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

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In the Matter of Applications 1680, 1703, 1899, 2124, 2198, 2199,
2200, 2493, 2767, 2776, 2966, 3344 and 5330 of the Yuba River
Power Company to appropriate from the Yuba River and its
Tributaries in Yuba, Sierra and Nevada Counties for
Power Purposes and Application 4916 of the Yuba
River Power Company to appropriate from the
North Yuba River in Yuba County for
Irrigation and Domestic Purposes

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DECISION A. 1680, 1703, 1899, 2124, 2198, 2199, 2200, 2493, 2767,
2776, 2966, 3344, 4916, 5330 D 193

Decided May 26, 1928

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APPEARANCES AT HEARING HELD AT SACRAMENTO, October 31, 1927.

FOR APPLICANT

Yuba River Power Company

D. Hadsell, C. W. Faries
J. W. Bringhurst, J. D. Galloway,
C. W. Mardel

FOR PROTESTANTS

Nevada Irrigation District

C. F. Metteer, Thomas Mulcahy,
A. L. Wisker, Fred H. Tibbetts

Judson Estate Company

C. F. Metteer, R. H. Kingdon

Pacific Gas & Electric Company

George A. Hunt

Bellevue Mining Company

R. H. Kingdon

Sam McCullough and
San Juan Ridge Inhabitants

Lynn Kelly

Other protestants

No appearance

The Federal Power Commission

F. E. Bonner

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling, Chief of
Division of Water Rights, Department of Public Works,
State of California.

O P I N I O N

GENERAL DESCRIPTION OF PROJECT

The Yuba River Power Company under its several power applications, contemplates a comprehensive development of the waters of the Yuba River and its tributaries for power purposes.

Under Application 2197, Permit 1154, License 435 and Application 3026, Permit 1354, License 436 the applicant has already acquired the right to divert 700 cubic feet per second throughout the entire year from the North Yuba River and 15,000 acre feet per annum from the same source by storage in Bullards Bar Reservoir from about December 15th to about July 15th of each season, which water is to be passed through the Bullards Bar Power House and used to develop 20,682 theoretical horsepower by passing a regulated flow of 1,000 cubic feet per second through a drop of 162 feet. The water is returned to the stream at the tail race of the Bullards Bar Power House. An agreement entered into between the Yuba River Power Company and the Pacific Gas and Electric Company under which the latter Company has leased the plant for a period of twenty-five years, provides that after the expiration of this period the Pacific Gas and Electric Company will obtain a title in fee to the plant.

Under the applications for power purposes now before this office it is proposed to construct five more power houses, namely,

- (1) The Sierra City Power House on the South Fork of the North Yuba River in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T 20 N, R 12 E, M.D.B. & M.
- (2) The Downieville Power House on the South Fork of the North Yuba River in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 36, T 20 N, R 10 E, M.D.B. & M.
- (3) The Ramshorn Power House on the North Yuba River in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T 19 N, R 9 E, M.D.B. & M.

(4) The Garden Valley Power House on Willow Creek, a tributary of the North Yuba River in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T 18 N, R 8 E, M.D.B. & M.

(5) The Narrows Power House on the Yuba River in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, T 16 N, R 6 E, M.D.B. & M.

At the Sierra City Power House (designated as I on accompanying map) two separate developments are proposed, the "Milton" and the "Sardine". Under the Milton development it is proposed to develop 46,104 theoretical horsepower by passing a regulated flow of 276 cubic feet per second through a drop of 1470 feet. Water for this purpose will be diverted as follows:

Direct Diversion

App.No.	Point of diversion as shown on accompanying map.	Amount	Source
2124	10	80 c.f.s.	Middle Fork Yuba River
2200	14	80 "	" " " "
2493	18, 19, 20	20 "	3 unnamed tributaries of Middle Fork
2767	21	151 "	Middle Fork Yuba River
2767	22, 23	7 "	Milton Creek and branch of same
2767	24, 25	66 "	S. Fk. S. Fk. North Yuba and branch
5330		(160 c.f.s.)	Middle Fork Yuba River alternative to Applications 2124 and 2200 (10) and (14)
	Total	404 c.f.s.	

Storage

App.No.	Point of diversion as shown on accompanying map.	Amount	Source
1703	2	15,000 a.f. per an.	S. Fk. North Yuba
1703	8	19,500 " " "	S.Fk. S.Fk. North Yuba
2200	13	40,000 " " "	Middle Fork Yuba River
2493	18, 19, 20	4,000 " " "	3 unnamed creeks
5330	36	(40,000)	Middle Fork Yuba River alternative to storage under Application 2200 at point (13)
	Total	78,500 a.f. per annum	

Under the Sardine development it is proposed to develop 29,905 theoretical horsepower by passing a regulated flow of 170 cubic feet per second through a drop of 1,548 feet. The supply for this development will be obtained as follows:

Direct Diversion

Appl.No.	Point of Diversion as shown on accom- panying map	Amount	Source
2767	26	58 c.f.s.	Sardine Creek
2767	27	118 "	N.Fk. S.Fk. North Yuba
2996	33	15 "	Sardine Creek
2996	34	85 "	Salmon Creek
Total		276 c.f.s.	

Storage

App.No.	Point of Diversion as shown on accom- panying map	Amount	Source
1703	3	4,000 a.f. per an.	Upper Sardine Lake
1703	4	1,000 a.f. " "	Lower Sardine Lake
1703	5	1,500 " " "	Upper Salmon Lake
1703	6	1,000 " " "	Lower Salmon Lake
1703	7	5,700 " " "	Lincoln Creek
2966	33	5,000 " " "	Sardine Creek
2966	34	25,000 " " "	Salmon Creek
Total		44,200 a.f. per an.	

