

Before the Division of Water Resources
Department of Public Works
State of California

c0o

In the Matter of Application 1270, Permit 2082, Application 1614, Permit 1481, Applications 1615, 1616, 2126, 2130, 2131, 2273, 2274, Application 2373, Permit 2083, Applications 2652, 2981, 2982, 5103, 5193, 6229, 6230, 6529, 6701 and 6702 of Nevada Irrigation District to appropriate from the North, Middle and South Forks of the Yuba River and tributaries, Bear River and Tributaries and Auburn Ravine in Nevada and Placer counties for Agricultural and Power Purposes; Applications 5970, 6265 and 6266 of Pacific Gas and Electric Company to appropriate from Bear River in Placer County for Power and Agricultural Purposes and Application 6652 of Bear River Water and Power Company to appropriate from Bear River in Placer County for Power Purposes.

c0o

Decision A. 1270, 1614, 1615, 1616, 2126, 2130, 2131, 2273, 2274, 2373, 2652, 2981, 2982, 5103, 5193, 5970, 6229, 6230, 6265, 6266, 6529, 6652, 6701 and 6702 D- 474

Decided: *March 10, 1941*

APPEARANCES AT HEARING HELD AT SACRAMENTO, APRIL 21, 22, 1931

For Applicants and Protestants

Nevada Irrigation District	C.F. Mattee, Wm. Durbrow, F.H. Tibbotts
Pacific Gas and Electric Co.	W.R. Dunn, Geo. A. Hunt
Bear River Water and Power Co.	Chas. W. Kitts and J.L. Rollins

For Protestants

City of Sacramento	Hugh Bradford, Chas. W. Blood
Fingree, Ferrin, Sammons, Sleeman, Wheeler and Berriman)	E. H. Armstrong
Martin Vanberg, J.P. Flint, Arctic Mining & Power Co. and Arctic Trustees)	F. T. Wilson
Hallwood Irrigation Company) Cordua Irrigation District)	Richard Belcher & W.T. Ellis
Natomas Company of California	Norwood Silsbee
Louis Wonneemann	Richard tum Suden

For Protestants (continued)

Farms Lands Investment Co. and) Alicia Mutual Water Company)	No appearance
Excelsior Water and Power Company	No appearance
Knightsen Irrigation District	No appearance
Board of Supervisors, Yuba County	No appearance
Yuba Consolidated Gold Fields	No appearance
Camp Far West Irrigation District	No appearance
Honcut-Yuba Irrigation District	No appearance
River Mines and Sureka Lakes and Yuba Canals Consolidated	No appearance

EXAMINER: Harold Conkling, Deputy State Engineer in Charge of Water Rights,
Division of Water Resources, Department of Public Works, State
of California.

O P I N I O N

Withdrawal of Certain Applications and Petitions

Subsequent to the hearing held at Sacramento on April 21 and 22, 1931, Applications 2126, 2130, 2131, 2981, 2982, 5103 and 6230 have been cancelled at the request of the Nevada Irrigation District, Applications 6265 and 6266 have been cancelled at the request of the Pacific Gas and Electric Company and Application 6652 has been cancelled at the request of the Bear River Water and Power Company. Inasmuch as these applications have been cancelled no further discussion is necessary.

Pending Applications and Petitions
Application 1270, Permit 2082 (Agriculture)

On May 19, 1925, Application 1270 was approved with the exception of the proposed appropriation of 250 cubic feet per second from the South Fork of the Yuba River. The District now seeks the approval of this phase of the application which proposes an appropriation of 250 cubic feet per second from

the South Fork of the Yuba River to be diverted from April 15 to September 30 of each season at points within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20 and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T 17 N, R 12 E, M.D.B.M.

By petition filed May 12, 1930, the District requested permission to change the place of use from a net area of 154,211 acres within the boundaries of the Nevada Irrigation District to a net area of 167,739 acres within the enlarged boundaries of the District, and also to change the points of diversion as follows:

(1) Canyon Creek

From a point N. 71° 30' W. 3000' from S.E. corner, Sec. 5, T 18 N, R 12 E, M.D.B.M. within SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 5.

To a point N. 7° 30' W. 370' from S $\frac{1}{4}$ corner of Sec. 5, T 18 N, R 12 E, M.D.B.M. within SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 5.

(2) Texas Creek

From a point N. 70° 00' W. 2500' from S.E. corner of Sec. 19, T 18 N, R 12 E, M.D.B.M. within SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 19.

To a point N. 31° 00' E. 1300' from S.W. corner of Sec. 19, T 18 N, R 12 E, M.D.B.M. within SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 19.

(3) Fall Creek

From a point N. 70° 00' E. 2500' from S.E. corner of Sec. 31, T 18 N, R 12 E, M.D.B.M. within SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 31

To points described as follows:

(a) N.Fk. Fall Creek or Clear Creek: N. 11° 30' W. 2200' from SE corner, Sec. 36, T 18 N, R 11 E, M.D.B.M., being within NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 36.

(b) Fall Creek: S. 62° 12' E. 1191.3' from NW corner, Sec. 6, T 17 N, R 12 E, M.D.B.M., being within NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 6.

(4) Trap Creek (erroneously designated as South Fall Creek)

From a point S. 55° 00' W. 4300' from N.E. corner of Sec. 6, T 17 N, R 12 E, M.D.B.M., within SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 6.

