

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 15372 by Otto Nieschulz to  
Appropriate Water from Plumas Lake in Yuba County for  
Irrigation Purposes.

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Decision A 15372 D 816

Decided January 13, 1955

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Appearances at Hearing Held at Marysville on June 3, 1954:

For the Applicant

Otto Nieschulz

In propria persona

For the Protestants\*

Paul Erickson )  
E. Thaddeus Platter )  
Reclamation District No. 784)

F. E. Carlin of  
Rich, Carlin and Fudge  
Attorneys at Law

Plumas Mutual Water Company )  
L. G. Kilkeary )

Arthur S. Powell  
Attorney at Law

EXAMINER - LESLIE C. JOPSON, Principal Hydraulic Engineer, Division  
of Water Resources, Department of Public Works, for A. D. EDMONSTON,  
State Engineer.

Also present - Gavin Craig, Senior Attorney, Division of Water  
Resources.

\* and/or interested parties.

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## OPINION

### General Description of the Project

The applicant seeks to appropriate 1.00 cubic foot per second from May 1 to September 15 of each year from Plumas Lake, Yuba County, at a point within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Projected Section 36, T14N R3E, MDB&M. The water is to be diverted by pumping, conveyed by open ditch 2,700 lineal feet in total length, utilized in irrigating 81 acres of alfalfa. The estimated capacity of the proposed works, according to the application, is 1,100 gallons per minute. The applicant asserts ownership of the land at the designated point of diversion and of the land to be irrigated. He states that construction work is complete and that the water is in use.

### Protests

The application has been protested by L. G. Kilkeary, by Plumas Mutual Water Company, and by Paul Erickson. Protestant Kilkeary states as the basis of his protest:

"Applicant would be taking water that is now in use by the undersigned protestant. This water is added to Plumas Lake by Plumas Mutual Water Company by pumping the same from the Feather River."

He bases his claim of a right to use of water from the source in question upon:

"Prior use from drainage waters into Plumas Lake and prior appropriations of Plumas Mutual Water Company of which protestant is a shareholder."

As to present and past use he states:

"Protestant and his predecessors in interest have used these waters for a period of approximately 35 years to irrigate about 200 acres to such crops as rice, beans and corn."

He states finally:

"Protestant has been using beneficially the waters applicant is attempting to appropriate. These waters come from Plumas Lake by natural drainage off the surrounding lands and from pumping by the Plumas Mutual Water Company from the Feather River by right of appropriation. . . . If the application is granted, sufficient waters will not be available for the irrigation of crops on protestant's lands. . . . Protestant is a shareholder in Plumas Mutual Water Company and is completely dependent upon that company for the furnishing of irrigation waters for his lands. All the irrigation waters delivered to protestant are from Plumas Lake ...."

The protestant Plumas Mutual Water Company argues:

"Applicant would be taking water that is now being delivered by the undersigned company to its shareholder and adjoining landholder, L. G. Kilkeary. This water is added to Plumas Lake by Plumas Mutual Water Company by pumping the same from Feather River."

It bases its claim of a right to use water upon:

"prior use from drainage waters into Plumas Lake and prior appropriations by protestant of waters being pumped from Feather River into Plumas Lake."

The protest includes also the following passage:

"Protestant has been delivering the waters applicant is attempting to appropriate for the beneficial use of landowners adjoining Plumas Lake since 1927. These waters come from Plumas Lake by natural drainage off the surrounding lands and from pumping by the protestant from the Feather River by right of prior appropriation. These waters have been delivered to L. G. Kilkeary and his predecessors ... from Plumas Lake for approximately 35 years ... for the irrigation of approximately 200 acres .... In the event applicant's

application is granted, there will not be sufficient waters available for delivery by protestant for the irrigation of L. G. Kilkeary's crops. Applicant has previously requested protestant to sell him water and has suggested protestant appropriate and pump additional water from the Feather River into Plumas Lake for applicant's benefit. Protestant did not have any surplus water to sell. Applicant agreed to drill his own well, which he can do, inasmuch as none of applicant's lands is subject to flooding. At the present time there is insufficient drainage waters in Plumas Lake for delivery by protestant to the said lands of L. G. Kilkeary for irrigation purposes and it is also necessary for protestant to pump additional waters from Feather River as above mentioned and temporarily store the same in Plumas Lake for subsequent delivery to these lands of L. G. Kilkeary."

The Paul Erickson protest contains passages as follows:

"The water that applicant proposes to appropriate consists of drainage and seepage waters that flow from time to time in the works of Reclamation District No. 784, and that said water first flows into what is known as Island Lake from Clark Slough which is one of the main drainage canals of Reclamation District No. 784 and which is the point from which applicant proposes to appropriate water, that all of the water that flows into Island Lake flows by gravitation in a northerly direction to what is known as Messick Lake from which protestant has been using water for irrigation purposes with the consent of the Board of Trustees of Reclamation District No. 784 for a period of over forty years, and that all of the lakes above mentioned are joined and are part of Plumas Lake which is the artificial reservoir created by Reclamation District No. 784 to store surplus drainage and seepage waters from the higher lands in the district and which waters are pumped by Reclamation District No. 784 from said Plumas Lake into Bear River."

"Protestant claims a right ... based upon prior use for irrigation purposes with consent of Board of Trustees of Reclamation District No. 784 for a period of 40 years or more."

"The extent of present and past use ... is ... irrigating approximately 32 acres of land planted to peaches,

walnuts, and plums. This water was first used during the summer of 1913, and the amount of water used by protestant amounts to approximately 800 gallons per minute during periods of irrigation, and that protestant has been consistently using said amount of water during three 7-day periods of each year during the irrigation season which extends from May 15 to September 10."

"This protest may be disregarded and dismissed if applicant permits sufficient waters to flow through the works of Reclamation District No. 784 to reach the point of diversion of protestant and which is sufficient to enable protestant to irrigate his said lands in the same manner as he has during the past forty years."

#### Answers

No answers to the protests are of record.

#### Hearing Held in Accordance with the Water Code

Application 15372 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Thursday, June 3, 1954, at 10 o'clock a.m. in the Board of Supervisors Hearing Chamber, Court House, Marysville, California. Of the hearing the applicant and the protestants were duly notified.

#### Substance of Hearing Testimony

Applicant Nieschulz testified (pages 7 to 32 of transcript) to the effect that water comes to him from Messick Lake and from the

direction of Arboga, that supply has been short during the last two irrigation seasons, that (in 1953) there was water enough to irrigate alfalfa twice only, that he thinks that there will be enough water this year, that it takes about eight 24-hour days to irrigate once, that it is his practice to irrigate five times per season, that when he bought his place in 1946 there was no pumping system upon it, that some of the water that reaches him is seepage from the Feather River and some is waste water from rice irrigation, that he installed a pump in the spring of 1953, that water was available in June, July and August of 1953 but not in September, that the source he pumps from is a drainage ditch of Reclamation District No. 784, that the point at which he diverts is perhaps the lowest point in the district, that much of the water in the district finds its way into Plumas Lake through ditches such as the one that he pumps from, that Reclamation District No. 784 attempts to keep the lake as low as possible by pumping into the river, that in 1953 he started irrigation about June 1, that supply lasted long enough for three irrigations, that the District pump has recently been moved from one location to a more advantageous one, that if he didn't use the water he seeks to appropriate it would settle in the lake, that some call the lake Plumas Lake and others call it Messick Lake, that between him and the river there is a canal that carries seepage water from Feather River, that there is a flat area there that is quite often flooded, that that is the area he has referred to as Messick Lake, that his pump draws from that flooded area, that he operates his property with the aid of his son.

Ottmer Nieschulz, applicant's son, testified (pages 32 to 50 of transcript) to the effect that he has worked with his father in operating the latter's land since 1944, that in 1953 the supply of irrigation water was sufficient until fall, that that water is drainage water from rice fields lying to the north together with some seepage from Feather River, that some water also comes from Messick Lake, that the reason that supply is sometimes low is that a neighbor's pump is not equipped with an automatic float and sometimes runs until the channel is practically drained. The witness testified further that if the water surface of Plumas Lake is allowed to stand a foot or two higher he could pump without difficulty and without injury to other lands. He testified further that there is a two-foot dam across the ditch just off the main highway, that the Mr. Osborn testified to is Mr. Kilkeary's foreman, that the water pumped by the plant that is not equipped with an automatic float valve went into Bear River and eventually into Feather River.

Paul Erickson testified (pages 51 to 60 of transcript) to the effect that he has lived in the Arboga district since 1912, that he owns forty acres within Reclamation District No. 784, located a mile north of Nieschulz, that he uses water from the same drainage area as Nieschulz, that he has been using water from that source since 1913, that he irrigates his whole farm an average of four times per year, that a single irrigation takes about eight days, that he doesn't irrigate at night, that irrigation extends from

about May 10 to about September 20, that his pump is rated at 800 gallons per minute, that his water supply is made up of drainage coming from one direction and seepage from another, or both, that insufficiency of supply in recent years has necessitated supplementation by means of an auxiliary plant that draws from a deep well, that he believes that he may have to use his deep well all the time if Nieschulz pumps as he proposes, that for two years he has noticed that the lake supply drops fast and he has attributed that drop to the Nieschulz pump, that there has been a deficiency however for five years and that that deficiency was the reason for putting in his well, that during the past five years the lake supply has been sufficient until about July 10, after which the deep well is relied upon as a source of supply, that there is water in the ditch after July but not enough to be worth pumping, that seepage from the river accounts for a part of the supply in the ditch through June though not enough to supply the pump, that the portion of the supply that comes from drainage passes the Nieschulz property. He testified further to the effect that his pump and the Nieschulz pump are about a mile apart, that some seepage rises above his pump and about an equal amount below, that in the fall when the river rises Messick Lake becomes very roily, that Plumas Mutual Water Company pumps from the river into a canal at the lower "edge" of Star Bend, that the canal "takes part of the land south of Plumas Lake", that "they auxiliary pumps too, deep well pumps".



John R. Osborn testified (pages 60 to 83 of transcript) to the effect that he is the manager of the Plumas Mutual Water Company, that he has held that position for eight years, that the Plumas Mutual Water Company diverts from Feather River at Star Bend, that it pumps from April 1 to some time in October, that it serves approximately twenty users and lessees, that in one season it "attempted to spill some water down to help Mr. Nieschulz" as an accommodation, that from natural sources there is insufficient water during the irrigation season to serve Nieschulz adequately at his present pumping site, that during the 1953 season when Nieschulz was pumping his supply was enough when the district's pumps were running, that in the last four or five years the irrigation supply has not been enough to serve all the landowners, that if Application 15372 is approved "the water that we spill for our own use would ... be claimed by Mr. Nieschulz and we would have lost it" that "there is quite a bit of our land that is under water if it were allowed to rise ... a foot or two, that pumping once started is continuous through the irrigation season, that there is no water going on Mr. Nieschulz's side now from the east at all, that "we are using it all in the fields", that there is water on the west side of Mr. Nieschulz's property. As to the matter of raising the elevation of Plumas Lake enough to permit Mr. Nieschulz to pump without interruption, Witness Osborn testified that such elevation would flood certain portions of Mr. Kilkeary's lands, that Mr. Kilkeary owns a

certain 90 acres of which 30 acres can be farmed now, that to reclaim the remaining 60 acres depends upon keeping the lake level as low as possible, that Mr. Kilkeary, an assessment payer in Reclamation District No. 784, has repeatedly asked that District to keep the lake level down, that the District has attempted to keep it down, that the Plumas Mutual Water Company only furnishes water to the persons who comprise it, that the lands of such persons extend roughly from Plumas Lake south to the line marked "19" on protestant's Exhibit 1B, that "we supplement our water supply from wells the same as Mr. Erickson does", that "there may also be some rice water that reaches the east side but not enough to go the full season", that the Reclamation District operates certain pumps for discharging excess water into the river, that currently the District has a pump near the Nieschulz land, that that pump operates when rainfall is excessive or the river is excessively high, with resultant seepage, that in past years the District has operated a pump some two or three miles to the east of its present location, that the District pumps mostly in spring but pumps also off and on during summer as necessary, that the Plumas Mutual Water Company sometimes repumps some of the drainage water for its own use but that such pumping is not worth while after June 1.

Arthur Palmer testified (pages 84 to 87 of transcript) to the effect that he has been a ditch tender and pump operator for Plumas Mutual Water Company since 1916, that that company and/or its predecessors have diverted from Feather River at or near the diversion point now in use since 1916 or earlier.

E. Thaddeus Platter testified (pages 82 to 103 of transcript)

to the effect that he is a landowner and also a lessee of lands within Reclamation District No. 784, that he farms approximately 315 acres within that District, devoted to rice, alfalfa, grain and pasture, that he has been a tenant since 1941 and an owner since 1946, that in 1946 he obtained his irrigation supply from wells and in 1947 began pumping from a drainage ditch of Reclamation District No. 784, called Plumas Lake Canal, that he has pumped from that source each succeeding year in varying amounts, that the closest point of his land is about one-half mile north and east of the Nieschulz place, that both Nieschulz and he are on the same canal, that in 1953 he experienced no difficulty in obtaining sufficient water "thanks to Plumas Mutual Water Company", that supply in the canal from which he pumps is very erratic, that "in one week there might be a tremendous surplus depending on the whims of rice growers and clover operators and the next week there might be no water at all", that between June 1 and mid-September the principal source of water in the canal is drainage, that the drainage comes "from rice and clover to the north out of wells, comes principally from clover and row crop irrigation to the south out of the Plumas Mutual", that in 1953 when "he (Nieschulz) was short of water irrigation was short also", that there was a definite shortage of water in 1953. As to the occurrence of shortages he testified:

" ... it is the worst in July and August because that's the heavy use time as far as rice, the fact that we don't drain them. After that time we start to drain our rice and from then on there is a surplus of water providing it's a heavy rice year."

Witness Platter testified further to the effect that during July and August, 1953, both he and Nieschulz were short of water, that during 1953 some water was gratuitously dumped into the canal by Plumas Mutual Water Company, that in 1953 there were no dams (weirs) in the canal, that this year there are two, that the weirs are for the purpose of maintaining a level in the canal that is satisfactory for pumping. Certain questions addressed to Witness Platter and the latter's answers thereto were as follows:

Q. If this application is granted will the granting ... have any effect on the irrigation water that you ... obtain from the canal? A. Unless I restrict the flow past that point it definitely will. There is only so much water exists. If I am supplied water for these grounds that I lease from Mr. Kilkeary, I would have to restrict it to pump it or it would be available to Mr. Nieschulz.

Q. You mean if you didn't pump it out it would flow down to Mr. Nieschulz? A. That is right. I would have to pump it out ... otherwise it would proceed on down the canal to Mr. Nieschulz's site of diversion.

Q. During the year 1953 did you estimate how much water you required for the purpose of irrigating your land? A. From the canal I am diverting with two pumps. One pumps approximately 2,200 gallons a minute and the other approximately 1,600. And for the rice crops these pumps operate approximately three-quarters of the time. The other quarter depends on weather and natural conditions.

Q. Three-quarters of the time from when to when? A. Last year April 18 until ... the 25th of August

Q. If you didn't use that water for irrigation purposes, what would happen to it? A. The drainage water that comes in from the north would proceed on down the canal and either be pumped by others or by the District out into the Feather River.

Q. If it wasn't used by others in the District, would it be necessary for the Trustees of the District to pump the water out? A. That's right, it would.

Q. ... Do you have an opinion as to whether or not if the level of the water were raised a foot or a foot and a half whether that would in turn flood some of the lands of Mr. Kilkeary? A. Yes, it would. I make no statement as to how much.

Q. ... the water that comes from the north. Where would that water come from? A. I reiterate, water comes from the north and comes from the east, comes from rice and from clover, and it comes from the south and from the east from the Plumas Mutual.

Q. Who uses that water now? A. I am using what I need of it . . . the flow of water there is erratic. There are periods of excess, and there are long periods in July and August of scarcity ....

Q. You state ... that at the present time there are two checks in this Plumas Lake Canal? A. That's right.

Q. And you stated that if it is not being used that water ... would go down and be pumped by Mr. Nieschulz perhaps and you would not be able to retrieve this water that Plumas Mutual has put in there for you? A. That's correct.