At the Downieville Power House it is proposed to develop 66,250 theoretical horsepower by passing a regulated flow of 500 cubic feet per second through a drop of 1,166 feet. The following appropriations are sought for this purpose:

Direct Diversion

App.No.	Point of diversion as shown on accom- panying map	Amount	Source
2124	10	80 c.f.s.	Middle Fork Yuba River
2198	11	175 "	S. Fk. North Yuba River
2200	14	80 "	Middle Fork Yuba River
2200	15	25 "	Middle Fk. N.Fk. North Yuba
2200	16	50 "	E.Fk. N.Fk. North Yuba

App.No.	Point of diversion as shown on accom- panying map	Amount	Source
2200	17	10 c.f.s.	Hog Canyon
2493	18, 19, 20	20 "	3 unnamed tributaries of Middle Fork Yuba
2767	21	151 "	Middle Fork Yuba River
2767	22, 23	7 "	Milton Creek and tributaries
2767	24, 25	66 "	S.Fk. S.Fk. North Yuba and tributaries
2767	26	58 "	Sardine Creek
2767	27	118 "	N.Fk. S.Fk. North Yuba River
2966	33	15 "	Sardine Creek
2966	34	85 "	Salmon Creek
Total		940 c.f.s.	

Storage

App.No.	Point of diversion as shown on accom- panying map	Amount	Source
1703	2	15,000 a.f. per an.	S.Fk. N. Yuba River
1703	3	4,000 " " "	Upper Sardine Lake
1703	4	1,000 " " "	Lower Sardine Lake
1703	5	2,500 " " "	Upper Salmon Lake
1703	6	1,000 " " "	Lower Salmon Lake
1703	7	5,700 " " "	Lincoln Creek
1703	8	19,500 " " "	S.Fk. S.Fk. N. Yuba River
2200	13	40,000 " " "	Middle Fk. Yuba River
2493	18, 19, 20	4,000 " " "	3 unnamed tributaries of Middle Yuba
2966	33	5,000 " " "	Sardine Creek
2966	34	25,000 " " "	Salmon Creek
Total		122,700 a.f. per an.	

At the Ramshorn Power Plant it is proposed to develop 25,114 theoretical horsepower by passing a regulated flow of 650 cubic feet per second through a drop of 340 feet. For this purpose it is proposed to divert water as follows:

Direct Diversion

App.No.	Point of diversion as shown on accom- panying map	Amount	Source
1899	9	400 c.f.s.	North Yuba River
2124	10	80 "	Middle Fork of Yuba River
Total		480 c.f.s.	

Storage

Although it appears that storage was contemplated none of the applications filed provide for the storage of waters to be used through the Ramshorn Power Plant.

At the Garden Valley Power House it is proposed to develop 93,700 theoretical horsepower by passing 1,150 cubic feet per second through a 717 foot drop. Water is proposed to be diverted for this purpose from the following sources;

Direct diversion

App.No.	Point of diversion as shown on accom- panying map.	Amount	Source
2199	12	590 c.f.s.	North Yuba River
2776	28	60 "	Slate Creek
2776	29	60 "	Canyon Creek
2776	30	2 "	Boyce Ravine
2776	31	3 "	Cherokee Creek
2776	32	135 "	North Yuba River
	Total	850 c.f.s.	

Storage

App.No.	Point of diversion as shown on accom- panying map.	Amount	Source
2199	12	70,000 a.f. per an.	North Yuba River

At the Narrows Power House under the initial development it is proposed to develop 31,364 theoretical horsepower by passing 1200 cubic feet per second through a drop of 230 feet and under the ultimate development it is proposed to develop 90,000 theoretical horsepower by passing 2,400 cubic feet per second through a drop of 330 feet. Water for these purposes will be obtained as follows:

Direct diversion

App.No.	Point of diversion as shown on accom- panying map.	Amount	Source
1680	1	700 c.f.s.	Yuba River at Narrows
3344	35	1,300 "	" " " "
Total		2,000 c.f.s.	

Storage

App.No.	Point of diversion as shown on accom- panying map.	Amount	Source
1680	1	20,000 a.f. per an.	Yuba River at Narrows

Under its agricultural application 4916 the Yuba River Power Company proposes to utilize 15,000 acre feet (which it already has the right to store in the Bullards Bar Reservoir for power purposes under licenses already issued on Applications 2197 and 3026) for agricultural purposes on a tract of land containing approximately 11,340 acres lying within T 16 N, R 4 and 5 E, and T 17 N, R 4 E, M.D.B. & M. in Yuba County.