To a point N. 6° 00' E. 1700' from S.W. corner of Sec. 6, T 17 N, R 12 E, M.D.B.M. within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 6.

Application 1614 - Permit 1491 (Irrigation)

Application 1614 was approved on July 20, 1923 by the issuance of Permit 1491 for an amount of water not to exceed 60,000 acre-feet per annum to be diverted throughout the year from Deer Creek, a tributary of the Yuba River, to storage in Scotts Flat Reservoir. The point of diversion to storage is described as being N. 85° 00' W. 950' from SE corner of Section 2, T 15 N, R 9 E, M.D.B.M. being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 2. The place of use is described as being 18,000 acres within T 15 N, Rs. 6, 7, 8 and 9 E, and T 15 S, Rs. 5 and 6 E, M.D.B.M.

By petition filed May 12, 1930 the District seeks to change the place of use to a total net area of 167,739 acres within the enlarged boundaries of the Nevada Irrigation District.

Application 1615 (Irrigation)

Under Application 1615 the Nevada Irrigation District proposes an appropriation of 100 cubic feet per second to be diverted from Deer Creek from April 1 to October 1 of each season. The point of diversion is described as being S. 31° 00' E. 1600' from N.W. corner of Section 20, T 16 N, R 7 E, M.D.B.M., being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 20. The place of use is described as being 120,000 acres bounded on the north by the Yuba River, on the west by the Feather River, on the south by the Bear River and on the east by approximately the 1000 foot contour.

By petition filed October 4, 1940 the District seeks to add points of diversion as follows:

South Fork of Deer Creek, Cascade Diversion:

N. 85° 00' E. 600' from W $\frac{1}{2}$ corner Sec. 34, T 17 N, R 10 E, M.D.B.M., being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 34.

South Fork of Deer Creek, Snow Mountain Ditch:

N. 37° 40' E. 2904' from SW corner Sec. 32, T 17 N, R 10 E,

M.D.B.M., being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Sec. 32.

Deer Creek, Diversion Dam:

S. 9° E. 1200' from N $\frac{1}{4}$ corner of Sec. 10, T 16 N, R 9 E,

M.D.B.M., being within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Sec. 10.

Deer Creek, Rough and Ready Diversion:

N. 22° 30' W. 3120' from SE corner of Sec. 7, T 16 N, R 9 E,

M.D.B.M., being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Sec. 7.

Deer Creek, Newtown Diversion:

SE corner of Lot 3, Block 41 Nevada City, being within the

NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 12, T 16 N, R 8 E, M.D.B.M.

Deer Creek, Pleasant Valley:

N. 55° 30' E. 2320' from SW corner of Sec. 18, T 16 N, R 8 E,

M.D.B.M., being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 18.

Deer Creek, Ripple Box Ditch:

N. 26° 30' E. 1240' from SW corner of Sec. 18, T 16 N, R 8 E,

M.D.B.M., being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Sec. 18.

On October 24, 1934, a petition was filed to change the place of use to include the entire area within the boundaries of the Nevada Irrigation District as well as an area outside of the District. This petition was subsequently amended by letter filed July 13, 1936 withdrawing that feature of the petition which proposed to serve lands outside of the District boundary and the District now proposes to irrigate 167,789 acres within the boundaries of the District.

Application 1816 (Irrigation)

Under Application 1816, the Nevada Irrigation District proposes an appropriation of 125 cubic feet per second of the waters of the South Fork of

the Yuba River to be diverted throughout the year at a point described as being N. 17° 23' W. 4097' from the SE corner of Section 27, T 17 N, R 8 E, M.D.B.M., being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 27. The place of use is described as being 120,000 acres bounded on the north by the Yuba River, on the west by the Feather River, on the south by the Bear River and on the east by approximately the 1000 foot contour.

On January 4, 1941 the District filed a petition to change the place of use to 85,000 acres being that area lying below the 1000 foot contour (U.S. G.S. datum) within the boundaries of the Nevada Irrigation District.

Application 2275 (Irrigation)

Under Application 2275 the Nevada Irrigation District proposes to appropriate 75,000 acre-feet per annum throughout the year from the South Fork of the North Fork of the Yuba River to storage in Milton and Bowman reservoirs at a maximum rate of 400 cubic feet per second, to be subsequently released and used for the irrigation of 154,211 acres within the boundaries of the Nevada Irrigation District.

By petition filed May 12, 1930, the District seeks to change the point of diversion as follows:

From a point N. 45° 00' E. 2000' from SW corner of Sec. 32,
T 20 N, R 13 E, M.D.B.M., being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said
Sec. 32

To a point S. 23° 13' E. 925' from NW corner of Sec. 32,
T 20 N, R 13 E, M.D.B.M., being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said
Sec. 32.

By the same petition it also seeks to change the place of use from 154,211 acres within the Nevada Irrigation District to a total net area of

167,789 acres within the Nevada Irrigation District.

Application 2274 (Power)

Under Application 2274 the Nevada Irrigation District proposes to appropriate 75,000 acre-feet per annum throughout the year from the South Fork of the North Fork of Yuba River to storage in Milton and Bowman Reservoirs at a maximum rate of 400 cubic feet per second for power purposes at the Bowman Power House within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T 18 N, R 12 E, M.D.B.M. and at the Spaulding Rim Power House within the NW $\frac{1}{4}$ of Section 16, T 17 N, R 12 E, M.D.B.M.