Q. That (check) was not in there for the purpose of holding that so that you could get your .... A. For the express purpose of doing that.

Q. Before Mr. Nieschulz would have an opportunity to pump it? A. That's right. I didn't feel it was fair ... to have water diverted to my pump and then not (to be) in a position to pump it.

Q. ... is it true that the water comes down through the Plumas Lake Canal, passes your property and if it's not used by you continues on to Mr. Nieschulz's property? A. That would be a true statement.

Q. And is it also true that any water which during the periods of excess does reach Mr. Nieschulz's property ... would that water ever be in a position where you would be able to use it once it passes your property? A. No, not after it passes our property.

Q. I take it then you would have no objection to Mr. Nieschulz using such water that passes your property that you do not have need for? A. No, absolutely no objection. In fact, if there is water that the District and I as a landowner have to be taxed to pay that pump bill, if he can use that water and my supply is not jeopardized, I am quite willing.

Q. Is it your principal concern that if this application is granted Mr. Nieschulz might acquire or assert some right to require you to let water down to him? A. That is my primary concern, yes, sir.

Q. And does any water reach your land which originates from the Feather River by means of seepage through the banks or levee? A. Not during the irrigation season.

Q. Therefore, if there is any such seepage during that season you would have no interest in what becomes of it or who uses it? A. No. I would have an interest in what becomes of it because I wouldn't want it to attain such a height that I do have access to it. I just don't want access to the seepage.

Q. You would say then ... that you would certainly have no objection to anyone else using it? A. That is correct, no objection.

Q. And is it true that between approximately May 1 and October 1 there is at times intermittently water in ... the Plumas Lake Canal in excess of your needs? A. Yes. "Intermittently" is the key word there. ... there is water, starting yesterday, going over the lower weir. Mr. Nieschulz has had adequate water yesterday, today, and tomorrow.

Q. That is more or less a typical condition? A. Yes. Both of our pumps are off and we are lowering our water on the rice, and that condition is true with at least three growers north of us. But, then, at such time as we replace that water I anticipate a shortage.

And there has been a considerable shortage this spring. We started on the 7th of May and there was no spill for the next fourteen days. Then a man above us had a break and there was considerable spill for a period of about four days.

Q. Is there any degree of certainty as to how much water would reach Mr. Nieschulz's for use on his land?

A. There is no assurance whatsoever that he would have water at any given time.

Q. You base that on the fact that it would have to come either from seepage or from surplus rice water that got by your place? A. That's right.

Q. I (Ottmer Nieschulz) would like to know if he feels during four irrigations during the season ... that I would hazard him. A. That would depend upon the time you irrigate. You can take four seven-day periods through the summer. And if you must have those periods at a time of plentiful water there is no conflict at all. But if you want to set a date -- you want to irrigate at a specified time you stand a good chance --.

D. C. Bull testified (pages 103 to 110 of transcript) to the effect that he has been chairman, Board of Trustees, Reclamation District No. 784, since about 1943, that the plan of Reclamation District No. 784 like that of any other reclamation district is to reclaim land, that the District has two certain pumping plants to which water is led by various canals, that said water is then pumped into Feather River, that there is also another canal that drains into Bear River, that Plumas Lake is one of the low points of the District, that the pump in Plumas Lake region is operated to some extent all year, that the effect of its operation is to keep the water low so that as much land as practicable may be reclaimed,

that operation in summer is to dispose of irrigation water that drains into the drainage canals, that the policy of the District is to keep the water level of Plumas Lake as low as practicable, that the Board has given permission to various landowners to pump certain waters from certain drains for the reason that such pumping would otherwise have to be done by the District, that the District has finished its construction program and is currently on a maintenance and operation basis.

#### Hearing Exhibits

Hearing Exhibits were introduced by the protestants only. The Exhibits, two in number, are as follows:  
Exhibit A - Map of Reclamation District No. 784, not dated, bearing notation "Prepared by Yuba Map and Blue Print Company".  
Exhibit B - Map of Plumas Mutual Water Company, dated September 21, 1927, bearing notation "By Howard O'Connor, Engineer".

#### Discussion

The source designated as Plumas Lake appears not to be a true lake as that term is commonly understood but rather an expanse of low-lying land, only portions of which are actually inundated. The inundated areas are scattered and more or less interconnected by channels, some natural, some artificial, on one of which, called Plumas Lake Canal, the applicant's point of diversion is located.



Plumas Lake Canal appears to receive storm water in winter and early spring and seepage from Feather River when that stream is high, as well as return flow from nearby irrigated lands. The flow in Plumas Lake Canal appears to be considerable at times but to be unsteady, to sometimes fail and to sometimes change direction. Water appears also to be added to Plumas Lake Canal at times of water scarcity by pumping, by the protestant Plumas Mutual Water Company, from Feather River, for service to its stockholders, one of which is Protestant Kilkeary. Protestant Erickson allegedly diverts from what is in effect a westerly and northerly prolongation of Plumas Lake Canal. The Plumas Mutual Water Company while a supplier of water appears not to be itself a user. Insofar as flows occur in Plumas Lake Canal in excess of the exercised rights of other diverters from that channel those flows appear to be subject to appropriation.

#### Summary and Conclusion

The applicant seeks to appropriate 1 cubic foot per second, from April 1 to September 15 of each year, from what he terms Plumas Lake, in Yuba County: the source more strictly is a channel between two small lakes which together with adjacent low areas are called, collectively, Plumas Lake. The water is wanted by the applicant for the irrigation of 81 acres of alfalfa.

The application is protested by Plumas Mutual Water Company whose function is to supply water to its shareholders and not to use water itself; and by two individuals -- L. G. Kilkeary and Paul Erickson -- who contend that the diversion proposed by the applicant would prevent enough water from reaching their points of diversion to satisfy their asserted rights.

The applicant did not answer any of the protests.

The application was the subject of a hearing at Marysville on June 3, 1954.

Salient items of testimony adduced at the hearing are in effect that the applicant's proposed diversion heads upon a channel -- actually a drainage channel of Reclamation District No. 784 -- which serves Protestant Kilkeary, which together with a communicating channel to the west and north serves Protestant Erickson and into which the protestant Plumas Mutual Water Company has introduced water at times of water scarcity for use by shareholder Kilkeary, that that channel carries storm runoff in winter and spring, seepage from Feather River at times of high stage in that stream and, later, return flow from irrigated lands; that the flow in that channel is sometimes considerable but is unsteady, sometimes changes direction, sometimes ceases entirely, is frequently insufficient to satisfy the protestants' claimed rights; that in 1953 flow occurred in June, July and August but not in September, that flow is usually least in July and August; that the works described in the

application are already in operation, that it is the applicant's desire to irrigate 5 times per season, each irrigation extending over eight 24-hour days; that E. Thaddeus Platter diverts from Plumas Lake Canal by means of two pumps located upstream (easterly) from the Nieschulz intake, that the Platter pumps operate approximately three-fourths of the time, that if Platter did not pump the water would continue westward and if not diverted in the intervening reach would have to be pumped into Feather River by the Reclamation District, as a drainage measure.

The circumstances in the matter at issue point to the conclusion that unappropriated water exists at times in the source filed upon by the applicant, that while the flow of such water is unsteady and intermittent, being dependent in summer upon return flow from irrigated lands that drain toward it, it may be taken and used beneficially in the manner proposed by the applicant without encroachment upon the rights of others. It is the opinion of this office therefore that Application 15372 should be approved and permit issued, subject to the usual terms and conditions.

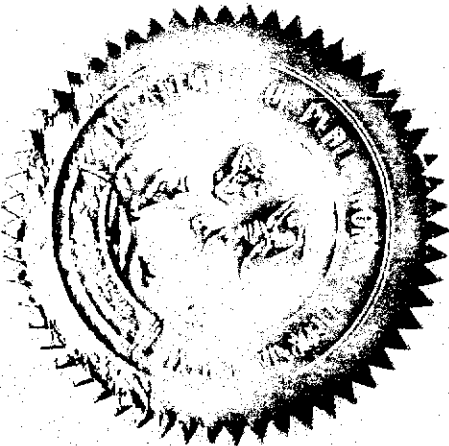
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ORDER

Application 15372 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15372 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this January 13, 1955.



A. D. Edmonston  
A. D. Edmonston  
State Engineer