Storage under the several applications is proposed as follows:

Reservoir	Capacity	Application	Amount of Storage
Narrows	73,000	1680	20,000
Sierra City	15,000	1703	15,000
Upper Sardine Lake	5,400	1703	4,000
Lower Sardine Lake	1,500	1703	1,000
Upper Salmon Lake	3,083	1703	2,500
Lower Salmon Lake	1,340	1703	1,000
Lincoln Valley	5,700	1703	5,700
Hay Press Valley	19,500	1703	19,500
Indian Valley	70,000	2199	70,000
Jackson Meadows	40,000	2200 or 5330	40,000
Milton	7,000	2493	4,000
Sardine Flat	26,653	2966	30,000
Bullards Bar	15,000	4916	15,000

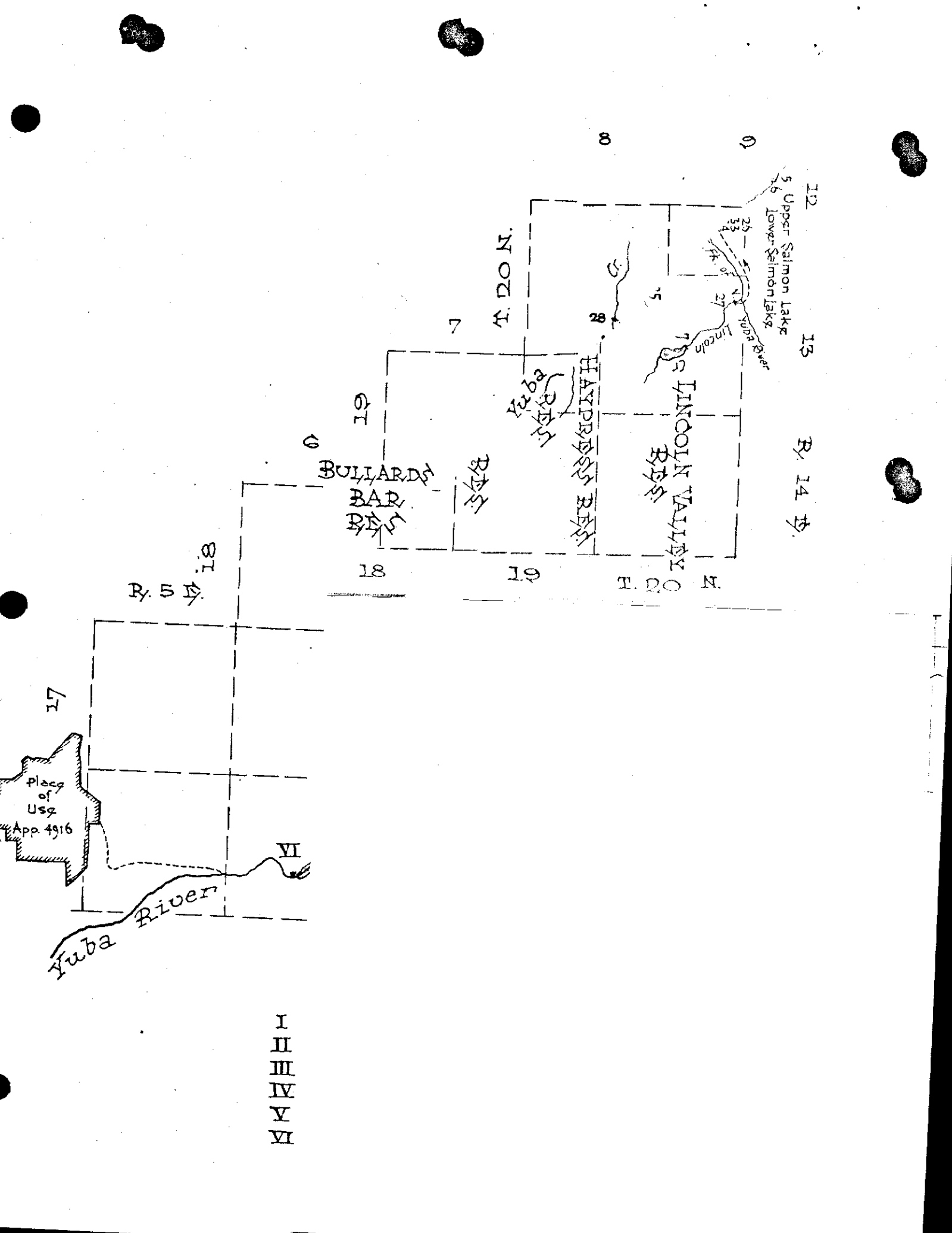
The accompanying map and tables show the general features of the several applications and the protestants.

TABLE I

PROTESTANTS

	1680	1703	1899	2124	2198	2199	2200	2493	2767	2776	2966	3344	4916	5330
Mammoth Gold Dredging Company	X													
Eureka Lakes & Yuba Canals Cons. and River Mines Company	X		X				X X X							
Nevada Irrigation District	X	X	X	X	X	X	X	X	X	X		X	X	X
Mrs. H. Devine	X	X												
Samuel Devine	X	X							X					
City of Sacramento	X	X	X	X	X	X	X	X	X	X				
Johanna Shaugnessy	X	X												
Rose Mattini	X	X												
Sierra Buttes Canal & Water Company	X	X	X		X	X	X	X			X			
Pacific Gas & Electric Company	X	X		X	X	X			X	X	X		X	
D. A. Sorracco, G. Zerga, A. Sorracco	X	X		X					X		X			
Richard Phelan	X	X												
Swastika Gold Mining Company	X			X					X		X			
John Kieffer	X								X					
Farm Land Investment Co. and Alicia Mutual Water Company	X	X	X	X	X	X	X	X	X	X				
Frank R. Wehe, Trustee Mountain Mine	X													
Lucien L. Solomons and Frank R. Wehe, Trustees Phoenix Mine	X													
Excelsior Water and Power Company				X				X	X					X
Sam McCullough, et al				X				X	X	X				X
John Rosenfeld Sons								X						
C. J. York								X						
Andrew Johnson								X						
Adolf Siebrecht								X						
Bellevue Mining Company											X			
Plumas Development Company											X			
Judson Estate Company											X			
E. O. Carvin									X					
E.L. and J.L. Hughes and E. Dermanly, Heirs of John Hughes, Deceased							X							

NOTE: The Nevada Irrigation District has succeeded to the rights of the Excelsior Water & Power Company and Eureka Lakes and Yuba Canals and River Mines Consolidated.