By petition filed May 12, 1930 it seeks to change the point of diversion as follows:

From a point N. 45° 00' E. 2000' from SW corner of Sec. 32,

T 20 N, R 13 E, M.D.B.M., being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 32

To a point S. 23° 13' E. 925' from the NW corner Sec. 32,

T 20 N, R 13 E, M.D.B.M., being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 32.

Application 2373 - Permit 2088

Application 2373 of Nevada Irrigation District was approved on May 19, 1926 by the issuance of Permit 2088 for an amount of water not to exceed 150 c.f.s. to be diverted from South Wolf Creek from about May 1 to about October 31 of each season for irrigation purposes. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T 15 N, R 3 E, M.D.B.M. The place of use is described as being 154,211 acres within the boundaries of the Nevada Irrigation District. The petition filed on May 12, 1930 did not include Application 2373, Permit 2088 but it was later agreed that the matter was overlooked by the District at the time and that it should be included.

(see memo by W.E.C. 11-14-34). It may therefore be assumed that by petition filed May 12, 1930 the District also sought to change the place of use from 154,211 acres to 167,789 acres within the boundaries of the Nevada Irrigation District.

Application 2652 (Agriculture)

Under Application 2652, the Nevada Irrigation District proposed to divert 100,000 acre-feet per annum of the flood waters of the Bear River to storage in South Wolf Reservoir. The point of diversion was described as being N. 16° W. 1400' from SE corner of Sec. 15, T 15 N, R 9 E, M.D.B.M. and the place of use as being 208,000 acres within the Nevada Irrigation District of which 154,211 acres are susceptible of irrigation under the application.

By petitions filed May 12, 1930 and October 3, 1940 the District seeks to change the place of storage from South Wolf Reservoir to storage in Parker and Combe reservoirs and to change the point of diversion from that described in Application 2652 to points described as follows:

Parker Dam

S. 33° E. 2200' from NW corner of Sec. 30, T 14 N, R 9 E,
M.D.B.M. being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 30.

Combe Dam

S. 20° E. 1900' from NW corner of Sec. 2, T 13 N, R 9 E,
M.D.B.M. being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Sec. 2.

By petition filed May 12, 1930 it also proposes to change the place of use to 167,789 acres within the enlarged boundaries of the Nevada Irrigation District.

Application 5193 (Irrigation)

Under Application 5193 the Nevada Irrigation District proposes an

appropriation of 50,000 A.F. per annum from the Middle Fork of the Yuba River to be diverted throughout the year to storage in Jackson, Milton and Bowman reservoirs. The points of diversion are described as follows:

(1) Middle Fork of Yuba River (Milton)

N. $70^{\circ} 30'$ E. 950' from SW corner of Sec. 12, T 19 N, R 12 E,

M.D.B.M. being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Sec. 12.

(2) Middle Fork of Yuba River (Jackson)

N. $70^{\circ} 45'$ W. 1940' from SE corner of Sec. 18, T 19 N, R 13 E,

M.D.B.M. being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Sec. 18.

The place of use is described as being 167,788 acres within the boundaries of the Nevada Irrigation District.

Application 5970 (Power)

As presented at the hearing application 5970 of the Pacific Gas and Electric Company proposed an appropriation of 525 c.f.s. throughout the year from "the natural flow and the regulated and/or augmented flow of the Bear River" for power purposes through two power plants designated as "Drum No. 2" and "Drum No. 3" power plants.

The points of diversion were described as follows:

Point of diversion (to Drum #2 Plant)

S. $2^{\circ} 31'$ E. 1570.9' from NW corner, Sec. 17, T 16 N, R 11 E,

M.D.B.M. being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 17.

Point of diversion (to Drum #3 Plant)

S. $87^{\circ} 40'$ W. 2279.1' from SE corner Sec. 27, T 16 N, R 10 E,

M.D.B.M. being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 27.

The places of use were described as follows:

Place of use (Drum #2 Power Plant)

Within SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 27, T 16 N, R 10 E, M.D.B.M.

Place of use (Drum #3 Power Plant)

Within SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 14, T 15 N, R 9 E, M.D.B.M.

After use for power purposes it is proposed to return the water to Bear River within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 14, T 15 N, R 9 E, M.D.B.M.

On November 29, 1940 an amended application was filed in which the points of diversion and places of use are described as follows:

Point of diversion (Dutch Flat Plant)

S. 3° 51' E. 1948.51' from NW corner, Sec. 17, T 18 N, R 11 E, M.D.B.M. being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 17.

Point of Diversion (Colfax Plant)

N. 47° 52' 30" W. 1274.75' from SE corner, Sec. 27, T 16 N, R 10 E, M.D.B.M., being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 27.

Place of Use (Dutch Flat Plant)

Within SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 27, T 16 N, R 10 E, M.D.B.M.

Place of Use (Colfax Plant)

Within SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 14, T 15 N, R 9 E, M.D.B.M.

Application 6229 (Agricultural)

Under Application 6229 the Nevada Irrigation District proposes to appropriate 120 c.f.s. from the Bear River to be diverted from April 1st to October 31st of each season at the intake of the Bear River canal. The point of diversion is described as being N. 77° W. 2500' from the SE corner of Sec. 22, T 15 N, R 9 E, M.D.B.M., being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 22. The place of use is described as being 167,799 acres within the boundaries of the Nevada Irrigation District.

Application 6529 (Irrigation)

Under Application 6529, the Nevada Irrigation District proposes an appropriation of 10 c.f.s. from Auburn Ravine, tributary to the Sacramento River

to be diverted from about April 1st to about December 1st of each season. The point of diversion is described as being S. 36° E. 5635' from the NW corner of Section 13, T 12 N, R 6 E, M.D.B.M., being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 13. The place of use is described as being 2,240 acres within Sections 14, 22 and 23 (except a portion of the W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 14), the NW $\frac{1}{4}$ of Section 27, the NW $\frac{1}{4}$ and W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 13, T 12 N, R 6 E, M.D.B.M.

Application 6701 (Power)

Under Application 6701 the Nevada Irrigation District proposes to appropriate throughout the entire year as follows:

(1a) From North Fork of Fall Creek (Clear Creek)	5 c.f.s.
(1b) From Fall Creek	10 c.f.s.
(2) From Trap Creek	<u>5 c.f.s.</u>
Total	20 c.f.s.

The points of diversion are described as follows:

(1a) Clear Creek

N. 11° 30' W. 2200' from SE corner, Sec. 36, T 18 N, R 11 E, M.D.B.M., being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 36.

(1b) Fall Creek

S. 62° 12' E. 1191.3' from NW corner of Sec. 6, T 17 N, R 12 E, M.D.B.M., being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 6.

(2) Trap Creek

N. 6° E. 1700' from SW corner of Sec. 6, T 17 N, R 12 E, M.D.B.M. being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 6.

The places of use are described as follows:

- (1) 20 c.f.s. through Spaulding Rim Power Plant within SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 16, T 17 N, R 12 E, M.D.B.M.

- (2) 10 c.f.s. through Spaulding No. 1 Power Plant within NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 20, T 17 N, R 12 E, M.D.B.M.
- (3) 10 c.f.s. through Drum Power Plant within NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 17, T 16 N, R 11 E, M.D.B.M.
- (4) 10 c.f.s. through Bear River No. 1 Power Plant within SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 33, T 16 N, R 10 E, M.D.B.M.
- (5) 10 c.f.s. through Bear River No. 2 Power Plant within NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 14, T 15 N, R 9 E, M.D.B.M.
- (6) 10 c.f.s. through Spaulding No. 2 Power Plant within SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 20, T 17 N, R 12 E, M.D.B.M.
- (7) 10 c.f.s. through Deer Creek Power Plant within NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 34, T 17 N, R 10 E, M.D.B.M.

When not utilized for other purposes the water will be returned to Bear River in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T 15 N, R 9 E, and to Deer Creek within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T 17 N, R 10 E, M.D.B.M.

Application 6702 (Irrigation)

Under Application 6702 the Nevada Irrigation District proposes to appropriate water from April 15th to September 30th as follows:

- | | |
|--|-----------|
| (a) North Fork of Fall Creek (Clear Creek) | 5 c.f.s. |
| (1b) Fall Creek | 10 c.f.s. |
| (2) Trap Creek | 5 c.f.s. |

The points of diversion are described as follows:

(1a) Clear Creek

N. 11 $^{\circ}$ 30' W. 2200' from SE corner, Sec. 36, T 18 N, R 11 E, M.D.B.M., being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 36.

(1b) Fall Creek

S. 82 $^{\circ}$ 12' E. 1191.3' from NW corner of Sec. 6, T 17 N, R 12 E, M.D.B.M. being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 6.

(2) Trap Creek

N. 6° E. 1700' from SW corner of Sec. 6, T 17 N, R 12 E,

M.D.B.M., being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Sec. 6.

The place of use is described as being 157,739 acres within the boundaries of the Nevada Irrigation District.

Of the applications now before the Division for action, Applications 1270, 2273, 2274, 2373, and 2852 have been previously heard. Application 1270 was approved on May 19, 1925 insofar as it related to appropriations from Canyon Creek, Texas Creek, Fall Creek and South Branch of Fall Creek but action was withheld upon the proposed appropriation from the South Fork of the Yuba River. Action was also withheld upon Applications 2273, 2274 and 2852. Application 2373 was approved by the issuance of Permit 2088 but under this proceeding/permittee was cited to show cause why the permit should not be revoked.

On December 1, 1925 the Nevada Irrigation District acquired by deed from the Excelsior Water and Power Company the rights initiated under Applications 1614, 1615, and 1616 together with certain direct flow rights under old appropriations from Deer Creek and the South Fork of the Yuba River. A permit had previously been issued in approval of Application 1614 but because of failure to complete the project within the time previously allowed the District was cited under this proceeding to show cause why the permit should not be revoked. No previous action had been taken on Applications 1615 and 1616 and these applications together with Applications 5193, 6229, 6529, 6701 and 6702 of the Nevada Irrigation District and Application 5970 which also had not previously been heard were set for hearing.

On December 10, 1926 the Board of Directors of the Nevada Irrigation District by resolution added a gross area of some 83,500 acres on the south

side of Bear River immediately adjacent to the then existing district and by petition filed with the Division on May 12, 1930 requested that the place of use designated in Application 1270, Permit 2082, Application 1614, Permit 1481, Application 2273, Application 2373, Permit 2083 and Application 2652 be amended to include this area, the approval of which petition will increase the estimated net irrigable area from 154,211 acres to 167,799 acres. On the same date the District petitioned to change the points of diversion under Application 1270, Permit 2082, Application 2273, Application 2274 and Application 2652 and also to change the place of storage under Application 2652 from South Wolf Creek Reservoir to Bear River (Parker) Reservoir. On October 4, 1940 a petition was filed to also include Cosbe Reservoir as a place of storage under Application 2652.

