

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

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In the Matter of Certain Applications to Appropriate Water for Irrigation Purposes as follows:

<u>Application Number</u>	<u>Applicant</u>	<u>Source Designation (See legend)*</u>	<u>County</u>
11242	Jerald and Edith S. Holzapfel	A	Glenn
11263	Gene Valla Tire Company	A	Glenn
11662	Terrill P. Knight	B	Glenn
11819	Joseph F. Azevedo	C	Glenn
11854	Elmer Johnson	D	Yolo
11855	E. G. Cochran	E	Yolo
11863	R. C. West	D	Colusa
11864	Mrs. B. C. Hughes	D	Colusa
11865	William H. and Edith M. West	D	Colusa
11875	H. B. and Clara Bell West	D	Colusa
11878	E. L. Wallace	F	Yolo
11881	William S. Wallace	G	Colusa
11885	John C. and Evelyn Cooling	H	Yolo
11886	Sadie V. Ash	B	Colusa
11888	L. W. and Helen M. Seaver	G	Colusa
11889	F. E. Buffum, et al.	G	Colusa
11899	Reclamation District No. 108	H	Colusa
11900	Frank J. Byington, Trustee	G	Colusa
11901	Clyde E. Coffman	G	Colusa

<u>Application Number</u>	<u>Applicant</u>	<u>Source Designation (See legend)*</u>	<u>County</u>
11902	A. J. Campbell and Clyde E. Coffman	G	Colusa
11903	L. W. Seaver	G	Colusa
11905	Aileen B. Armstrong	H	Colusa
11909	Frank J. Byington, Trustee for Byington Estate	G	Colusa
11910	River Farms Company of California	G	Yolo
11913	C. W. and M. F. Struckmeyer	G	Colusa
11925	Anna A. Schutz	G	Colusa
11926	Fred W. Schutz	G	Colusa
11928	William S. Wallace	G	Colusa
11931	Lloyd M. Kahn	G	Colusa
11954	Wallace R. Lynn and Samuel Bohne	G	Colusa
11955	Charles Welch	G	Colusa
11956	Charles Welch	G	Colusa
11957	Charles Welch	G & I	Colusa
11958	Charles Welch	J	Colusa
11959	I. G. Zumwalt, et al.	G	Colusa
12087	Gertrude M. Sherer	G	Colusa
12115	U. S. Department of the Interior - Fish and Wildlife Service	G	Colusa
12125	Compton Delevan Irrigation District	J	Colusa
12256	Heidrick Brothers	H	Yolo
12310	Wilbur B. Jensen	G	Colusa
12363	Mildred Hahn	K	Colusa
12411	F. R. Wilkins and Howell Davis	G	Colusa

<u>Application Number</u>	<u>Applicant</u>	<u>Source Designation (See legend)*</u>	<u>County</u>
12412	Olive Percy Davis, et al.	G	Colusa
12429	Del Valley Farms, Inc.	G & L	Colusa
12459	Mrs. Luta King	G	Colusa
12889	Michael V. Doherty	G	Colusa
12946	Helphenstine Rice Lands	G	Colusa
12995	Heidrick Brothers	E	Yolo
12996	Heidrick Brothers	E	Yolo
12997	Heidrick Brothers	E	Yolo
13000	Olive Percy Davis, et al.	C	Colusa
13001	Olive Percy Davis, et al.	C	Colusa
13002	Olive Percy Davis, et al.	C	Colusa
13003	Ethel Brandenburg	D	Colusa
13006	John J. Anderson	M	Yolo
13452	I. G. Zumwalt	G	Glenn

* Legend (explaining source designations):

- A: Bl Drain on Lower End of Glenn-Colusa District.
- B: Reclamation District 2047, "A" Drain.
- C: Colusa Drain - 2047 Main Drain.
- D: District 108 Drain Canal.
- E: West Levee Borrow Pit, R.D. 108.
- F: Knights Landing Ridge Cut.
- G: Main Canal, R.D. 2047.
- H: Back Borrow Pit, District 108.