I
II
III
IV
V
VI

HEARINGS HELD IN CONNECTION WITH THE
APPLICATIONS OF THE YUBA RIVER POWER COMPANY

The several applications were completed in accordance with the Water Commission Act and the requirements of the rules and regulations of the Division of Water Rights and being protested were set for a public hearing at Room 707 Forum Building, Sacramento, California, at 10:30 o'clock a.m. on October 31, 1927. Of this hearing applicant and protestants were duly notified.

Prior to this hearing, other hearings were held on the applications of the Nevada Irrigation District at which the applicant, Yuba River Power Company, was represented. Data were presented at these hearings which are applicable to this proceeding and it was stipulated at the hearing held on October 31, 1927 that such data might be considered by this office in its deliberations in the matter of these applications of the Yuba River Power Company. These hearings were as follows:

February 20, 21, 1922	Joint hearing before the Federal Power Commission and the Division of Water Rights at San Francisco
April 18, 1923	Hearing before the Division of Water Rights at Sacramento
June 4, 1923	Hearing before the Division of Water Rights at Sacramento
December 23, 1924	Hearing before the Division of Water Rights at Sacramento

PROTESTS

The protests filed in the matter of the applications of the Yuba River Power Company were numerous as shown by the accompanying table. Many of them were made several years ago and in some cases, conditions have materially changed since they were filed. The protests fall into one or the other of the following general classifications:

- (1) Protests against interference with prior vested water rights including riparian rights.

- (2) Protests against interference with the right to dump mining tailings into tributaries of the North Yuba River.
- (3) Protests against interference with the contemplated water supply of a proposed irrigation district on the San Juan Ridge.
- (4) Protests against flooding property in reservoir sites.
- (5) Protests which were subsequently disposed of by stipulation or agreement of the parties.

Of the many protestants the only ones who appeared at the hearing held on October 31, 1927, were the Nevada Irrigation District, the Pacific Gas and Electric Company, the Judson Estate Company, the Bellevue Mining Company and representative of the San Juan Ridge inhabitants.

PROTESTS AGAINST INTERFERENCE WITH PRIOR VESTED RIGHTS

Protests which may be considered under this heading were filed by the following parties: Swastika Gold Mining Company; Mountain Mine; Phoenix Mine; Richard Phelan; Rose Mattini; Johanna Shaughnessy; John Rosenfelds Sons; C. J. York; Andrew Johnson; Adolf Siebrecht; Excelsior Water & Power Company; Nevada Irrigation District; Mammoth Gold Dredging Company; Eureka Lakes and Yuba Canals Consolidated and River Mines Company; City of Sacramento; Farm Land Investment Company and Alicia Mutual Water Company; E. O. Carvin; Judson Estate Company; E. L. Hughes and E. Dermonly, Heirs of John Hughes, deceased.

In 1922 an engineer of this office investigated the protests then on file and reported that many of the rights claimed had apparently lapsed through non use. Among these protestants were the Swastika Gold Mining Company, the Mountain Mine, the Phoenix Mine, Johanna Shaughnessy and John Rosenfelds Sons.

Relative to the alleged right of Mrs. Mattini the report of the engineer indicated that there was sufficient water entering the stream below the applicant's point of diversion to satisfy her alleged rights.

Relative to the protest of the Judson Estate Company it appears that on November 19, 1923, this company filed Application 3719 with this office which was approved on November 16, 1925 by the issuance of Permit 2523. According to the terms of this permit the Judson Estate Company was granted the privilege of diverting 40.5 cubic feet per second from 6 ravines tributary to Canyon Creek and 2 ravines tributary to Slate Creek together with intermediate runoff caught by ditches between the points of diversion named; the water to be diverted throughout the entire year for hydraulic mining purposes and returned to Gold River Creek at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6, T 20 N, R 9 E, M.D.B. & M. It appears that both the point of diversion and point of return of the diverted waters are well above the proposed diversion point named in Application 2776 the only one protested by this company and therefore interference with the right of the protestant would be impossible. Apparently the protestant company merely wished to appear for the sake of directing attention to its alleged rights.

Attention is also directed to the fact that as between Application 3719 of this protestant and Application 2776 of the Yuba River Power Company the latter company has the earlier priority.

All applications of the Excelsior Water and Power Company have been cancelled with the exception of Applications 1614, 1615, 2126, 2130 to appropriate from Deer Creek and its tributaries and Application 1616 and 2131 to appropriate from the South Fork of the Yuba. These applications have been assigned to the Nevada Irrigation District and as the points of diversion under these several applications are above the point of diversion of the applicant under Application 1680 and 3344 and on different branches of the Yuba River than those from which the applicant seeks to divert under its other applications there can be no interference by the approval of the applications of the Yuba River Power Company.

The rights of the Eureka Lakes and Yuba Canals Consolidated and the River Mines Company have also been acquired by the Nevada Irrigation District and will need no separate discussion.

With the exception of the Nevada Irrigation District and the Judson Estate Company none of the above protestants appeared at the hearing and as no evidence was submitted in support of their allegations the protests may be dismissed without further consideration. If any of these protestants have prior rights which will be interfered with by any diversions which the applicant may make they must necessarily be taken care of either by purchase or agreement.