Briefly summarizing, the Nevada Irrigation District by this proceeding is seeking the following:

(1) Approval of Applications 1270 (insofar as it relates to an appropriation from the South Yuba River), 1615, 1616, 2273, 2274, 2652, 5193, 6229, 6529, 6701 and 6702.

(2) Extensions of time within which to complete the developments proposed under Application 1614, Permit 1481 and Application 2373, Permit 2083.

(3) Changes in points of diversion described in Application 1270, Permit 2082 and Applications 2273, 2274 and 2652.

(4) Changes in place of use described in Application 1270, Permit 2082, Application 1614, Permit 1481 and Applications 2273 and 2652.

(5) Change in place of storage described in Application 2652.

Protests

All applications of the Nevada Irrigation District filed prior to February 20, 1922 were included in a joint hearing held by the Division of Water Resources and the Federal Power Commission called at that time and continued to April 7, 1922. In the opinion upon which Decision A 1270, etc. D 55 was rendered on May 19, 1925 will be found a detailed discussion of protests received prior to that time. Many of these protestants no longer have any interest in the matter and only those who entered an appearance at the hearing held on April 21, 1931 will be considered in this opinion. These protestants are as follows:

Pacific Gas and Electric Co.
Bear River Water and Power Co.
Martin Vanberg, J.F. Flint, Arctic Mining &
Power Co., and Arctic Trustees
Louis Nonnenman
City of Sacramento
Natomas Company of California
Hallwood Irrigation Company
Messrs. Pingree, Ferrin, Sammons, Sleeman,
Wheeler and Serriman

The protests of the Pacific Gas and Electric Company were withdrawn.

The protest of the Bear River Water and Power Company was based upon its Application 6352 to appropriate from the Bear River. This application has been cancelled at the request of the Company and therefore its protest may be dismissed.

Martin Vanberg, et al withdrew their protests at the hearing on April 21, 1931 (Transcript, p. 38).

The protest of Louis Nonnenman was fully discussed in the opinion upon which Decision A 1270, etc. D 55 was rendered. No further evidence was presented at the hearing held on April 21, 1931 in support of his contentions and no further consideration need be given to it.

The protests of the City of Sacramento and Natomas Company of California were directed against any and all applications insofar as they might interfere with their use of water from the Sacramento River under prior appropriations but the protests were not pressed and it is our understanding that they were not intended to indicate that there was no further unappropriated water available for appropriation under these applications but were merely intended to inform the applicants of the prior claims of these protestants.

Although the Hallwood Irrigation Company was represented at the hearing held on April 21, 1931 no testimony was presented in support of their contentions. The records of this office indicate that Hallwood Irrigation Company's protest was directed mainly against the approval of Applications 4309 and 4310 which were not included for hearing. Although the Cordua Irrigation District entered an appearance at the hearing no protest was filed in its behalf.

Messrs. Pingree, Ferrin, Sammons, Sleeman, Wheeler and Berriman were represented at the hearing but their objections were not pressed when it was learned that the District did not intend to divert any natural flow from Wolf Creek other than under Application 2373 which had already been approved.

All protests against Applications heard at the hearing held on April 21, 1931 may be considered dismissed on the grounds that either they have been withdrawn, dismissed as a result of a previous hearing or for failure on the part of the protestant to appear at the hearing and offer evidence in support of their contentions.

The several pending applications referred to above and the petitions to change were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for hearings as indicated above of which hearings applicants and protestants were duly notified.

Permittee being in arrears in connection with the prescribed dates for beginning and completing construction and beneficial use under Application 1614, Permit 1481 and Application 2373, Permit 2088 and changes having been made in the plans of development under these applications and permits without petitions to establish conformity therewith permittee was cited to show cause why these permits should not be revoked for failure to comply with the terms and conditions thereof. Of this hearing permittee received due notice.

Application 1270

Subsequent to the hearings held in connection with Application 1270 in 1922, 1923 and 1924 action was withheld upon that feature of Application 1270 involving a diversion of 250 cubic feet per second from the South Fork of the Yuba River, it being the opinion of the Division that although records of spill at Lake Spaulding indicated that during certain periods of the year there was unappropriated water in this source, it was not considered at the time that a diversion from this source as proposed was necessary for the requirements of the District.

At the hearing held on April 21, 1931 representatives of the District requested that this phase of Application 1270 be cancelled and those present at the hearing were given to understand that it would be cancelled. Had it not been withdrawn it would undoubtedly have been protested by the Pacific Gas and Electric Company which objects to any further appropriation of the natural flow of the South Fork of the Yuba River at Spaulding.

We do not know why this phase of the application was not immediately cancelled as were other applications which were withdrawn at the hearing but the record indicates that no action was taken and that some three years later the District, claiming that the cancellation was not sanctioned by its Board of Directors, asked that it be approved.

The rules and regulations of the Division relative to hearing procedure provide that

"when an applicant or protestant is represented by an agent or attorney, such agent or attorney shall immediately enter his appearance before the Division of Water Resources and there be recognized as fully controlling the case on behalf of his client."

Both the chief engineer and the attorney of the Nevada Irrigation District entered appearance in behalf of the District and at the hearing requested the cancellation of that phase of Application 1270 which proposed an appropriation of 250 c.f.s. from the South Fork of the Yuba River. It is the opinion of this office that the request for cancellation was in effect an abandonment and that the Division is without authority to reinstate this phase of Application 1270. It is therefore in order to cancel that feature of Application 1270 which proposes an appropriation of 250 c.f.s. from the South Fork of the Yuba River.

On May 12, 1930 the District filed a petition with the Division seeking to change the place of use and to change its points of direct diversion on Canyon, Texas, Fall and Trap Creeks. The petition also proposed to incorporate within the application certain points of rediversion which by consent of the District may be stricken from the petition as the District proposes to rely upon the decision in the case of Stevens, et al, v. Oakdale Irrig. Dist., 13 C. 2d 343; 90 P. 2d 58 and the well established point of law that a natural water course may be used as a conveyor of foreign water, for the rediversion of water within the District boundaries.

The petition to change the place of use and the points of diversion may therefore be approved with the exception of the point of diversion described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T 13 N, R 11 E, M.D.E.W. As this point is located on the North Fork of Fall Creek (or Clear Creek) which is tributary to Fall Creek at a point below the original point of diversion on Fall Creek it is clearly a source of water not available under Application 1270

as originally filed and therefore can not be included thereunder.

Application 1614 - Permit 1491

Nevada Irrigation District was cited to show cause why the permit issued in approval of Application 1614 should not be revoked because permittee had failed to maintain the schedule of construction and use prescribed in the permit and had been slow in submitting the required petition to conform the project to the amended plan of the District and had failed to show good cause why further time should be allowed.

The necessary petition to change the place of use was filed on May 12, 1930 and recent progress reports indicate that some \$84,000 has been expended in clearing the reservoir site and on preliminary work done in connection with the construction of Scotts Flat dam. The District has requested an extension of time within which to complete construction work and use of water and good cause having been shown it is in order to grant such an extension.

At a conference between the representatives of the District and the Division held on May 24, 1940 it was agreed that an extension of five years would be granted within which to complete this project.

Application 1615

Studies made by the Division indicates that there is water available for appropriation under Application 1615 of the Nevada Irrigation District. Petitions have been filed to change the place of use to 127,739 acres within the boundaries of the District and to add points of diversion on the upper reaches of Deer Creek so that the water may be used upon District lands. Application 1615 should be amended as proposed and approved in its amended form.

Application 1618

The Nevada Irrigation District filed a petition on January 4, 1941 to change the place of use to that area within the District boundaries lying below the 1000 foot contour (U.S.C.S. datum). The application is unopposed and there is apparently no reason why the petition may not be granted and the application approved in its amended form.

Applications 2273 and 2274

Under Applications 2273 and 2274 of the Nevada Irrigation District it is proposed to appropriate 75,000 acre-feet per annum throughout the year from the South Fork of the North Fork of the Yuba River (Haypress) for agricultural and power purposes respectively.

When other applications of the District were approved on May 19, 1925 after hearing action was withheld in connection with Applications 2273 and 2274 because of the priority of right under Applications 1703 and 2196 of the Yuba River Power Company, the fact that the District had no plans for immediate development of the waters of the South Fork of the North Fork of the Yuba River and the uncertainty as to the necessity of these waters for the ultimate needs of the District.

Applications 1703 and 2196 have since been cancelled and are therefore no obstacle to action upon Applications 2273 and 2274. The District however is still uncertain as to when it may be in a position to proceed with these applications and there is some uncertainty as to whether or not the necessary easements can be secured. Furthermore, although the District maintains that this supply is essential for its ultimate development, there is some doubt as to whether the District will reach such a stage of development that this supply will become necessary.

Apparently the District is not in any better position to proceed with

the proposed developments at this time than it was at the close of the hearing held in 1922 and under the circumstances we are of the opinion that the applications should be cancelled upon the records of this office.

Application 2373 - Permit 2088

On May 19, 1925, Application 2373 of the Nevada Irrigation District was approved by the issuance of Permit 2088 for an amount of water not to exceed 150 c.f.s. to be diverted from South Wolf Creek from about May 1 to about October 31 of each season and 12,500 A.F. per annum to be collected to storage throughout the year, for irrigation purposes.

On April 21, 1931 the District was cited to appear at a hearing and show cause why the permit should not be revoked for failure to comply with the terms and conditions thereof.

It developed at the hearing that the storage feature of Application 2373, Permit 2088 had been abandoned and the Division was authorized to revoke it. The District however asked that the direct diversion feature of the application be retained. Accordingly, on August 7, 1933 an order was entered by the Division revoking the storage feature of the Permit and action has been withheld on the direct diversion feature in order to afford the District an opportunity to proceed therewith.

Annual progress reports submitted by the District however indicated that little or nothing has been accomplished and under date of March 31, 1937 Mr. Durbrow informed the Division that the District had found that Wolf Creek had such a flashy runoff that it could make no practical use of such runoff during the irrigation season.

This filing has been before the Division for nearly 20 years and little or nothing has been accomplished. No use of the water has been made

and the District has no definite plans for future development under the permit. It is therefore our opinion that Permit 2033 should be revoked for failure on the part of the District to comply with the terms and conditions thereof.

