

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 13861 (Application 16361) of)	ORDER:	WR 88- 10
HERSHEY LAND COMPANY and)	SOURCES:	Sacramento River and
LAYTON KNAGGS,)		Colusa Basin Drain
Permittees.)	COUNTY:	Yolo

ORDER SPLITTING PERMIT 13861 AND APPROVING THE ISSUANCE
OF A PRELIMINARY CEASE AND DESIST ORDER

BY THE BOARD:

1.0 INTRODUCTION

Hershey Land Company and Layton Knaggs (permittees) having received Permit 13861 (Application 16361); a Notice of Violation of Conditions of Permit 16361 and Intent to Issue Preliminary Cease and Desist Order having been issued on May 3, 1985; a draft Preliminary Cease and Desist Order having been prepared; permittees having requested a hearing pursuant to Water Code Section 1834(b); one day of public hearing having been held October 15, 1986; permittees having appeared and presented evidence; the evidence having been duly considered; the Board finds as follows:

2.0 SUBSTANCE OF PERMIT 13861

Permit 13861 authorizes the direct diversion of 65.36 cubic feet per second (cfs) of water from April 1 through June 30 and from September 1 through September 30, from the Sacramento River and the

98-10

Colusa Basin Drain for irrigation use in Yolo County. There are two points of diversion. The place of use consists of 2,615.66 acres and is illustrated in Figure 2 and on the project map filed with Application 16361.

3.0 SCOPE OF PROJECT

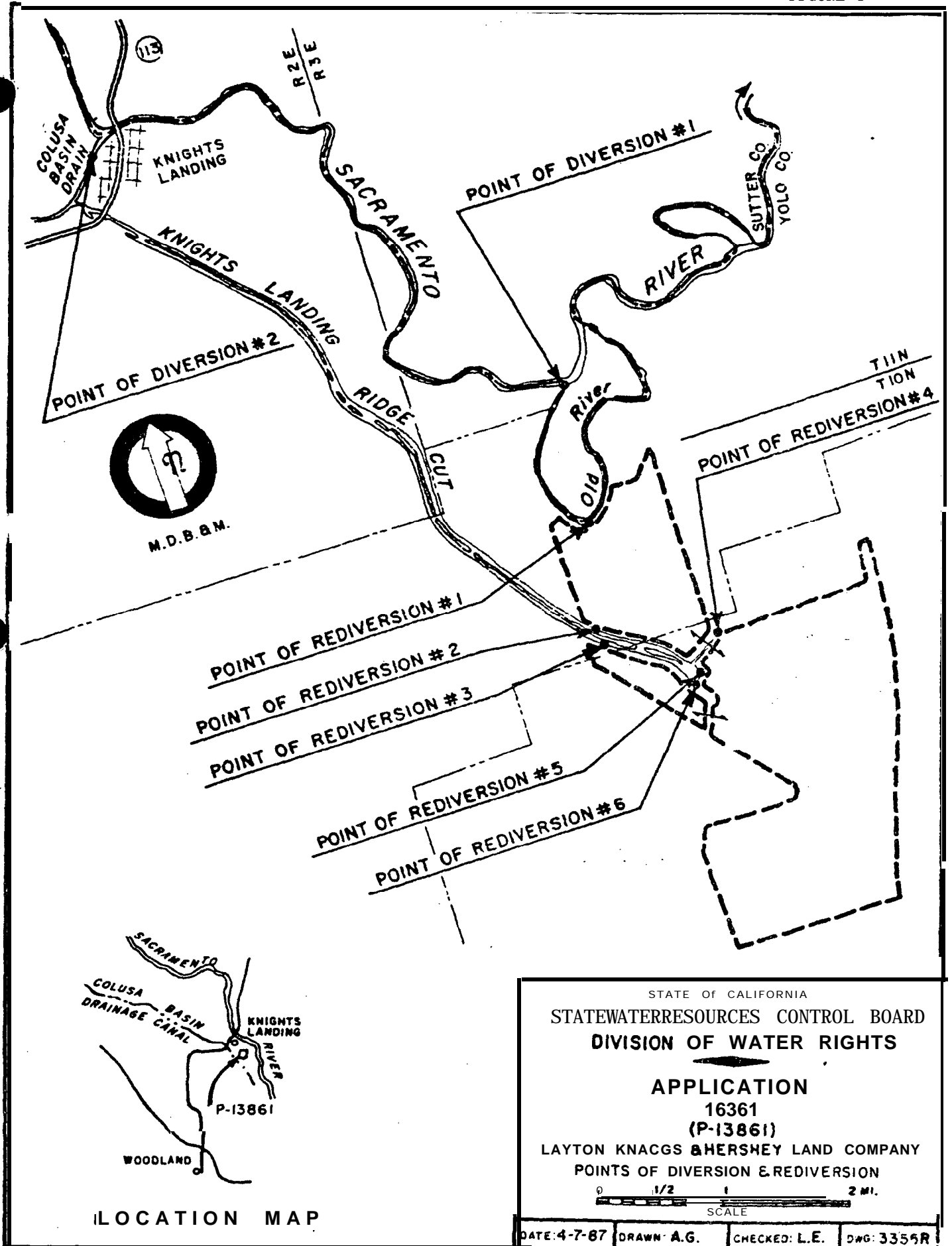
Hershey Land Company and Layton Knaggs each own property which is separately operated. Of the 2,616 acres which comprise the place of use, 701 acres are owned and operated by the Hershey Land Company and 1,915 acres are owned and operated by Layton Knaggs. The property is located approximately seven miles northeast of Woodland in Yolo County (see location map, Figure 1).