PROTEST OF THE NEVADA IRRIGATION DISTRICT

All of the applications of the Yuba River Power Company were protested by the Nevada Irrigation District with the exception of Applications 1899, 2776 and 2966. Protestant alleges possible interference with its prior right to divert from tributaries of the Yuba River.

Protestant claims that under Section 15 of the Water Commission Act, a pending application for power purposes, though prior in time is inferior in right to a subsequent application for agricultural purposes. In other words the protestant contends that agricultural use is next highest to domestic use and that the Division of Water Rights shall be guided by this rule in acting upon applications, even though in conflict with the fundamental principle of appropriation which has obtained from the beginning of that doctrine and which was carried into the Water Commission Act, to wit, "first in time, first in right".

Section 15 of the Water Commission Act to which reference is made provides as follows:

"The state water commission shall allow, under the provisions of this act, the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in the judgment of the commission will best develop, conserve and utilize in the public interest the water sought to be appropriated. It is hereby declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation. In acting upon applications to appropriate water the commission shall be guided by the above declaration of policy. The commission shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest."

The second and third sentences of this section, if they stood alone and as a complete section might lend themselves to such an interpretation as protestant suggests, although this is debatable because it is a familiar rule of statutory interpretation that all of an Act and all of its sections and each section must be considered as a whole and the context given due consideration.

In the light of the fundamental principle of appropriation that "first in time is first in right" we would expect departures from that doctrine to be expressly declared or so clearly indicated as to leave no room for doubt especially in view of the fact that date of filing an application is made the date to which the priority of a right initiated under the Act relates.

It has been heretofore held by the Division of Water Rights, in the matter of an application filed by the East Bay Municipal Utility District to appropriate from the Mokelumne River for municipal purposes that such an application is prior in right as against applications prior in time and pending before the Division of Water Rights for other purposes. However Section 20 of the Water Commission Act is very explicit wherein it declares that such applications "shall be considered first in right, irrespective of whether they are first in time". Here then is an instance wherein the Act does depart from the fundamental principle of priority

which it otherwise observes. In so doing the Act as we would expect is very explicit and leaves no room for doubt or uncertainty. Such cannot be said of Section 15 if it be urged that it also constitutes such a departure in every case as between domestic and agricultural applications on the one hand and applications for other purposes on the other hand.

The true applicability of the declaration of policy contained in these sentences of this section, it seems to us, is clearly indicated by the legislature. The opening sentence discloses its subject matter as that of the "public interest" in acting upon an application. Hence the two sentences under consideration seem to be merely a declaration that wherein the "public interest" is involved agricultural use shall rank next to domestic use. In other words if other things are equal and decision is to be made on the basis of public interest this section declares that agricultural development shall be favored as against power development.

But in the matter of these applications of the Yuba River Power Company for power purposes no such consideration of public interest would appear to govern. All water which the applicant proposes to divert either directly or to storage, is to be returned to the Yuba River or tributaries thereof at points which lie above the main agricultural lands of the valley and will be available for present and future irrigation needs, which it is believed is the ideal regulation of stream flow. While protestant might ultimately benefit, if these waters were reserved for its use, because the revenue from power which could be developed thereby would be a source of income for the district, it is the opinion of this office that these waters are not necessary for agricultural use within the district and that public interest would in no wise be served by such a reservation.

On May 19, 1925 in its action upon the applications of the Nevada

Irrigation District, this office declared in Decision A 1270, etc. D 55:

"An investigation of the available supply from Milton and Jackson watersheds, Canyon Creek, 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 re-storage it should supply the ultimate demands of the District.

"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 Number 1270 is necessary for the needs of the District with the available mountain supply, and action on this feature of Application Number 1270 can await a further showing in the matter.

"The proposed diversion from Bear River under Application Number 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."

Since the above mentioned decision was rendered the district has been enlarged by the inclusion of 66,500 acres in Placer County and is obligated to serve an additional 7,000 acres outside of the district boundaries. It has however acquired the water rights of the Excelsior Water & Power Company including direct diversion rights of long standing on the South Yuba River and Deer Creek and a permit under Application 1614 of this office allowing a storage of 42,000 acre feet in Scotts Flat Reservoir on Deer Creek. There is still available, if needed, the water under Application 1270 by diversion at Lake Spaulding on the South Yuba River which portion of Application 1270 has not yet been acted upon, and also the 100,000 acre feet from Bear River under Application 2652 which is still pending. Under the circum-

stances it is not seen wherein public interest in anywise demands that additional water be reserved for the Nevada Irrigation District on the head waters of the Middle Yuba and North Yuba.

There is no question but that Application 1270, Permit 2082 of the Nevada Irrigation District has the priority over all of the applications of the Yuba River Power Company as it is prior in time.

The point of diversion named in Application 1680 of the Yuba River Power Company lies below the junction of the South, Middle and North Forks of the Yuba River and Deer Creek and above it is a drainage area of approximately 1200 square miles of watershed which, according to Bulletin 5 of the Division of Engineering and Irrigation, Department of Public Works, State of California, entitled "Flow in California Streams" has a mean seasonal runoff of approximately 2,652,600 acre feet per annum, varying from a minimum seasonal flow of 998,400 acre feet per annum to a maximum of 6,176,000 acre feet per annum.

Mr. Tibbetts, Chief Engineer of the Nevada Irrigation District, in his report of April 1924 estimates that the mean seasonal runoff from Bowman watershed (Canyon Creek) and from the Texas and Fall Creek watersheds from which water is to be diverted under Application 1270 of the Nevada Irrigation District, is approximately 142,600 acre feet per annum which is less than $5\frac{1}{2}\%$ of the mean seasonal runoff from the Yuba River watershed above the point of diversion named in Application 1680 of the Yuba River Power Company. It is very apparent therefore that the proposed diversion of the Yuba River Power Company under Application 1680 can in no way interfere with protestants rights.