Application 2652

Application 2652 was included for hearing in 1922 but action was withheld at that time as it was our opinion that the proposed appropriation was not necessary as the District apparently had an ample supply to meet its needs without it. Conditions however have changed in that the District boundaries have been enlarged and a petition has been filed to serve the enlarged area and to include the Parker and Combe reservoir sites on the Bear River as places of storage rather than the reservoir site on South Wolf Creek as was originally intended.

Combe Reservoir has been constructed to a capacity of approximately 3000 acre feet and water is now being stored by the District and subsequently released for irrigation purposes within the District boundaries. The Gold Hill distributing system through which it is proposed to distribute the water has been purchased by the District from the Pacific Gas and Electric Company at a cost of \$250,000. The maximum amount of water which the District proposes to store in Combe Reservoir during a single collection period is approximately 12,500 acre-feet.

Although it appears that the District has purchased the Parker Dam site and also 1600 acres of land within the Parker Reservoir site, it has no plans for immediate construction of the dam as the economic condition of the fruit area which it is proposed to serve from this dam has not been such as to justify any immediate plans for construction. The District has offered its cooperation to the United States Government in the construction of a dam at the Parker site but negotiations have only gotten to the point of turning over to the Government such data as the District has collected concerning the dam

site and the type of dam suggested by its engineers. Mr. Durbrow is of the opinion that these negotiations will probably continue until a definite decision is made by the army engineers as to where it is intended to build a dam on Bear River for the storage of debris.

It is felt that under these circumstances Application 2852 should be approved only for the 12,500 acre-feet which the District proposes to store in Combe reservoir and that action upon the proposed storage in Parker reservoir should be withheld for a reasonable time pending more definite plans by the District for the construction of this reservoir.

Application 5193

An application for license filed by the District with the Federal Power Commission was dismissed and license modified by eliminating therefrom all reference to Jackson reservoir. An appeal has been taken by the Nevada Irrigation District and the District has been given to understand that action on Application 5193 would be withheld pending the result of the appeal. Action therefore should be temporarily withheld.

Application 5970

The cancellation of Application 6652 of the Bear River Water and Power Company removes all opposition to the approval of Application 5970 of the Pacific Gas and Electric Company and there is no reason why this application may not be approved.

There is apparently no conflict with Applications 5633 and 5634 of the State Department of Finance as such water which is not returned to the stream above the points of diversion under Applications 5633 and 5634 is utilized for irrigation purposes under rights prior to those initiated under these applications.

Under Application 5970 the Pacific Gas and Electric Company proposes a utilization of 525 cubic feet per second through its Dutch Flat and Solfax

Power Plants which amount may at times include the 135 cubic feet per second or a portion thereof which the Nevada Irrigation District proposes to utilize through these two power plants under its Application 4309, Permit 2935. For this reason a special clause should be incorporated in any permit which may be issued in approval of Application 5970 to the effect that the total amount of water simultaneously diverted under the permit together with that diverted under Application 4309, Permit 2935 for use through the Dutch Flat and Colfax Power Plants shall not exceed 525 cubic feet per second.

Application 6229

Application 6229 of the Nevada Irrigation District proposes an appropriation of 120 cubic feet per second from the Bear River to be diverted through the Bear River Canal of the Pacific Gas and Electric Company for agricultural purposes within the boundaries of the Nevada Irrigation District. The District has made arrangements with the Company for the use of its canal and it is our understanding that use is now being made.

The agricultural use proposed under Application 6229 is purely local and will not interfere seriously with the consummation of the development proposed under Applications 5633 and 5634 of the State Department of Finance. Application 6229 is therefore not deemed to be in conflict with the State filings and should be approved.

Application 6529

Application 6529 of the Nevada Irrigation District proposes the appropriation of 10 c.f.s. from Auburn Ravine for irrigation purposes.

All protests against this application have been withdrawn. Although not a record protestant, Howard R. Catlett (since deceased) was concerned lest the proposed appropriation would interfere with his prior rights under

Application 2357, Permit 1093, License 459 and Application 6212, Permit 3279. No appearance was made at the hearing nor has any evidence been submitted by Mr. Catlett or his successors in interest in support of his contentions.

No data is available relative to the natural runoff of Auburn Ravine but it is a matter of common knowledge that at certain times there is water available in excess of the amounts claimed under prior vested rights which is available for appropriation under Application 6529. While we are of the opinion that Auburn Ravine is not a dependable source of supply at the present time, the fact remains that as the irrigated area in the watershed increases there will be a corresponding increase of return water available for diversion and use under Application 6529. It is the opinion of the Division that Application 6529 should be approved.

Applications 6701 and 6702

Applications 6701 and 6702 of the Nevada Irrigation District to appropriate from the North Fork of Fall Creek (or Clear Creek), Fall Creek and Trap Creek are for increased use for power and irrigation purposes respectively, over and above the amounts of water which the District may appropriate from these sources under its Applications 1270 and 2372.

Applications 6701 and 6702 are for relatively small amounts of water. The water after use for power purposes under Application 6701 will be used for agricultural purposes within the District boundaries under Application 6702. The agricultural use proposed is purely local and will not interfere seriously with the consummation of the development proposed under Applications 5631 and 5632 of the State Department of Finance. Applications 6701 and 6702 are therefore not deemed to be in conflict with the State filings and should be approved.

Summary and Conclusions

Application 1270 - Permit 2082

That portion of Application 1270 relating to an appropriation of water from the South Fork of the Yuba River was definitely withdrawn by the District and should therefore be cancelled.