There are two points of diversion. Point of Diversion No. 1 is located on the Sacramento River approximately five miles downstream from Knights Landing. Point of Diversion No. 2 is located at the outfall gates on the Colusa Basin Drain near the confluence of the drain and the Sacramento River. (See Figure 1.) The water is conveyed from the points of diversion to the place of use by a system of canals and ditches. Water is applied by either flooding or furrow irrigation over the entire place of use.

3.1 Use of Water by Hershey Land Company

Hershey Land Company diverts water from the Sacramento River (Point of Diversion No. 1) via the Old River channel at Point of Rediversion No. 1. The Company has a contract with the U. S. Bureau of Reclamation for diversion of water from the Sacramento River during July and August when unappropriated water is not available under

FIGURE 1



STATE OF CALIFORNIA
 STATEWATERRESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

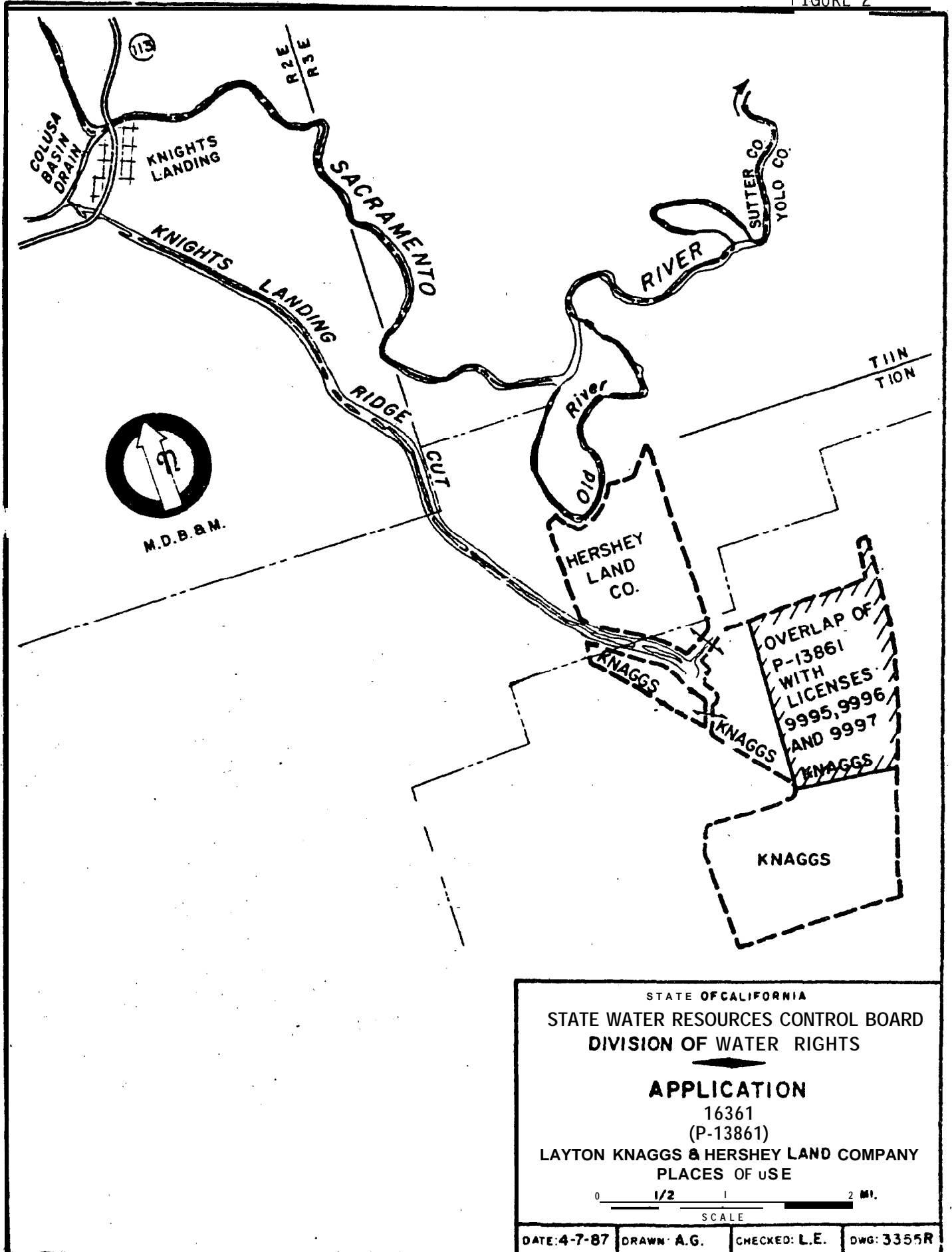
APPLICATION
 16361
 (P-13861)

LAYTON KNACGS & HERSHEY LAND COMPANY
 POINTS OF DIVERSION & REDIRECTION

0 1/2 1 2 MI.
 SCALE

DATE: 4-7-87	DRAWN: A.G.	CHECKED: L.E.	DWG: 3356R
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FIGURE 2



Permit 13861. The Company also claims riparian rights to water from the Sacramento River.

Hershey Land Company also diverts water from the Colusa Basin Drain (Point of Diversion No. 2) via the Knights Landing Ridge Cut at Point of Rediversion No. 2 by pumping. Hershey Land Company has submitted pump records as evidence that no water is diverted from Point Of Rediversion No. 2 during July and August.

3.2 Use of Water by Layton Knaggs

Mr. Knaggs diverts water directly from the Colusa Basin Drain at Point of Diversion No. 2. He also diverts water at Point of Rediversion No. 3 by pumping and at Points of Rediversion Nos. 4, 5, and 6 by gravity flow through a system of canals and ditches. Portable diesel pumps are used to divert water from the ditches onto the place of use.

Mr. Knaggs has wells on his property which provide an additional source of water for irrigation. He has also contracted with Yolo County Flood Control and Water Conservation District for surplus water from the Cache Creek system.

4.0 STAFF INSPECTION

The project authorized by Permit 13861 was inspected by a staff engineer of the Division of Water Rights on October 22, 1980. The inspecting engineer found:

1. Hershey Land Company and Layton Knaggs are separately and independently diverting and using Water.
2. No evidence of the presence of any water measurement programs or devices.
3. Evidence that water may have been diverted at times and in amounts not authorized by Permit 13861.
4. Evidence that water diverted pursuant to Permit 13861 was used on lands not within the place of use authorized under Permit 13861.

5.0 PROPOSED PRELIMINARY CEASE AND DESIST ORDER

The notice of intent to issue a Preliminary Cease and Desist Order was issued by the Chief; Division of Water Rights on May 3, 1985. The proposed enforcement action was initiated for the following reasons:

1. Permittee's failure to file a petition for an extension of time to complete the beneficial use of water;
2. Permittee's failure to provide a detailed plan as required by a permit term for measuring the water diverted and placed to beneficial use under the permit;
3. Evidence that water may have been diverted at times and in amounts not authorized by the permit; and
4. Evidence that permitted water is being used on lands not within the authorized place of use.

The draft order would have required permittees to:

1. Cease and desist from diverting water in violation of Permit 13861.
2. Submit a petition requesting an extension of time to complete use of water pursuant to Permit 13861 by July 1, 1985 or reduce the use of water to the amounts used and places of use developed prior to December 1, 1973.
3. Submit a plan for installation of water measuring devices at all points of diversion and rediversion by June 3, 1985; submit evidence including certification by a licensed Civil Engineer that the water measuring devices are installed and functional by July 1, 1985; submit records of use from the required water measuring devices with the annual Progress Report by Permittee.
4. Request that Permit 13861 be split in accordance with the separate and independent ownerships of the place of use authorized under Permit 13861.
5. Stop diverting and placing water to beneficial use on lands which are not within the authorized place of use.
6. Submit each year prior to the commencement of the authorized diversion season but not later than April 1, a map designating the net lands upon which water diverted pursuant to Permit 13861 will be used and the crops to be grown on those lands.

7. Furnish evidence of contracts for the purchase of all water diverted during the months of July and August with a provision for any related **instream** losses prior to July 1.
8. Submit annual progress reports by permittee Layton Knaggs for the years 1980, 1981, 1982, 1983, and 1984 by **July 1, 1985**.

6.0 REQUEST FOR HEARING

On May 21, 1985 the permittee requested a hearing to "... discuss the permit in question and the proposed method of diversion measurement with the complexity of the irrigation system in conjunction with excess drainage flow from the Ridge Cut." During a prehearing conference on July 9, 1986, the permittee alleged the following:

1. The maximum quantity of water is now being used.
2. The information requested by the Board regarding historical use has been supplied or is difficult to obtain.
3. Water used by permittees outside the permitted season of diversion and place of use is purchased or obtained under rights other than Permit 13861.
4. Permit terms and conditions have been met, full beneficial use of water is being made, and a license should be issued.
5. Use of water by the two permittees is related and the permit should not be split.

These allegations will be discussed in the context of the issues which were noticed for hearing.

7.0 ISSUES TO BE DECIDED

The Notice of Hearing issued on September 16, 1986 identified the following key issues:

1. Should a preliminary cease and desist order be issued?
2. Should Permit 13861 be split to reflect separate and independent uses?
3. Have the terms and conditions of Permit 13861 been complied with and should a portion or all of Permit 13861 be licensed?
4. Should all or a portion of Permit 13861 be revoked for noncompliance of permit conditions?

Testimony at the hearing addressed the division of Permit 13861 and compliance with its terms.

7.1 Division of Permit 13861

Permit 13861 was issued to Davidella Hershey, Grace H. Hershey, and Florence F. Hershey on February 15, 1963 pursuant to Decision 1045. The Hersheys retained ownership of the place of use until 1973 when the property was divided between Hershey Land Company and Layton Knaggs. Figure 2 illustrates the current ownership of the property which is the permitted place of use.

Although Hershey Land Company and Layton Knaggs currently hold an undivided interest in the permit, they separately own and operate the properties covered by the permitted place of use. In addition, the permittees' points of rediversion reflect the separate ownership of property within the permitted place of use. There is no coordination among the permittees regarding the operation of the points of rediversion and the use of water.

Board staff recommended to the permittees that Permit 13861 should be divided pursuant to 23 CCR 836(a). * During the hearing, the permittees agreed that Permit 13861 should be divided and a separate permit or license should be issued to each user.

* 23 CCR 836 reads:

"836. Issuance of Separate Permits and Licenses."

(a) When the place of use described in an application, permit, or license is divided into two or more ownerships and each of the owners succeeds to a separate interest in the application, permit or license, the board may issue separate permits or licenses covering the interest held by each owner. The separate permits or licenses shall replace any existing permit or license previously issued for the same use and shall contain the same terms to the extent they are, applicable. The existing permit or license will then be revoked. The priority of the rights will not be affected and each of the permits or licenses will bear the same number as the replaced instrument plus a distinguishing letter designation.

(b) **Issuance** of separate permits and licenses in accordance with subsection (a) shall not be construed as a determination by the board that the water right has been fully maintained by continuous beneficial use or by observance of the law and provisions of the permit or license."

Permittees submitted crop records for years 1981 through 1986.

Permittee Hershey Land Company believes using the duty ratio of 1 cfs per 80 acres on row crops is a fair assessment of its water needs.

Based on the crop records and the above ratio, Hershey Land Company would be entitled to approximately 8.76 cfs for its portion of Permit 13861 (701 acres x (1 cfs ÷ 80 acres) = 8.76 cfs).

We find that a more appropriate division of the water allocation would be based on the percentage of the total acreage owned by each party. The present allocation of 65.36 cfs for 2,616 acres computes to approximately 1 cfs per 40 acres. This ratio is the allowance for irrigation of rice according to the Board's regulations (23 CCR 697(a)(1)). Even if Mr. Knaggs' portion were completely planted in rice, he should have sufficient water to reasonably cover his use.

7.2 Compliance With Permit 13861

Permit 13861 was issued pursuant to Decision 1045. The permit required that complete application of water was to be made on or before December 1, 1965. An extension of time until December 1, 1968 to put water to full beneficial use was granted by a Board order dated November 2, 1966.

On May 26, 1971 the Board adopted an order which granted an extension of time until December 1, 1973 to put water to full beneficial use and to provide the Board with the data necessary to determine the amount of water applied to beneficial use. The order also added a condition to Permit 13861 which states:

"Permittee shall furnish to the Board not later than December 1, 1971, a detailed plan and program for measurement of water diverted and placed to beneficial use under the permit."

The Board has not received the requested flow measurement data or the plan required by the 1971 order.

7.2.1 Hershey Land Company

During the hearing Hershey Land Company presented evidence regarding its use of water. Hershey submitted flow records and power use data from 1982 through 1986 indicating that its diversion and use of water have been within the terms of Permit 13861. The Hershey Land Company Sacramento River pump is equipped, with a flow meter. The Ridge Cut pump is not equipped with a flow meter so power use records were submitted to verify its use. Crop history records were submitted for the period **1981** through 1986 which indicate that the maximum use of water occurred during 1981. The Hershey Land Company also submitted evidence of riparian rights and a contract with the Bureau of Reclamation for use of water during July and August. Hershey did not submit a plan or program for measuring flows as required by the Board order of 1971.

7.2.2 Layton Knaggs

Conflicting testimony was presented regarding the feasibility of monitoring diversions to Mr. Ynaggs' property. Permittees' engineer

contends that "the complexity and intermittent nature of drainage flow through Mr. Knaggs' property make it infeasible to determine accurate diversion on irrigated lands" (Permittee, 11:3). Board staff testified that it would be feasible to install some sort of measuring device.

Based on evidence presented by Mr. Knaggs, we find that he did not do an in-depth analysis of the various methods for measuring flows on his property. Further, we find that no inspection was made at any time during the early eighties to find out how many pumps were on his property. Mr. Knaggs presented evidence that it would be possible to measure the water where it enters his property, and where it leaves his property to determine how much water was used in between.

Based on the evidence presented by Mr. Knaggs, the Board has determined that the permittee has not made an adequate attempt to provide a method for measuring the amount of water used and that methods are available. Permittees' engineer would prefer to use crop records and crop duty data as proof of how much water was and is being used by Layton Knaggs. This method for determining use is not acceptable to the Board due to the varied conditions under which the crop may be grown. In addition, the method does not provide a means for determining the actual water used or a means for determining compliance with the terms of the permit.

Permittee admits that the condition of Permit 13861 requiring monitoring of diversion flows has not been complied with.

8.0 ACTION EXEMPT FROM CEQA

This order is exempt from Public Resources Code Section 21000 et seq., in accordance with Section 15321 of Title 14 of the California Code of Regulations.