While it is true that Application 3344 of the Yuba River Power Company has a later priority than Applications 1270, 1614 to 1616, 2126, 2130, 2131, 2272 to 2277 and 2372 of the Nevada Irrigation District, we can see no

possible interference with the rights of the District if this application is approved as the point of diversion thereunder is below the points of diversion of the protestant and is below the junction of the main forks of the Yuba River where water is available after being put to power uses above. As to the alleged conflict with Application 5193 of the Nevada Irrigation District the applicant has the priority.

Applications 1899, 2776 and 2966 were not protested by the Nevada Irrigation District and therefore will not be considered in this discussion.

Under Application 1703 the Yuba River Power Company has the priority to divert 19,500 acre feet per annum of the waters of the South Fork of the South Fork of the North Yuba River for power purposes and under Application 2196 (which application was not included in this hearing) the applicant has the priority to divert for agricultural purposes. This source was not affected by the withdrawal order under Section 2a of the California Irrigation District Act hereafter referred to and therefore these applications have a priority over Applications 2273 and 2274 of the Nevada Irrigation District to divert from the same source. Attention is also directed to the fact that in Decision A 1270, etc. D 55 above referred to the opinion of this office was as follows:

"Neither the immediate construction plans or 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."

The next application in order of priority on the South Fork of the North Yuba River is Application 2767 of the Yuba River Power Company under which it is proposed to divert 61 cubic feet per second from the South Fork of the South Fork of the North Yuba River throughout the year for power purposes. The point of diversion named in the application lies below the points

of diversion named in Applications 2273 and 2274 of the District and there would be no interference with any rights which the District may hereafter acquire. Attention is also directed to the fact that during December 15th to July 15th this water is a portion of the water diverted under Application 1703 of the applicant for power purposes.

As to Applications 2198, 2199, 2200, 2776 and 2966 which seek to divert from the North Fork of the Yuba and its tributaries there can be no interference with any proposed diversions of the protestant as the points of diversion under these applications either lie below the proposed points of the protestant or on streams which are tributary to the North Fork below any proposed point of diversion of the protestant.

Application 4916 to appropriate from the North Fork of the Yuba for agricultural purposes will be discussed later.

In accordance with Section 2a of the California Irrigation District Act, the State Water Commission withheld from appropriation at the request of the State Engineer during a period of one year--March 26th, 1920 to March 26, 1921,--all waters of Canyon Creek and the Middle Fork of the Yuba River as follows:

- (1) All water of Canyon Creek and tributary streams above a point of diversion on Canyon Creek located in the SW $\frac{1}{4}$ of Section 14, T 17 N, R 11 E, M.D.B. & M.
- (2) All waters of the Middle Fork of the Yuba River and tributary streams above a point of diversion on the Middle Fork of the Yuba River located in the SE $\frac{1}{4}$ of Section 11, T 19 N, R 12 E, M.D.B. & M.

Under this order of withdrawal this office assumes that Applications 2275 and 2276 of the Nevada Irrigation District have a priority as of March 26, 1920. The Yuba River Power Company questions the right of the Nevada Irrigation District to this earlier priority and has taken the matter to the courts but in this opinion as in the opinion upon which

Decision A 1270 D55 was rendered this office assumes that under Applications 2275 and 2276 the Nevada Irrigation District has the earliest priority to divert from the Middle Fork of the Yuba River at the Milton site. Under these two applications the District has the right to divert 75,000 acre feet per annum throughout the entire year for power purposes and from about December 1st to about July 15th for agricultural purposes.

According to the report of Mr. Tibbetts, referred to above, the mean seasonal runoff from the Jackson Meadows watershed (area 39.2 square miles) is approximately 125,490 acre feet per annum varying from a possible minimum of 62,700 acre feet to a maximum of 264,200 acre feet. Granting the right of the Nevada Irrigation District to divert 75,000 acre feet of this amount there would be available over 50,000 acre feet of the mean seasonal runoff for the applicant and such other prior rights on the stream as there may be.

While it is our opinion that the normal runoff is not sufficient to supply the entire amount of water applied for under Applications 2124, 2200 and 2767 there would be years when the runoff would appear to justify the approval of these applications, leaving it to time and experience to prove what amounts may in fact be used. Testimony presented at the hearing indicated that the applicant considered that it would be entirely feasible to develop Milton and Jackson even though 75,000 acre feet per annum were abstracted from the flow under permits issued to the Nevada Irrigation District. Furthermore the amount of water which the District can divert from the Middle Fork to the South Fork of the Yuba River is limited by the capacity of the Milton Bowman tunnel to a proposed ultimate diversion of 700 cubic feet per second and there will undoubtedly be peaks of flood discharge which can not be diverted by the District and which may be available to the applicant for diversion through its Milton-Sierra conduit.