Application 1270, Permit 2082 may be amended in accordance with the petition filed May 12, 1930 for change in place of use and points of diversion except that the petition to include a point of diversion on the North Fork of Fall Creek (Clear Creek) described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T 18 N, R 11 E, M.D.B.M. should be denied.

Application 1614 - Permit 1481

Application 1614, Permit 1481 may be amended in accordance with the petition filed May 12, 1930 to change the place of use.

As good cause has been shown for an extension, a five year extension of time may be granted within which to complete construction and use.

Application 1615

Application 1615 may be amended in accordance with petition filed October 24, 1934 and October 4, 1940 and as amended may be approved.

Application 1616

Application 1616 may be amended in accordance with the petition filed January 4, 1941 to change the place of use to 65,000 acres and as amended may be approved.

Applications 2273 and 2274

As there is some doubt as to whether the District will ever reach such a stage of development that the appropriations from the South Fork of the North Fork of the Yuba River will become necessary and as the District has no plans for proceeding with the proposed development in the near future, Applications 2273 and 2274 may be cancelled.

Application 2373 - Permit 2088

This filing has been before the Division for nearly 20 years and little or nothing has been accomplished. No use of the water has been made and as the District has no definite plans for proceeding with the proposed development, Permit 2088 heretofore issued in approval of Application 2373 to appropriate water from South Wolf Creek may be revoked.

Application 2652

Application 2652 may be amended in accordance with the petitions filed on May 12, 1930 and October 3, 1940 to change the points of diversion, place of use and places of storage.

As Combe reservoir has already been constructed to a capacity of approximately 9000 acre-feet and the District proposes to store 12,500 acre-feet per annum in this reservoir it is the opinion of this office that Application 2652 should be approved for 12,500 acre-feet per annum and that action be withheld on the proposed storage in Parker Reservoir as there are no immediate plans for constructing it. Application 2652 may be amended to conform to the petitions filed insofar as those petitions apply to changes in points of diversion, places of storage and places of use.

Application 5193

Action on Application 5193 should be temporarily withheld pending action by the Federal Power Commission in connection with the appeal of the Nevada Irrigation District.

Application 5970

The amended application 5970 may be approved subject to the usual terms and conditions and subject also to a special term or condition to the effect that the total amount of water diverted under the permit together with that diverted simultaneously under Application 4309, Permit 2935 for use through the Dutch Flat and Colfax Power Plants shall not exceed 525 c.f.s.

Application 6229

Application 6229 may be approved.

Application 6529

Application 6529 may be approved.

Applications 6701 and 6702

These applications may be approved.

ORDER

Permits 1481 and 2088 having heretofore been issued in approval of Applications 1614 and 2373, it appearing that permittee had not complied with the terms and conditions of the permits and said permittee having been duly cited to show cause why said permits should not be revoked, and

Applications 1270, 1615, 2652, 5193, 5970, 6229, 6529, 6701 and 6702 for permits having been filed with the Division of Water Resources and protests having been received, and

Petitions having been filed to amend Application 1270, Permit 2082, Application 1614, Permit 1481 and Applications 1615, 1616, and 2652, and

Public hearings having been held and the Division of Water Resources now being fully informed in the premises,

IT IS HEREBY ORDERED that the place of use and points of diversion named in Application 1270, Permit 2082 be amended to conform to the petition to change filed May 12, 1930 except as to the point of diversion described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T 18 N, R 11 E, W.D.B.M. and that Application 1270 be amended by striking therefrom all reference to the proposed appropriation of 250 cubic feet per second from the South Fork of the Yuba River; and

IT IS FURTHER ORDERED that Application 1614, Permit 1481 be amended

to conform to the petition filed May 12, 1930 to change the place of use and that an extension of time until December 1, 1946 be granted within which to complete construction and to apply the water to complete beneficial use; and

IT IS FURTHER ORDERED that Application 1615 be amended in accordance with the petitions filed October 24, 1934 and October 4, 1940 and that it be approved as amended and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate; and

IT IS FURTHER ORDERED that Application 1616 be amended in accordance with the petition filed January 4, 1941 and that it be approved as amended and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate; and

IT IS FURTHER ORDERED that Applications 2273 and 2274 be cancelled without prejudice; and

IT IS FURTHER ORDERED that Permit 2088 heretofore issued in approval of Application 2373 be revoked without prejudice; and

IT IS FURTHER ORDERED that Application 2652 be amended in accordance with the petitions filed on May 12, 1930 and October 4, 1940 insofar as these petitions relate to change in place of use, change in points of diversion and places of storage and that Application 2652 as amended be approved for an amount of water not to exceed 12,500 acre-feet per annum to be stored in Combe Reservoir, and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and that action be withheld on the remaining 67,500 acre-feet applied for until further order is entered;

IT IS FURTHER ORDERED that action on Application 5193 be withheld until further order is entered; and

IT IS FURTHER ORDERED that Application 5970 in its final amended form

be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term or condition to-wit:

"The total amount of water diverted under this application and permit together with that diverted simultaneously under Application 4309, Permit 2956 for use through the Dutch Flat and Colfax Power Plants shall not exceed 325 cubic feet per second;" and

IT IS FURTHER ORDERED that Applications 6229, 6529, 6701 and 6702 be approved and that permits 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 10th day of March, 1941.

EDWARD HYATT, State Engineer

By HAROLD CONKLING
Deputy

(Seal)

WES:m