

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the matter of Applications 12140, 12183,)
12231, 12235, 12236, 12277, 12278, 12295,)
12300, 12314, 12315, 12321, to 12326, in-)
clusive, 12399, 12421, 12422, 12423, 12440,)
12441, 12456, 12457, 12603, 12622, 12623,)
12624, 12667, 12682, 12755, 12759, 12779)
to 12782, inclusive, 12785, 12786, 13370,)
13371, 13372, 14242, 14243, 14662, 14744,)
14963, 15635, 15636, 15644, 15954, 15955,)
16014 to 16019, inclusive, 16044, 16060,)
16212, 16243, 16385, 16386, 16688 and)
16819 to appropriate waters of the American)
River by the City of Sacramento, etc.)

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Decision No. D 870 relating to Applications 12323,
12624 and 14963 only.

Decided March 29, 1957.

Appearances at Hearing Conducted at Sacramento on November 27, 28 and 29 and
on December 5, 6, 7 and 10, 1956, by Henry Holsinger, Chairman, John B. Evans,
Member, and W. P. Rowe, Member, State Water Rights Board:

Sacramento Municipal Utility District)	Martin McDonough, Attorney
)	Stephen B. Downey, Attorney
)	David S. Kaplan, Attorney
City of Sacramento)	Martin McDonough, Attorney
City of North Sacramento)	Stephen B. Downey, Attorney
County of Sacramento)	
Sacramento River Water and)	
Delta Association)	
Santa Clara Valley Water)	Albert T. Henley, Attorney
Conservation District	
Hollister Irrigation District	
Campbell Water Company	
City of San Jose	
State Department of Water Resources)	Mark Nosler, Attorney
Elk Grove Irrigation District)	Denslow B. Green, Attorney
Galt Irrigation District)	
State Department of Fish and Game)	Lucian B. Vandegrift
	Deputy Attorney General

Pacific Gas and Electric Company	)	Joseph Sheeks, Attorney
Reclamation Districts 348, 2029, 2036, 756, 802 and 1614	)	Tom H. Louttit, Attorney
Lockeford Protection District)	
Mokelumne River Irrigation District)	
Woodbridge Water Users Conservation District)	
City of Stockton	)	Monroe Langdon, Attorney
City of Roseville	)	Robert A. Boone
County of Placer	)	Ralph M. Brody, Attorney
Stockton and East San Joaquin Water Conservation District)	
County of El Dorado	)	Ralph M. Brody, Attorney
El Dorado Irrigation District	)	Jack Winkler, Attorney
Georgetown Divide Public Utility District	)	George Maul, Attorney John Cousens, Attorney
North San Joaquin Water Conservation District	)	R. P. Rott, Attorney E. G. Chandler, Attorney
State Park Commission	)	John Morris Deputy Attorney General
Fair Oaks Irrigation District	)	Philip F. Driver, Attorney
San Juan Suburban Water Company	)	L. K. Jordan
California Water Service Company San Jose Water Works	)	Carl F. Mau
Augusta Bixler Farms and Numerous Other Delta Landowners	)	John A. Wilson, Attorney
San Joaquin County Flood Control and Water Conservation District	)	Richard W. Dickenson San Joaquin County Counsel
Sierra Club and the Federation of Western Outdoor Clubs	)	Harold Bradley
Sacramento Sierra Sportsmen's Council and Associated Sportsmen's Clubs	)	Sam Grosch
Citrus Heights Irrigation District	)	William A. Sitton, Attorney
E. Clemens Horst Company	)	George E. Miller, Jr.
United States of America Bureau of Reclamation	)	John K. Bennett, Assistant Regional Solicitor, Department of the Interior

Sweetwater Company	)	Bacigalupi, Elkus and Salinger, Attorneys
El Dorado County Sportsmen's Organization	)	Robert Ramsey
Unorganized Sportsmen in Sacramento Area	)	Thomas J. MacBride, Attorney and Assemblyman, 8th District

DECISION

Notice and Hearing

All the applications listed in the caption were completed in accordance with the Water Code and applicable administrative rules and regulations and were set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before the State Water Rights Board (hereinafter referred to as "the Board"), on November 27, 1956 at 10:00 A.M. at Sacramento, California. Of the hearing the applicant and the protestants were duly notified. The hearing extended through later sessions convened on November 28 and 29 and on December 5, 6, 7 and 10, 1956.

In view of the large number of applications and protests and the numerous issues to be considered and in the interest of expediency the applications were segregated for hearing into groups. It was ordered that applications for nonconsumptive use of water (power) above Folsom Dam and Reservoir and all protests thereto be heard at the first session of the hearing beginning on November 27, 1956, to be followed by the remaining applications. Subsequently, by request of the concerned applicants, hearing of applications falling in the foregoing category other than those of the Sacramento Municipal Utility District was deferred until a later session. Consequently, the first session of the hearing concerned only Applications 12323, 12624, and 14963 of the Sacramento Municipal Utility District for its upper American River

power development, and protests thereto.

For reasons hereinafter stated, the record of the hearing thus far completed establishes that the aforesaid applications of the utility district may properly be determined at this time and that there is no good cause for withholding such determination until after the remaining applications have been heard. Therefore, this decision concerns only Applications 12323, 12624, and 14963.

Substance of the Applications

Application 12323, filed February 13, 1948, initiates appropriations of 400 cubic feet per second by direct diversion year-round from South Fork Silver Creek and/or Silver Creek and 50,000 acre-feet per annum by storage from South Fork Silver Creek and 225,000 acre-feet per annum by storage from Silver Creek for power purposes. Diversion to storage will extend from October 1 to July 31 of each season.

Application 12624, filed July 29, 1948, initiates appropriations from tributaries of Middle Fork American River for power purposes as follows:

<u>Source</u>	<u>Direct Diversion (cfs)</u>	<u>Diversion to Storage (ac.ft.)</u>
South Fork Rubicon River	500	200,000
Rubicon River	500	75,000
Rock Bound Creek	200	14,000
Gerle Creek	---	25,000

Direct diversion will be made year-round and diversion to storage will extend from October 1 to July 31 of each season.

Application 14963, filed August 12, 1952, initiates appropriations of 400 cubic feet per second from Silver Creek and 800 cubic feet per second from South Fork American River year-round for power purposes.

Description of the Project

Sacramento Municipal Utility District's Upper American River Project is shown pictorially on the District's Exhibit 10. (Hereinafter the exhibits of Sacramento Municipal Utility District are identified as SMUD Exhibit ____).

The project consists of a system of reservoirs and conduits to supply water to power plants. The uppermost dam will create Rubicon Reservoir to a capacity of 2,160 acre-feet on the upper Rubicon River and will act as a diversion to turn water westerly to Rockbound Lake on a nearby tributary. The capacity of Rockbound Lake will be increased to 3,200 acre-feet. A small creek will carry this water westerly to Buck Island Lake which will be increased in capacity by 1,370 acre-feet. Buck-Loon Tunnel, 9 feet in diameter and 8,450 feet long, will carry the combined flows from the upper Rubicon River westerly to Loon Lake which will be increased in capacity to 48,000 acre-feet by construction of suitable dams.

Loon Lake is on the headwaters of Gerle Creek, a tributary of South Fork Rubicon River, in El Dorado County. Power water will be discharged down Gerle Creek to Sawmill Diversion Reservoir, with a capacity of 500 acre-feet, which will also receive water from another tributary of Gerle Creek.

The combined flows of Gerle Creek and the upper Rubicon River, which is a tributary of the Middle Fork of the American River, will be diverted by tunnel southerly to Union Valley Reservoir on Silver Creek,

a tributary of the South Fork of the American River. This tunnel, known as Robbs Peak Tunnel, will have a diameter of 9 feet and a length of 22,000 feet. This tunnel will be used to divert an average of about 85,000 acre-feet per year from the Middle Fork of the American River to the South Fork.

The Rubicon River, from a point about five miles above the entrance of South Fork Rubicon River, forms the common boundary of El Dorado and Placer Counties to the junction with the Middle Fork of the American River, which stream then becomes the county boundary to its junction with the North Fork of the American River below which point the middle of the bed of the combined flows of both forks is the county boundary to a point near Folsom Dam.

Union Valley Reservoir will be created to a capacity of 181,000 acre-feet by the construction of a rockfill dam 344 feet high on Silver Creek about 2 miles above the junction of South Fork of Silver Creek. A power plant will be constructed below Union Valley Reservoir to utilize the hydraulic head and water supply created by the reservoir. It will operate under a static head of 391 feet just below the confluence of Silver Creek and South Fork of Silver Creek. A dam 167 feet high will create Junction Reservoir to a capacity of 2,500 acre-feet.

Ice House Reservoir, having a capacity of 40,300 acre-feet, will be created by the construction of a rockfill dam 152 feet high on South Fork of Silver Creek. A tunnel 8 feet in diameter and 1,490 feet long will ultimately be bored to convey the water northerly from the reservoir to streams tributary to Union Valley Reservoir.

The combined flows from Union Valley, Ice House and Junction Reservoirs will be carried westerly through Jaybird Tunnel and Conduit

along the south wall of Silver Creek Canyon to the penstocks of Jaybird Power Plant operating under a static head of 1,527 feet. Jaybird Tunnel will be 13.5 feet in diameter and 23,300 feet long.

Camino Diversion Dam on Silver Creek immediately below Jaybird Power Plant will create a small reservoir having a capacity of 180 acre-feet. From this point, Camino Tunnel, having a diameter of 13.5 feet and a length of 27,220 feet, will be bored along the north canyon wall of Silver Creek to the head of the penstocks of Camino Power Plant. These penstocks will operate under a static head of 1,054 feet. The power plant will be located on the South Fork of the American River about a mile below the junction of Silver Creek.

A concrete arch dam 160 feet high will be constructed on South Fork American River about 4 miles below the Camino Power Plant. It will create Slab Creek Reservoir which will have a capacity of 8,400 acre-feet and back water almost to the Camino Power Plant. White Rock Tunnel, with a diameter of 13.5 feet and length of 31,050, will be bored along the south canyon wall of the South Fork of American River to the head of the penstock for White Rock Power Plant. This penstock will operate under a static head of 856 feet. Water will be discharged from White Rock Power Plant into South Fork American River at a point approximately 25 miles above Folsom Dam. An afterbay reservoir to equate the power water to a more stable flow will be provided below White Rock Power Plant.

The estimated cost of the project is \$85,000,000, all of which will be spent on constructions in El Dorado County except for a small section of the transmission line.

Interference with natural drainage of certain Delta lands.

Hindrance to gravity diversions from Delta channels if water surfaces thereof are lowered; hindrance to gravity disposal of return water if water surfaces in said channels are raised, with consequent accumulation of salts on affected properties.

Destruction of the barrier, now provided by natural flow, to intrusion of saline water.

Increased costs of levee maintenance due to higher water levels in Delta channels under operation contemplated in the applications.

Prohibition of full development of the American River basin.

Increased irrigation costs and impairment of water quality resulting from changing the water surface elevations and reversing the direction of flow in certain Delta channels.

Destruction of fish unless adequate flows in the various channels are maintained.

Deprivation, in protestant's locality, of opportunity to expand.

Answers to Protests

The applicant declared that its applications are subject to vested rights under California law, that it will recognize and respect all prior water rights, that studies of available records indicate that surplus water is available for appropriation, that its project will not harm protestants but will actually be beneficial to them, that better regulation of the flow in the American River may reduce high water conditions in the Delta during flood seasons and cause more water to be available in dry seasons through return flow of stored water, and

that the demand of Delta users of maintenance of present flow in the American River and other tributaries of the Sacramento River without further development thereon would constitute an unreasonable use of water contrary to State law.

Disposition of Protests

The numbers preceding the following paragraphs refer to those shown in the list of protestants on pages 8 and 9 of this decision.

1. and 2. The interests of protestants, State Fish and Game Commission and State Department of Fish and Game, in the subject applications are identical and their protests may be considered as one and the same. Department of Fish and Game Exhibit 7 sets forth several conditions and recommendations for by-pass of water at various points of diversion in the interest of maintaining fish life which that Department suggests be incorporated in any permits issued to applicant. The applicant has accepted the terms and conditions proposed by the Department, (R.T., Sec. 1, Dec. 7, p. 49). Permits issued pursuant to Applications 12323, 12624, and 14963 will contain terms and conditions in the interest of fish life substantially as outlined in said Exhibit No. 7. Thereby it is considered the protests of the Fish and Game Commission and Department of Fish and Game will be satisfied.

3. Protest of City of Sacramento withdrawn (R.T., Sec. 2, Dec. 6, p. 27).

4. Protest of County of El Dorado withdrawn (R.T., Sec. 1, Dec. 7, p. 57).

5. Protest of County of Placer withdrawn (R.T., Dec. 10, p. 8).

6. Protest of Georgetown Divide Public Utility District withdrawn (R.T., Sec. 1, Dec. 7, p. 56).

7. Georgetown Divide Water Co., Ltd., made no appearance at the hearing. By letter to the Board, dated December 3, 1956, the company stated that it does not desire to protest the applications which are the subject of this decision in view of the representation by applicant that no diversion or use will be made under these applications which will interfere with diversion or use of water for higher uses, whether such higher uses are made under either prior or subsequent rights. Since permits issued to applicant will contain an express provision carrying into effect the foregoing representation, the protest of the water company need not be further considered.

8. Protest of North Fork Ditch Company (now San Juan Suburban Water District) withdrawn (R.T., Sec. 2, Dec. 6, p. 26).

9. Protest of Pacific Gas and Electric Company withdrawn (R.T., Sec. 1, Dec. 7, p. 60).

10. and 11. E. Clemens Horst Company and Elvas Farms Company are situated on the main stem of American River below Fair Oaks USGS gaging station. Protests of these companies are based upon an apprehension that the applicant's projects will render the water supply inadequate at their points of diversion during the irrigation season.

Chart III of SMUD Exhibit 8 depicts the flow of American River which would have occurred at Fair Oaks during the period 1927 through 1946 had the applicant's project as presently envisioned been in operation. Although this exhibit shows that during 14 of the 20 years of study the annual amount of flow passing Fair Oaks would have been less under project conditions (varying from a minimum reduction of 2,700 acre-feet during the year 1943-44 to a maximum reduction of 163,200 acre-feet during the year 1931-32) the reduction would have occurred

during the period of the year when considerable quantity of water is wasting to the ocean and the flow during the normal irrigation season under project conditions would have been greater every year. It is, therefore, apparent that the water supply of E. Clemens Horst Company and Elvas Farms Company would be improved by the applicant's project and accordingly the protests of these two protestants appear to be without merit.

Because of the intermediate location of Folsom Dam and Nimbus Dam of the United States the operation of these structures will have a far more direct effect on the water supply of the two foregoing protestants than the proposed SMUD upstream development. This matter will be considered in detail during the consumptive-use-applications phase of the American River hearing.

12. through 29. These protestants are located on various sloughs and channels in the Delta area, and the American River is only one of the several sources of water supply. They submitted substantially identical protests which were directed toward not only the non-consumptive-use but also consumptive-use applications of the applicant and alleged that the project would cause injurious reduction of their water supply. The discussion contained in the two preceding paragraphs would appear to apply equally in the present instance. A showing of injury has not been made nor from the evidence submitted may injury be anticipated. These protests appear likewise without merit.

The United States, through its Bureau of Reclamation, filed a protest against the subject applications some time after the close of the protest period. In the absence of showing of cause for the late filing as required by Section 1330 of the Water Code, the protest was not accepted. The record shows, however, that an agreement in principle

was tentatively reached between the District and the United States providing for operation of the power project of the District in a manner satisfactory to the United States and that upon execution of a written agreement between the District and the United States the latter would withdraw its objections to the non-consumptive-use applications for power development of the District (R.T., Dec. 6, Sec. 1, p. 29). Subsequently, under date of March 19, 1957 such agreement was executed and a copy thereof was introduced into evidence as SMUD Exhibit 16. It appears, therefore, that the objections of the United States to these applications of the District have been fully satisfied.

Discussion of Other Evidence

Evidence has been introduced into the record by the State Department of Water Resources regarding The California Water Plan as it applies to the proposed ultimate development of the American River watershed. The most salient information presented insofar as the subject applications are concerned is contained in Department of Water Resources Exhibits 5, 6, and 7. In general, the circumstances are as follows:

The State Plan for development of American River as contained in the preliminary draft of Bulletin 21 of the former State Water Resources Board (SWRB Exh. 8) differs in certain respects from the modified plan of Sacramento Municipal Utility District as contemplated under Applications 12323, 12624, 14963.

The project as proposed by the district follows the California Water Plan in the upper Rubicon River watershed from the proposed diversion dam, and then through Rockbound, Buck Island and Loon Lakes. Below Loon Lake, the State Plan provides for a diversion northwesterly

from Gerle Creek to a power plant on the Rubicon River in Placer County immediately north of the intersection of the east-west boundary between Placer and El Dorado Counties, while the district's plan provides a diversion from Gerle Creek southerly to a tributary of the South Fork of American River. As it was the opinion of the former Division of Water Resources that a feasible substitute for a part of the district's project might be found which would better develop the water resources of the basin, the State Water Resources Board was requested by the Division to consider the matter with result that the Board on June 1, 1956, adopted a resolution (DWR Exh. 5) urging the district to fully investigate and consider a "substitute plan" as proposed by that Board, but in the event the district, after investigation and consideration, found the "substitute plan" to be less feasible than the project which was contemplated by the district, the district's plan would be considered by the State Water Resources Board as an acceptable alternative for basin development, in lieu of the plan contained in the draft of said Bulletin 21.

The principal difference between the "substitute plan" and the district's proposal, except as noted in the preceding paragraph, is the State's plan of a large dam on South Fork of Silver Creek creating storage for about 135,000 acre-feet of water at an estimated cost of \$11,840,000 while the district's dam, about 4 miles upstream, would create 40,300 acre-feet of storage at an estimated cost of \$3,000,000 (SMUD Exhibit 7). The power conduits and tunnels along Silver Creek from Union Valley Dam (Junction) to Camino Power Plant are essentially the same under all three plans.

In accordance with the said resolution (DWR Exh. 5) the district made an investigation and analysis and concluded that the "substitute plan"

was less feasible from the district's standpoint. Accordingly, the Director of Water Resources on December 4, 1956, by letter to Henry Holsinger, Chairman, State Water Rights Board (DWR Exh. 7), stated that the Department of Water Resources concurred with the district's conclusion and that the Department has recommended to the State Water Board (formerly State Water Resources Board) that if the district is able to immediately proceed with its development the district's plan as proposed under Applications 12323, 12624, 14963 be considered as an acceptable alternative to the basic plan presented in Bulletin 21.

In view of the position of the State Department of Water Resources as outlined no further consideration of the California Water Plan is required pursuant to the mandate contained in Section 1256 of the Water Code.

Although they had filed no protests, appearance was made at the hearing by Reclamation Districts 348, 2029, 2036, 756, 802, 1614, Lockeford Protection District, Mokelumne River Irrigation District and Woodbridge Water Users Conservation District. As shown on Louttit Exhibit 1, the first six districts are located in the San Joaquin River Delta Area extending from Walnut Grove on the north to Byron on the south. Lockeford Protection District and Mokelumne Irrigation District are located adjacent to and south of Mokelumne River near Lockeford. Woodbridge Water Users Conservation District extends from Mokelumne River on the north and Calaveras River on the south, with its east boundary approximately on the longitude of Lodi and extending an average of about 6 miles to the west.

These districts object to the issuance of permits to any of the 22 applicants involved in the American River hearing unless such

permits contain provisions as to (1) flood control, (2) regulation of flow (3) prevention of salinity and deterioration of waters within the San Joaquin Delta (4) prevention of evaporation of stored waters in dry years (5) non-surrender of rights of the districts under State Applications 5644, 5645 and 7940 and (6) that there be no infringement upon the vested rights of the districts. A detailed statement of the position of these districts is contained in Louttit Exhibit 2.

This Board is in complete accord that flood and salinity control and the regulation of flow in the Delta area are highly desirable. However, reservation for flood control purposes in any reservoir reduces the resultant yield for other purposes and accordingly, those desiring such protection must expect to contribute to the cost of the project if it is to be operated also for flood control purposes. This Board cannot properly require operation of the applicant's project for flood control purposes where there has been no flood control contribution for the project. It should be pointed out, however, that any water storage project will afford a certain degree of flood control protection.

As previously mentioned, the operation of Folsom Dam and Nimbus Dam will have a far more direct effect on the water conditions in the Delta area than the applicant's project. Where the water will neither be consumptively used nor exported from the American River watershed, as in this instance, specific provisions in any permits issued pursuant to Applications 12323, 12624 and 14963 for maintenance of flow and salinity control is considered unnecessary.

Reclamation District No. 348, et al., calls attention of this Board to experiments which have been carried on in South Africa and to

some extent in the United States with a view to reducing loss by evaporation from the surface of a storage reservoir and insists that, when recognized methods of prevention of evaporation are fully established as economically sound, that such methods be employed by the applicant. Such a condition has never been imposed in the past upon a permittee in connection with a water storage project in this State. To impose such a condition at this time in a permit in view of the nebulous status of the program under experimentation is considered improper.

The applications under consideration are for permits to appropriate "unappropriated water" of the State of California and as a matter of policy of this Board, all permits are issued expressly subject to vested rights. Furthermore, the applicant has agreed as evidenced in SMUD Exhibit 13, to accept permits subject to higher uses of water whether made under prior or subsequent rights. Permits so conditioned should obviate any apprehension of the Delta users insofar as recommendations (5) and (6) cited above are concerned.

San Joaquin County Flood Control and Water Conservation District, which embraces all of the territory of San Joaquin County, made a brief appearance and filed two exhibits. The position of this district insofar as the subject applications are concerned and the demands for permit conditions are identical to Reclamation District 348 et al., as previously discussed.

Sierra Club and the Federation of Western Outdoor Clubs through one of the directors of Sierra Club introduced into the record a statement expressing concern over the adverse effect the proposed project will have on the recreational value of Desolation Valley Primitive Area

and questioning the need of development in the area at this time. These organizations contend that because of the unique and irreplaceable value of this wilderness they oppose the proposed development at the present time and urge that the area be allowed to remain in its primitive state until a need for power is evident after the remainder of the power potential of the basin has been developed. These matters concern a field over which this Board has no jurisdiction. It is assumed that the apprehension of these organizations will be adequately considered by the Federal Power Commission and any other federal agency having jurisdiction if and when access to the land in question is allowed.

Sacramento Sierra Sportsmen's Council and Associated Sportsmen's Club introduced several resolutions urging that any permit issued be conditioned to provide for a by-pass of sufficient water to maintain fish life and other recreational potentials. As quantities of by-pass water believed necessary for these purposes were not mentioned in said resolutions this Board has assumed that insofar as these parties are concerned the minutia of operation has been left to the judgment and recommendations of the Department of Fish and Game.

Representatives of Eldorado National Forest presented testimony as to the past recreational uses within the forest, which includes the Lake Tahoe area. They stated that from 1951 to 1956 visits to the area increased from 200,000 to 600,000, that federal appropriations for maintenance and improvement of the forest facilities sharply increased in recent years indicating an awakened interest on the part of Congress as to the recreational needs, and concluded that in view of the negotiations and agreements which the applicant has made with Department of Fish and Game, U. S. Forest Service and County of El Dorado, the project will improve recreational facilities of the forest area.

Under Application 12624, water will be transported to the South Fork American River from tributaries of the Middle Fork. Some decrease of flow of the Middle Fork will occur during the winter months but due to the proposed releases for fish at Sawmill Dam the summer flow may possibly be increased slightly. Testimony by the applicant indicates that for the months of July, August and September the historical flow of Middle Fork of American River may be increased by an average of about 1000 acre-feet per month under project conditions.

Further evidence, particularly SMUD Exhibit 5, shows the growth of the service area of Sacramento Municipal Utility District, both as to population and power demands and points to the conclusion that within the very near future its power demands will exceed its present supply. No evidence appears in the record that the project is contrary to the public interest but in fact shows a pressing need of additional power to effect an orderly growth of the district. Financing of the project will be by revenue bond issue recently approved by a vote of the district. A thorough study of the feasibility of financing the project through the sale of revenue bonds was made by recognized bond experts. Such study indicates without qualification that the project can be financed in this manner (See SMUD Exh. 9; R.T., Nov. 28., Sec. 1, pp 38-52).

SMUD Exhibit 3 is "Application for License, Upper American River Project, by Sacramento Municipal Utility District", dated July 20, 1955. This is an application to the Federal Power Commission for a license authorizing construction, operation and maintenance of the project works contemplated under water right Applications 12323, 12624, and 14963.

According to said Exhibit 3 the project area embraces 5717.12 acres of U. S. land, and 4769.32 acres of patented land. All the government-owned land is within Eldorado National Forest.

The bulk of the patented land within the project boundaries consists of extensive timberland holdings in Union Valley Reservoir site, which for the most part is owned by Michigan-California Lumber Company.

So far none of the land in private ownership has been purchased by the applicant. These lands will be acquired as needed either through direct negotiations with the owner or by exercise of power of eminent domain. Issuance of license by the Federal Power Commission will allow occupancy of federal land.

Summary and Conclusions

Twenty-nine individuals or entities filed protests against Applications 12323, 12624 and 14963. Eight protests were subsequently withdrawn, and in the light of evidence submitted at the hearing the remaining 21 protests are adjudged to be without merit.

The legislative mandate to this Board as contained in Section 1256 of the Water Code has been met by acquiescence of the State Department of Water Resources to the applicants' project in lieu of the State's plan as contained in the draft of Bulletin 21.

The concern expressed by the Sierra Club and the Federation of Western Outdoor Clubs over the adverse effect of the project on Desolation Valley is a matter over which this Board has no jurisdiction.

The interest of other recreational organizations, the Eldorado National Forest, the County of El Dorado and the State Department of Fish and Game in the preservation of fish and wildlife in the watershed has

been satisfied by agreements of the applicant to maintain certain flow conditions.

Applicant has shown that adequate unappropriated water exists to operate the project and has agreed to accept permits subject to higher uses. It has also shown that an orderly growth of the applicant district demands that a new source of electric power be obtained within the very near future, that the applicant has financial ability to undertake the project, and that the project is not in conflict with the public interest.

The Board finds that there is unappropriated water available for power purposes to supply applicant, which water may be appropriated in the manner proposed in the applications without injury to any other lawful user of water, that the intended uses are beneficial, and that said applications should be approved and permits issued to applicant subject to the usual terms and conditions and subject to the additional terms and conditions indicated in this decision. The Board further finds that as so conditioned, the appropriations will best develop, conserve and utilize in the public interest the waters sought to be appropriated.

ORDER

Applications 12323, 12624 and 14963 for permits to appropriate unappropriated water for power purposes having been filed with the former Division of Water Resources, protests having been filed, jurisdiction of the administration of water rights including the subject applications having been subsequently transferred to the State Water Rights Board and a public hearing having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12323, 12624 and 14963 be, and the same are, hereby approved and it is ordered that permits be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated under permit issued pursuant to Application 12323 shall not exceed 400 cubic feet per second by direct diversion year-round from South Fork Silver Creek, and/or Silver Creek, and 50,000 acre-feet per annum by storage from South Fork Silver Creek, and 225,000 acre-feet per annum by storage from Silver Creek to be collected between about October 1 of each year and about July 31 of the succeeding year.

2. The amount of water to be appropriated under permit issued pursuant to Application 12624 shall be limited as follows:

<u>Source</u>	<u>Direct Diversion (cfs)</u>	<u>Diversion to storage (ac.ft.)</u>
South Fork Rubicon River	500	200,000
Rubicon River	500	75,000
Rock Bound Creek	200	14,000
Gerle Creek	---	25,000

Direct diversion may be made year-round and storage shall be from about October 1 of each year to about July 31 of the succeeding year.

3. The amount of water to be appropriated under permit issued pursuant to Application 14963 shall not exceed 400 cubic feet per second from Silver Creek and 800 cubic feet per second from South Fork American River, to be diverted between January 1 and December 31 of each year.

4. The maximum amount herein stated may be reduced in license if investigation so warrants.

5. Construction work shall begin on or before July 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permits may be revoked.

6. Said construction work shall be completed on or before December 1, 1967.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1975. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

8. All rights and privileges under the permits including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interests of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water, and to prevent unreasonable interference with vested rights.

9. No diversion or use of water shall be made under the permits which will in any way interfere with diversion or use of water for irrigation or domestic purposes, whether such higher uses are made under either prior or subsequent rights.