There would also appear to be a limitation on the amount of water to be diverted by the Nevada Irrigation District as set forth in Paragraphs 2 and 3 of Article 29 of the license issued to the Nevada Irrigation District by the Federal Power Commission on November 16, 1925. These paragraphs read as follows:

- (2) That whenever the supply of water in "Bowman Reservoir", so-called, whether from the natural runoff of the watershed of said reservoir or otherwise, is such that water is spilled over or past the dam creating said reservoir in excess of the amount required to be spilled in order to satisfy prior rights, the diversion of waters through "Milton-Bowman Tunnel", so called, shall be so reduced as to avoid such spill.
- (3) If and when works are constructed for the diversion of water from the Middle Fork to the North Fork of Yuba River, the Licensee shall permit to be so diverted any of its waters which if not so diverted would be spilled over or past said Milton Dam, and shall likewise permit to be so diverted any waters which if diverted by itself through said Milton-Bowman Tunnel could not be beneficially used by it for purposes of irrigation, or for purposes of power under the provisions of said contract with the Company, or for storage for such purposes.

Not only therefore does it appear that applications 2124 and 2200 should be approved but that Application 5330 should also be approved since no more water will be diverted under that application than under Applications 2124 and 2200. There should however be clauses inserted in the several permits which will be discussed later.

Under Application 2493 of the Yuba River Power Company it is proposed to divert from three unnamed creeks which are tributary to the Middle Yuba River at points which lie below the points of diversion of the Nevada Irrigation District on that stream and therefore diversions made under these applications could not interfere with any rights acquired by the protestant.

PROTESTS AGAINST INTERFERENCE WITH THE RIGHT TO
DUMP TAILINGS INTO SLATE CREEK AND ITS TRIBUTARIES

Those filing protests which may be considered as being within this class were the Bellevue Mining Company, Plumas Development Company and the Judson Estate Company.

These protestants allege in effect that the approval of Application 2776 would result in interference with the operation of their mines and request that if the application is approved, restrictive clauses should be incorporated in the permit in order to insure them the right to dump tailings into Slate Creek above any existing impounding dam or dams or any such that may hereafter be constructed.

In this connection it may be stated that under the Revised Statutes of the United States approved March 1, 1893 (known as the Caminetti Act), an act to create the California Debris Commission and regulate hydraulic mining in the State of California a means is provided for the creation of storage of mining debris, the control of storage to be vested in the California Debris Commission and the space to be paid for by mines operating behind the dams according to the yardage of gravel washed each season.

This office is without authority to impose upon applicant the restrictions which protestants propose. The relative rights of the two parties in the premises is a matter for the courts to decide.

PROTESTS AGAINST INTERFERENCE WITH THE CONTEMPLATED
WATER SUPPLY OF A PROPOSED IRRIGATION DISTRICT ON THE
SAN JUAN RIDGE

Sam McCullough and inhabitants of the San Juan Ridge protested on the above grounds.

There is approximately 20,000 acres of agricultural land on what is known as the San Juan Ridge between the Middle and South Forks of the

Yuba River extending from the point of convergence of these two forks on the west to Graniteville on the east, the greater portion lying within the watershed of the Middle Yuba River.

A protest on behalf of this area was filed, the inhabitants fearing that if the applications of the Yuba River Power Company to appropriate from the headwaters of the Middle Yuba River were approved it would result in taking all of the available unappropriated water of the Middle Yuba leaving none available for the irrigation of agricultural land on the San Juan Ridge.

Testimony presented at the hearing indicated that there were approximately 6,000 acres of land under cultivation on the ridge. The few hundred inhabitants intend to form an incorporated association, take water from the Middle Fork of the Yuba River at a point near the Delhi mine in T 18 N, R 10 E, and convey it through the Delhi Mining Company's ditch system to a point near the Little Grass Valley Ravine where the water would flow by gravity into the present Eureka Lake Ditch system which is being operated by the San Juan Ridge protestants. It was claimed that the Little Grass Valley Ravine would make an economical storage site and that negotiations were pending with the Delhi Mining Company with a view to acquiring the existing rights of that company at the proposed point of diversion.

Other than possible interference with these prior vested rights which these protestants are proposing to acquire, we can see no grounds for protest as the protestants have filed no application with this office, either individually, in behalf of the inhabitants of the San Juan Ridge or in behalf of the proposed irrigation district and even if such application or applications were filed the right initiated thereby would be subsequent in priority to the applications of the Yuba River Power Company now pending.

It would appear that protestants in this case have as yet established no substantial claim to the waters which applicant seeks to appropriate and therefore the protest must be overruled.

PROTESTS AGAINST FLOODING PROPERTY IN RESERVOIR SITES

The protestants claiming damage by possible flooding were D. A. Sorracco, G. Zerga and A. Sorracco, John Kieffer, Samuel Devine and Mrs. H. Devine, and Richard Phelan.

These protestants own property which lies in the immediate vicinity of the proposed Sierra City Reservoir and allege damage by flooding if that reservoir is constructed.

These are rights of way matters and the protestants have been given to understand by the applicant that they will be adequately compensated for any damage done. The protests may therefore be dismissed.

PROTESTS WHICH WERE SUBSEQUENTLY DISPOSED OF BY
STIPULATION OF THE PARTIES

The protest of the Sierra Butte Canal and Water Company, E. A. Hayes and J. C. Hayes was disposed of prior to the hearing by a stipulation of the parties executed on October 29, 1927, wherein it was agreed that the protest would be and was withdrawn in consideration of acknowledgment of applicant of the prior rights of the protestants.

The protest of the Pacific Gas and Electric Company was disposed of by a similar stipulation executed April 3, 1928 wherein it was agreed between the parties that the protest should be and was withdrawn in consideration of certain acknowledgments by and on behalf of applicant with respect to the rights of the protestant.

Copies of these agreements are on file with the Division of Water Rights.