9.0 CONCLUSIONS

1. Based on review of the evidence presented, the Board concludes Permit 13861 should be divided between the Hershey Land Company and Layton Knaggs. The quantity of water should be divided based on the percentage of the total acreage owned by each party. The current allocation of 65.36 cfs for 2,616 acres computes to approximately 1 cfs per 40 acres. The Hershey Land Company owns 701 acres which would entitle it to 17.51 cfs. Layton Knaggs owns **1,915** acres which would entitle him to 47.85 cfs. Since diversion is authorized for **121** days, the Hershey Land Company is entitled to 4,195 afa and Layton Knaggs is entitled to 11,464 afa.

After the **division** of the permit is accomplished, the Hershey Land Company's permit will be ready to be licensed. The Hershey Land Company should also submit a Statement of Water Diversion and Use for their riparian claim to Sacramento River water at Point of Diversion No. 1 in accordance with Water Code § 5100 et seq.

2. Layton Knaggs continues to be in **violation** of Permit 13861 and Water Code Section 1605. Section 1605 states in relevant part:

"The permittee shall furnish the board with such records, data, and information, as may be required to enable the board to determine the amount of water that has been applied to beneficial use and whether the construction of the works and the use of the water therefrom is in conformity with law, the rules and regulations of the board, and the permit."

Mr. Knaggs should be required to pursue installation of measuring devices on his property immediately.

3. A preliminary cease and desist order should be issued for Mr. Knaggs' use of water under his permit.

ORDER

IT IS HEREBY ORDERED that:

1. Permit 13861 is hereby divided between the Hershey Land Company and Layton Knaggs. Hershey Land Company shall be assigned Permit 13861A and Layton Knaggs shall be assigned Permit 13861B. Diversion and use under Permit 13861A shall be limited to 17.51 cubic feet per second, not to exceed 4,195 acre feet per annum. Diversion and use under Permit 13861B shall be limited to 47.85 cubic feet per second, not to exceed 11,464 acre feet per annum.
2. Not later than 90 days after this order is adopted by the Board, Hershey Land Company and Layton Knaggs shall submit to the Board maps which

delineate their respective places of use and points of diversion and
rediversion. The maps shall be prepared in accordance with Title 23 of the
California Code of Regulations, Sections 715 and 717.

3. The following condition shall be deleted from Permit 13861A and from
Permit 138618:

"Permittee shall furnish to the Board not later than
December 1, 1971, a detailed plan and program, for
measurement of water diverted and placed to beneficial use
under the Permit."

4. The following condition shall be added to Permit 13861A and Permit 138618:

"Permittee shall maintain records of water diverted and
placed to beneficial use under the Permit. The permittee
shall submit these records with the annual Progress Report
by Permittee."

5. Permittee Hershey Land Company shall submit a petition requesting an
extension of time to complete use of water pursuant to Permit 13861A by
September 1, 1988.
6. Permittee Layton Knaggs shall submit a petition requesting an extension of
time to complete use of water pursuant to Permit 13861B by September 1,
1988,
7. After the separate permits are issued, the Chief, Division of Water Rights
'shall issue the preliminary cease and desist order attached hereto
(Attachment 1) for Mr. Knaggs' use of water under Permit 138618.
8. After Permits 13861A and 13861B are issued, Permit 13861 shall be revoked
pursuant to 23 CCR 836(a).

9. Permittee Layton Knaggs shall submit a plan for installation of water measuring devices at all points of diversion and rediversion and any other points, to quantify the amount of water diverted and used on the place of use pursuant to Permit 138618 by November 1, 1988. Permittee Layton Knaggs shall submit evidence including certification by a licensed civil engineer that the water measuring devices are installed and functional by September 1, 1989. Permittee Layton Knaggs shall submit records of use from the required water measuring devices with the annual Progress Report by Permittee.
10. Permittee Hershey Land Company shall submit a Statement of Water Diversion and Use for its riparian claim to Sacramento River water at Point of Diversion No. 1 in accordance with Water Code Section 5100 et seq.,