10. Permittee shall maintain the following minimum stream flows in the interest of fish life:

a. In the Rubicon River below Rubicon River Diversion Dam; six cubic feet per second or the natural flow, whichever is less, in addition to the 491 acre-feet stored and released from stream-flow maintenance dams constructed by the California Department of Fish and Game on Lakes Clyde, Middle Velma, Schmidell, and Lois.

b. In the outlet stream from Buck Island Lake; one cubic foot per second at all times, in addition to such amounts and at such rates as the California Department of Fish and Game may determine from the 633 acre-feet, stored and regulated by the Department in Rockbound, Buck Island, and Highland Lakes.

c. In Gerle Creek, below Loon Lake Dam; eight cubic feet per second at all times.

d. In South Fork Rubicon River below Sawmill Diversion; five cubic feet per second during the period May 1 to October 31 inclusive, and two and one-half cubic feet per second during the period November 1 to April 30 inclusive.

e. In Silver Creek between Union Valley Dam and Junction Reservoir, no minimum flow required.

f. In South Fork Silver Creek below Icehouse Dam; ten cubic feet per second during the period May 1 to October 31 inclusive; and five cubic feet per second during the period November 1 to April 30 inclusive.

g. In Silver Creek below Junction Dam (Jaybird Powerhouse Intake Dam) and below Camino Intake Dam;

(1) For those years the April 1 forecast of the California Department of Water Resources for the unimpaired runoff of

the American River at Fair Oaks is 2,000,000 acre-feet or greater; 20 c.f.s. during the period May 1 to October 31 inclusive, and 10 c.f.s. during the period November 1 to April 30 inclusive.

(2) For those years the April 1 forecast of the California Department of Water Resources for the unimpaired runoff of the American River at Fair Oaks is 1,500,000 acre-feet or greater, but less than 2,000,000 acre-feet; 15 c.f.s. during the period May 1 to October 31 inclusive, and 8 c.f.s. during the period November 1 to April 30 inclusive.

(3) For those years when the April 1 forecast of the California Department of Water Resources for the unimpaired runoff of the American River at Fair Oaks is greater than 1,000,000 acre-feet, but less than 1,500,000 acre-feet; 10 c.f.s. during the period May 1 to October 31 inclusive, and 6 c.f.s. during the period November 1 to April 30, inclusive.

(4) For those years when the April 1 forecast of the California Department of Water Resources for the unimpaired runoff of the American River at Fair Oaks is less than 1,000,000 acre-feet; 5 c.f.s. during the following period of May 1 to April 30, inclusive.

Provided that all streamflows specified above shall be measured at a point not to exceed one-fourth mile below the indicated project structure.

Provided further, that minimum streamflows maintained by the Permittee as stated in Sections 10(d) and 10(f) during the period May 1 to October 31 inclusive, may be reduced by

~~one~~-half in those years in which the April 1 forecast of the Department of Water Resources for the unimpaired runoff for the American River at Fair Oaks is less than 1,500,000 acre-feet.

h. Provided further that the Permittee shall release from its Slab Creek Reservoir sufficient water to maintain a flow of at least 30 c.f.s. (in addition to the releases from New Chute Camp Diversion Dam made by Pacific Gas and Electric Company under Article 27 (a) of its F.P.C. license for Project No. 78) as measured at the existing gaging station approximately one mile downstream from New Chute Camp Diversion Dam at all times when such water would have been available under pre-project conditions in excess of the Pacific Gas and Electric Company's diversion rights at New Chute Camp Diversion Dam; provided, however, that permittee shall not be required to make such releases out of water which it has itself stored or imported from another watershed, and provided further that in dry years the figure "15 c.f.s." shall be deemed substituted for the figure "30 c.f.s." in the foregoing clause. A dry year, within the meaning of this paragraph, is one in which the current water year unimpaired runoff of the American River at Fair Oaks, California, as estimated by the State of California on May 1, will be 1,500,000 acre-feet, or less. The dry year schedule shall apply over the twelve-month period commencing on June 1, thereafter.

i. Provided further that the Permittee shall construct below its White Rock powerhouse an afterbay dam providing a storage capacity of not less than 400 a.f. and, to the extent permitted under its F.P.C. license, will schedule releases from that afterbay

dam in whatever manner is most agreeable to State and Federal agencies having the responsibility for the conservation and preservation of fish life and other recreational values.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this 29th day of March, 1957.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ John B. Evans
John B. Evans, Member

/s/ W. Penn Rowe
W. Penn Rowe, Member