AGRICULTURAL APPLICATIONS OF THE YUBA RIVER POWER COMPANY
(Applications 2004-2196-3345-4916)

Although the Yuba River Power Company has several pending agricultural applications before this office, none of them with the exception of Application 4916, were sufficiently in form to consider at the hearing held on October 31, 1927, as no relationship with the lands that are to be irrigated had been established and applicant had not been able to comply with the provisions of the law which require that the place of use shall be described in the application. Action on the remaining applications for agricultural purposes is therefore held in abeyance and only Application 4916 was included for hearing. This application proposes the re-use for agricultural purposes of water stored in Bullards Bar Reservoir under licensed Applications 2197 and 3026 of the Yuba River Power Company and used for power purposes.

Testimony presented at the hearing indicated that if Application 4916 of the Yuba River Power Company is approved, it would be assigned to the Bullards Bar Development Company, a California Corporation organized and owned by the Yuba River Power Company. The Bullards Bar Development Company as an operating company would enter into a contract with a separate and distinct company known as the Orange County Investment Corporation with a view to developing an irrigation system.

Subsequent to the hearing a definite contract has been entered into between the Bullards Bar Development Company and the Orange County Investment Company, a copy of which is on file in this office, for the delivery of water by the Bullards Bar Development Company to the Orange County Investment Company, for use upon lands within the project of the latter Company. According to the opening brief filed by the applicant subsequent to the hear-

ing, the Orange County Investment Company has spent a considerable sum of money in the development of its project by way of constructing canals and ditches and has made many sales of lands.

As has been shown above, the application is for re-use of water already stored for power purposes and therefore the proposed diversion would not interfere with the rights of the Nevada Irrigation District. The protest of the Pacific Gas and Electric Company has been withdrawn and it would appear that permit action would be in order.

However it appeared from the application as presented at the hearing that the applicant itself will not store water in Bullards Bar Reservoir but will utilize waters stored by the Pacific Gas and Electric Company after such waters are passed through the Bullards Bar Power Plant and the Colgate Power Plant, the Pacific Gas and Electric Company controlling such water under a lease from the applicant. As it appeared that the application could be approved if amended in such a way as to ask for an equivalent amount of direct diversion in terms of cubic feet per second instead of storage in terms of acre feet per annum and the season of diversion amended accordingly to coincide with the intended season of use, the matter was called to the attention of the applicant and on June 4, 1928, an amended copy of the application was filed in this office.

According to the amended application the source of the proposed appropriation is a regulated flow of water from North Yuba River resulting from the operation of the Bullards Bar Dam and Reservoir. The amount of water which applicant seeks to divert is 15,000 acre feet per annum for diversion from the regulated flow in the river that results from collection in Bullards Bar Reservoir between December 15th and July 15th of each season, of the natural flow of said stream and the release of said collected

water from said reservoir. The season of diversion from storage is from about April 15th to about October 15th of each year. The rate of diversion will be 250 cubic feet per second as a maximum and otherwise as the same may become or be made available until the whole amount is diverted.

As amended the application comes within the jurisdiction of this office and may properly be approved.

CONFUSION IN PLACE OF USE UNDER APPLICATIONS 2124 and 2200

The records show that there is apparently some confusion as to the places of use intended under Applications 2124 and 2200. It is impossible to determine with certainty what power houses it was originally intended to specify under these filings. The Division has however indicated to the Yuba River Power Company that in view of the fact that its project is a comprehensive one involving the full development of the North and Middle Forks of the Yuba River it (the Division) was not disposed to refuse permission to now specifically include power houses which may not originally have been specified therein. Accordingly the Sierra City Power House was added as a place of use in these two applications which power house, if included at all originally, was only included by reference.

As a means of precaution the Yuba River Power Company filed Application 5330 which covers the use of water at the Sierra City Power House which appropriation was also included in Applications 2124 and 2200. The permits issued on these applications should indicate that this is a fact and that the combined appropriations under Applications 2124, 2200 and 5330 shall not exceed 160 cubic feet per second of direct diversion and 40,000 acre feet per annum of diversion to storage from the Middle Fork of the Yuba River.

CONCLUSION

The water supply appears to be adequate to justify the approval of the applications, the purposes to which the applicant intends to put the water applied for are useful and beneficial and therefore the power applications should be approved subject to existing rights.

While the total amount of water applied for under the several applications exceeds the penstock capacity of the several power plants, the amount diverted from any one source does not exceed the capacity of the plant or plants through which it is to be passed and no attempt should be made to limit the amount of water to be diverted from any one source. The amounts of diversion and season thereof may be adjusted at the time of license action.

As the agricultural application, 4916, has been amended in such a way as to come under the jurisdiction of this office it also should be approved, as amended.

O R D E R

Applications 1680, 1703, 1899, 2124, 2198, 2199, 2200, 2493, 2767, 2776, 2966, 3344, 4916 and 5330 of the Yuba River Power Company 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 that Applications 1680, 1703, 1899, 2124, 2198, 2199, 2200, 2493, 2767, 2776, 2966, 3344, 4916 and 5330 be approved and that permits be granted thereon to the applicant subject to such usual terms and conditions as may be appropriate, and

IT IS HEREBY FURTHER ORDERED that there be incorporated in the permits issued in approval of Applications 2124, 2200 and 5330 a special clause

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indicating that the combined diversions from the Middle Fork of the Yuba River under these three applications and permits shall not exceed 160 cubic feet per second by direct diversion and 40,000 acre feet per annum by storage.

Dated at Sacramento, California, this 26th day of May, 1928.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

SEB: MP
WES: