

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

oOo

In the Matter of Applications 2737, 2738, 2739 and 2799 of the Hillside Water Company to appropriate from Bishop Creek and Tributaries in Inyo County for Irrigation Purposes; Applications 2737 and 4349 of the Southern Sierras Power Company to appropriate from Bishop Creek and Tributaries in Inyo County for Power Purposes and Applications 2738 and 4548 of the Nevada-California Power Company to appropriate from Bishop Creek and Tributaries in Inyo County for Power Purposes.

oOo

DECISION A. 2737, 2738, 2739, 2797, 2788, 2792, 4548, 4549 D-275

Decided *November 1, 1930*

oOo

APPEARANCE AT HEARING HELD AT LOS ANGELES September 14, 1928.

For Applicants

Hillside Water Company)	
Southern Sierras Power Company)	E. W. Coil and
Nevada California Power Company)	W. L. Huber

For Protestants

City of Los Angeles	(S. B. Robinson and G. T. Warren In propria persona
R. J. Schober	
Parker, Gilbert and Bandini Dear, and Frank Utter	Parker Dear
John Barlow, et al. (Bishop Creek Water Users)	No appearance
George C. Krough	"
McArthur Bros.	"
L. C. Hall	"
Watterson Bros.	"
H. M. Beckman and Geo. Rea	"
Rawson Ditch Company	"
Owens River and Big Pine Canal Company	"
John Albears	"
Fred E. Gillenwaters	"

EXAMINER: Harold Conding, Chief of the Division of Water Rights,
Department of Public Works, State of California.

oOo

APPEARANCES AT HEARING HELD AT LOS ANGELES

December 5, 1929

For Applicants

Hillside Water Company)
Southern Sierras Power Company)
Nevada California Power Company)

H. W. Coil and
W. L. Huber

For Protestants

City of Los Angeles
Other Protestants

Geo. T. Warren
No appearance

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

oOo

O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

The essential features of each application are shown by the accompanying table.

Applications 2737, 2738, 2739 and 2799 of the Hillside Water Company as completed and advertised proposed the irrigation of 4960 acres of land. At the hearing held on December 5, 1929, however, the applicant requested that the place of use be amended by eliminating therefrom 1,040 acres of land not adaptable to irrigation and the applications have been amended accordingly.

It is the intent under the applications to use the same waters for both power and irrigation and since the Southern Sierras Power Company owns certain power plants and the Nevada-California Power Company certain others arranged in series and using the same water, triplicate applications for the three companies were necessary. No power applications, however, were filed to conform to Application 2739 for irrigation storage or Application 2799 for direct irrigation diversion.

All of the applications were protested by the City of Los Angeles and John Barlow, et al. (Bishop Creek Water Users). Application 2787 was protested by Geo. Keough and McMurtrie Bros., Application 2739 by L. C. Hall,

Watterson Bros., H. M. Beckman and Geo. H. Bee, Rawson Ditch Company and Owens River and Big Pine Canal Company, and Application 4549 was protested by John Albars, Rudolph J. Schober, Frank A. Utter, Fred E. Gillenwaters and Parker, Gilbert and Bandini Dear.

Amount	Season of Diversion	Place of Use	Reservoir Capacity	Point of Return
215	AF: May 1-Aug. 15	3920 Ac. T6 & 7S R32E	Lake #1	215 A.F.
1389	AF: " "	" "	Lake #2	1389 A.F.
1161	AF: " "	" "	Lake #3	1161 A.F.
234	AF: " "	" "	Lake #4	234 A.F.
2000	AF: May 1-Aug. 15	3920 Ac. T6 & 7S R32E	Hillside Res.	14000 A.F.
138.6	AF: May 1-Aug. 15	3920 Ac. T6 & 7S R32E	Green Lake	138.6 AF
31.6	AF: " "	" "	Balloon Lake	31.6 AF
17.3	AF: " "	" "	Cliff Lake	17.3 AF
215	AF: May 1-Aug. 15	Plants 5 and 6 of	Lake #1	215 AF: Bishop Creek in
1389	AF: " "	Southern Sierra Po. Co.	Lake #2	1389 AF: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 9
1161	AF: " "	" "	Lake #3	1161 AF: T7S R32E M.D.M.
234	AF: " "	" "	Lake #4	234 AF:
215	AF: May 1-Aug. 15	Plants 2, 3 & 4 of	Lake #1	215 AF: Bishop Creek in
1389	AF: " "	Nevada-Calif. Po. Co.	Lake #2	1389 AF: NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 19
1161	AF: " "	" "	Lake #3	1161 AF: T 7 S R 32 E
234	AF: " "	" "	Lake #4	234 AF:
20	cfs Apr. 1-Oct. 1	3920 Ac. T6 & 7S R32E		
2000	AF: May 1-Aug. 15	Plants 2, 3 & 4 of	Hillside Res.	14000 A.F. Bishop Creek in
		Nevada-Calif. Po. Co.		NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 19
				T 7 S, R 32 E
2000	AF: May 1-Aug. 15	Plants 5 & 6 of	Hillside Res.	14000 A.F. Bishop Creek in
		Southern Sierra Po. Co.		SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 9 T7S
				R 32 E

Application	Date	Purpose	Source	Tributary:	Point of Diversion
				to	
2737 Hillside Water Co.	1-30-22	Irr.	Mid.Fk. Bishop Cr.	Owens R.	(1)NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8 T9S R1E (2)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6 T9S R1E (3)SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.35 T8S R3OE (4)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.26 T8S R3OE
2738 Hillside Water Co.	1-30-22	Irr.	Green Lake Creek	Bishop Cr.	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.11 T9S R31E
2739 Hillside Water Co.	1-30-22	Irr.	Green Lake Creek	Bishop Cr.	(1)NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.13 T9S R31E (2)NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec.13 T9S R31E (3)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.11 T9S R31E
2787 So. Sierra Po. Co.	3-11-22	Power	Mid.Fk. Bishop Cr.	Owens R.	(1)NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8 T9S R31E (2)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6 T9S R31E (3)SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.35 T8S R3OE (4)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.26 T8S R3OE
2738 Nev.-Calif. Po. Co.	3-11-22	Power	Mid.Fk. Bishop Cr.	Owens R.	(1)NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8 T9S R31E (2)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6 T9S R31E (3)SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.35 T8S R3OE (4)SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.26 T8S R3OE
2799 Hillside Water Co.	3-15-22	Irr.	Bishop Creek	Owens R.	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 9 T7S R32E
4548 Nev.-Calif. Po. Co.	4-18-25	Power	Green Lake Creek	Bishop Cr.	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.11 T9S R31E
4549 So. Sierra Po. Co.	4-18-25	Power	Green Lake Creek	Bishop Cr.	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec.11 T9S R31E

PROTESTS

The City of Los Angeles alleges in effect that it is entitled to divert all of the waters of Owens River which may reach the intake of the Los Angeles aqueduct and inasmuch as Bishop Creek is the largest tributary of the Owens River, any water diverted by applicants therefrom would seriously interfere with its rights.

The Bishop Creek Water Users claim riparian rights, unadjudicated vested rights and rights initiated by Application 3445 filed with this office and allege in effect that they are entitled to any water in Bishop Creek in excess of the amount adjudicated under the "Chandler Decree" and any storage made by the applicants would deprive them of rights to which they are entitled.

George C. Keough and McArthur Brothers claim riparian rights to the flow of Bishop Creek and allege in effect that if the water is diverted as proposed in Application 2787 it would result in preventing the natural flow of the Creek from passing through their lands and destroy their value as Mountain home sites.

L. C. Hall alleges in effect that the proposed diversion under Application 2799 will seriously interfere with his proposed project under his prior Application 2152.

Watterson Bros. allege in effect that the proposed diversion under Application 2799 will interfere with their rights initiated by the filing of prior Application 3445.

H. S. Beckman and George M. Rea claim riparian rights and an appropriate right to the use of 40 second feet from the Owens River below the confluence of Owens River and Bishop Creek and allege in effect that no water may be diverted as proposed under Application 2799 without interfering with their rights.

The Rawson Ditch Company claims a right to 40 second feet from the North and South Branches of Bishop Creek and alleges in effect that any water diverted as proposed in Application 2799 would deprive them of water to which they are entitled.

The Owens River and Big Pine Canal Company claims the right to divert 100 second feet from Owens River at a point below the junction of Bishop Creek and alleges in effect that any diversion as proposed in Application 2799 would seriously interfere with its rights.

John Albars, Rudolph J. Schober, Frank A. Utter, Fred E. Gillenwaters and Parker, Gilbert and Bandini Dear objected to the storage of the waters of Green Lake Creek as proposed in Application 4549 on the grounds that such storage would prevent water from flowing down to them as it has in the past and would result in depriving them of the water necessary for irrigation, domestic and recreational purposes at their mountain home sites.

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

The several applications were completed in accordance with the Water Commission Act and the rules and regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on September 14, 1928, at 10:00 o'clock A.M. in Room 1026 Associated Realty Building, Los Angeles. This hearing however was adjourned indefinitely in order to allow the interested parties an opportunity to adjust their differences, it appearing that the City of Los Angeles might withdraw its protests against the approval of the power applications provided that the Hillside Water Company would withdraw its applications for irrigation purposes. As it appeared that very little progress had been made toward an amicable adjustment the hearing was resumed on December 5, 1929, at 10:00

A. H. in Room 1026 Associated Realty Building, Los Angeles. Of these hearings applicants and protestants were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Bishop Creek, the largest tributary of the Owens River rises in the northwestern portion of Inyo County and flows into the Owens River about thirty miles above the intake of the Los Angeles aqueduct. The average annual flow of Bishop Creek during the period from 1904 to 1929 was approximately 71,740 acre feet, varying from a minimum of 35,776 acre feet in 1924 to a maximum of 121,120 acre feet in 1906. The average surplus over decreed rights was 15,440 acre feet.

DISCUSSION

PROTESTS OF CITY OF LOS ANGELES WITHDRAWN AFTER HEARING

Under date of October 3, 1930, the City of Los Angeles advised this office that it would agree to withdraw its protests against the approval of Applications 2787 and 4549 of the Southern Sierra Power Company and Applications 2738 and 4543 of the Nevada California Power Company provided that the Hillside Water Company would consent to the withdrawal of its Applications 2737, 2738, 2739 and 2799. The Hillside Water Company advised this office under date of October 25, 1930, that this compromise was agreeable to it and therefore Applications 2737, 2738, 2739, 2799 may be cancelled and the protests of the City of Los Angeles against Applications 2787, 2788, 4543 and 4549 considered withdrawn.

REMAINING PROTESTANTS

The only protests to be considered therefore are those of John Farlow, et al. (Bishop Creek Water Users) against the approval of Applica-

tions 2737, 2738, 4543 and 4549, those of George Hough and McMurtrie Brothers against Application 2737 and those of John Albans, Rudolph J. Schober, Frank Utter, Fred E. Gillenwaters and Parker, Gilbert and Bandini Bear against Application 4549.

DECREE RIGHTS ON BISHOP CREEK

Under the "Chandler Decree", so called, the rights to the natural flow of Bishop Creek were adjudicated as between the Bishop Creek farmers and the Hillside Water Company up to an amount not to exceed 58,860 acre feet as set forth in the Final Decree filed as Applicant's Exhibit No. 3 and to which reference is herewith made.

The following table indicates the annual flow of Bishop Creek during the years 1904 to 1929 inclusive, and the surplus after the maximum rights under the decree were taken care of, assuming that the decree was in force and effect during this period and that the flow in Bishop Creek was such that the entire 58,860 acre feet would have been diverted.

<u>Year</u>	<u>Runoff-Acre Feet</u>	<u>% of Mean</u>	<u>Decreed Rights</u>	<u>Surplus-Acre Feet</u>
1904	82,960	115	58,860	24,100
1905	80,530	85	"	1,670
1906	121,120	169	"	62,260
1907	91,870	127	"	32,410
1908	57,890	80	"	-----
1909	90,500	126	"	31,640
1910	77,484	108	"	13,604
1911	110,767	154	"	51,907
1912	55,898	78	"	-----
1913	55,745	78	"	-----
1914	97,011	135	"	38,151
1915	78,912	110	"	20,052
1916	91,470	123	"	32,610
1917	73,121	102	"	14,261
1918	65,157	91	"	6,297
1919	62,261	87	"	3,401
1920	61,708	86	"	2,846
1921	64,841	91	"	5,931
1922	95,247	133	"	36,387
1923	59,595	33	"	755
1924	55,773	50	"	-----
1925	54,094	75	"	-----
1926	56,114	78	"	-----
1927	77,057	108	"	18,197
1928	49,219	69	"	-----
1929	40,139	56	"	-----
Average	71,740			15,440

From the table it is evident that during a year of normal runoff there is water in Bishop Creek over and above the amounts adjudicated by the "Chandler Decree" and that there was a surplus during 18 years of the 26 years shown. It is this surplus which the applicants are seeking to appropriate as a supplemental supply. The use proposed is a non-consumptive one and the protestants can only be affected by the proposed storage which will no doubt inure to their benefit by producing a greater flow during the irrigation season. The protests of the Bishop Creek Water Users may therefore be dismissed.

Rudolph J. Schober, Frank Utter and Parker, Gilbert and Sandini Dear appeared at the hearing held on September 14, 1928, and were apparently satisfied on being informed that the applicants merely sought to divert the peak

flows and that there would be no change in the flow of the stream during the period of low flow. Their protests may therefore be dismissed.

No showing was made at either hearing on behalf of the other protesters and having failed to submit evidence in confirmation of their allegations they have failed to support the burden of proof appropriate to a moving party. Their protests may therefore be dismissed.

CONCLUSION

The projects proposed under Applications 2787 and 4549 of the Southern Sierras Power Company and Applications 2788 and 4548 are for useful and beneficial purposes. Mr. Kramer, Regional Engineer, U. S. Forest Service has given this office to understand that action by this office is agreeable at any time to the Federal Power Commission. It has been shown that there is unappropriated water available for use of applicant and it is therefore the opinion of this office that Applications 2787, 2788, 4548 and 4549 be approved.

As the Hillside Water Company has agreed to the withdrawal of its Applications 2737, 2738, 2739 and 2799 upon certain conditions which have been complied with by the City of Los Angeles, those applications should be rejected and cancelled upon the records of this office.

ORDER

Applications 2737, 2738, 2739, 2787, 2788, 2799, 4548 and 4549 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 Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Applications 2787, 2788, 4548 and 4549 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate, and

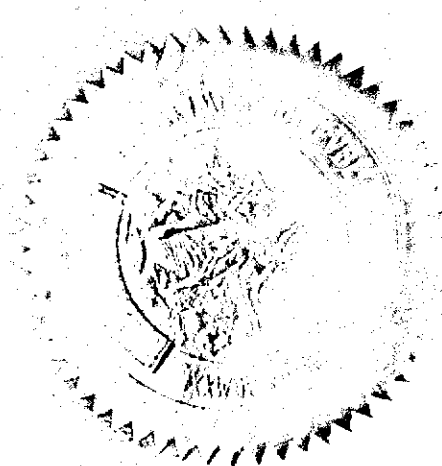
IT IS FURTHER ORDERED that Applications 2787, 2788, 2789 and 2799 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *1st* day of *November*, 1930.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

WES:MP



47-117
E. H. P.