be rejected;

That Application No. 2275 be approved subject to the usual terms and conditions for a total of 75,000 acre feet per annum and that the direct diversion feature of this application which it was sought to add subsequent to the date of filing the original application be rejected;

That Application No. 2276 be approved subject to the usual terms and conditions for a total of 75,000 acre feet per annum with the diversion season limited to the period from about December 1 to about July 15 of each season and that the direct diversion feature of this application which it was sought to add subsequent to the date of filing the original application be rejected;


That Application No. 2277 be approved subject to the usual terms and conditions for a total of 5,000 acre feet per annum with the diversion season limited to the period from about December 1 to about July 15 of each season and that the direct diversion feature of this application which it was sought to add subsequent to the date of filing the original application be rejected;

That Application No. 2372 be approved subject to the usual terms and conditions with the diversion season to storage limited to the period from about December 1 to about July 15th;

That Application No. 2373 be approved subject to the usual terms and conditions for a total of 150 cubic feet per second direct diversion and 12,500 acre feet per annum of storage, and

That action on Applications No. 2273, No. 2274, No. 2278, No. 2652, No. 2981, and No. 2982 and upon the proposed appropriation from South Fork of Yuba River under Application No. 1270 be withheld until further order is entered.

19th
DATED: Sacramento, California, this 19th day of May, 1925.


(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS
STATE DEPARTMENT OF PUBLIC WORKS