CERTIFICATION

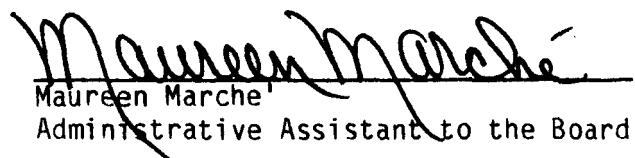
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 16, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Danny Walsh
Ted Finster
Eliseo M. Samaniego

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board



STATE WATER RESOURCES CONTROL BOARD
PRELIMINARY CEASE AND DESIST ORDER 7P
FOR VIOLATION OF PERMIT 13861B (APPLICATION 16361)

THE STATE WATER RESOURCES CONTROL BOARD FINDS:

1. Layton Knaggs is the holder of Permit 13861B.
2. The time allowed to complete use of water under the permit has been extended by orders approving a new development schedule dated November 1, 1966 and May 26, 1971. The May 26, 1971 extension allowed permittee until December 1, 1973 to complete application of water to the proposed uses. No further requests for extension of time to complete use of water pursuant to Permit 13861B have been received.
3. The Order approving the development schedule dated May 26, 1971 added a condition to Permit 138618 which reads as follows:

"Permittee shall furnish to the Board not later than December 1, 1971, a detailed plan and program for measurement of water diverted and placed to beneficial use under the Permit."

The Board has not received adequate compliance with this condition. Further, water measuring devices at each point of diversion and rediversion appear necessary.

4. The project authorized under Permit 13861B was inspected by a staff engineer of the Division of Water Rights on October 22, 1980. The inspecting engineer found no evidence of any water measurement programs or devices.
5. This order is exempt from Public Resources Code Section 21000 et seq., in accordance with Section 15321 of Title 14 of the California Code of Regulations.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The permittee, Layton Knaggs, shall cease and desist from diverting water in violation of Permit 138618 and all amendments to Permit 13861B.
2. The permittee shall submit a petition requesting an extension of time to complete use of water pursuant to Permit 138616 by September 1, 1988.
3. The permittee shall submit a plan for installation of water measuring devices at all points of diversion and rediversion and any other points, to quantify the amount of water diverted and used on the place of use by November 1, 1988. The permittee shall submit evidence including certification by a licensed Civil Engineer that the water measuring devices are installed and functional by September 1, 1989. The permittee shall submit

records of use from the required water measuring devices with the annual Progress Report by Permittee.

4. Permittee shall not divert and place water to beneficial use on lands which are not within the place of use authorized under Permit 138618.
5. The permittee shall submit each year prior to the commencement of the diversion season authorized by Permit 138619 but not later than April 1, a map designating the net lands upon which water diverted pursuant to Permit 138619 will be used and the crops to be grown on those lands. In the event any changes are made during the diversion season in the place of use, point of diversion, amount of water diverted and used, or the crops grown, such changes shall be reported to the Chief, Division of Water Rights, by December 1 following the diversion season.
6. The permittee shall furnish evidence of contracts for the purchase of all water diverted during the months of July and August. The evidence shall be provided to the Board prior to July 1 of any year in which diversions are made during July and August.
7. Permittee shall submit the annual progress report for the years 1986 and 1987 by September 1, 1988.

If, after four years, permittee has continuously and diligently complied with the conditions as set forth in this Preliminary Cease and Desist Order, the Chief of the Division of Water Rights may rescind the Preliminary Cease and Desist Order, and shall notify the permittee of the cancellation of said Order.

If, in the opinion of the Chief of the Division of Water Rights, the permittee fails to show reasonable diligence in pursuing the provisions of this Preliminary Cease and Desist Order, the Division Chief shall request the State Water Resources Control Board to adopt a Final Cease and Desist Order.

CERTIFICATION

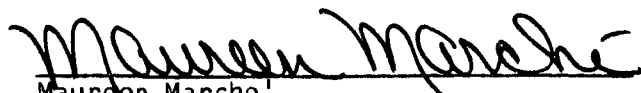
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of and order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 16, 1988.

AYE: W. Don Maughan
 Darlene E. Ruiz
 Danny Walsh
 Edwin H. Finster
 Eliseo M. Samaniego

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board