- I: Logan and Hunter Creek.
- J: Stone Corral Creek Drain.
- K: Colusa Trough.
- L: Lateral Canal, R.D. 2047.
- M: Borrow Pit of Reclamation District 787.

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Decision A. 11242, 11263, 11662, 11819, 11854, 11855, 11863, 11864, 11865,
 11875, 11878, 11881, 11885, 11886, 11888, 11889, 11899, 11900,
 11901, 11902, 11903, 11905, 11909, 11910, 11913, 11925, 11926,
 11928, 11931, 11954, 11955, 11956, 11957, 11958, 11959, 12087,
 12115, 12125, 12256, 12310, 12363, 12411, 12412, 12429, 12459,
 12889, 12946, 12995, 12996, 12997, 13000, 13001, 13002, 13003,
 13006, 13452 D. 683

Decided November 27, 1950.

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APPEARANCES AT HEARING HELD AT SACRAMENTO, MAY 15 and 16, 1950:

For the Applicants

Jerald and Edith S. Holzapfel)	
Gene Valla Tire Company)	
Terrill P. Knight)	
I. G. Zumwalt, et al.)	Duard F. Geis
Compton-Delevan Irrigation District)	
I. G. Zumwalt)	
Joseph F. Azevedo)	Joseph F. Azevedo
Elmer Johnson)	
Mrs. B. C. Hughes)	
E. L. Wallace)	
John C. and Evelyn Cooling)	James C. McDermott
Heidrick Brothers)	
John J. Anderson)	
E. G. Cochran)	George Clark

R. C. West

No Appearance

Wm. H. and Edith M. West

H. B. and Clara Bell West

Wm. S. Wallace

L. W. and Helen M. Seaver

F. E. Buffum, et al.

Clyde E. Coffman

A. J. Campbell and Clyde E. Coffman

Ralph W. Rutledge

L. W. Seaver

Aileen B. Armstrong

C. W. & M. F. Struckmeyer

Anna A. Schutz

Fred W. Schutz

F. R. Wilkins and Howell Davis

Ethel Brandenburg

Reclamation District No. 108

(Stephen W. Downey, Atty.
(E. E. Blackie, Engr.

Sadie V. Ash

Mrs. Luta King

Arthur C. Huston, Jr.

Frank J. Byington, Trustee

Geo. K. Ford

River Farms Company of California

No Appearance

Lloyd M. Kahn

Herbert Leland

Wallace R. Lynn and Samuel Bohne

Roy D. Reese

Charles Welch

No Appearance

Gertrude M. Sherer

Edmund Davies

U. S. Department of the Interior,
Fish and Wildlife Service

Frederick J. Anderson

Wilbur B. Jensen	No Appearance
Mildred Hahn	No Appearance
Olive Percy Davis, et al.	Alvin Weis
Del Valley Farms, Inc.	No Appearance
Michael V. Doherty	(Mrs.) J. V. Doherty
Helphenstine Rice Lands	Ray Helphenstine

For the Protestants

Chas. F. Lambert)	Chas. F. Lambert
Compton Water District		
J. M. Board, Administrator of the Estate of Henry Jameson, Dec.		No Appearance
Chas. F. Lambert, for and on behalf of -		
Glenn-Colusa Irrigation District		W. L. Callender & P. J. Minasian
Jacinto Irrigation District		P. J. Minasian & Roscoe Caldwell
Provident Irrigation District		P. J. Minasian
Princeton-Codora-Glenn Irrigation District		C. H. Larimer & P. J. Minasian
Compton-Delevan Irrigation District		Duard F. Geis
Maxwell Irrigation District		P. J. Minasian
I. G. Zumwalt, et al.		Duard F. Geis
Davidella Hershey, et al.)	George Clark
Elmer Johnson		
E. G. Cochran		
Department of the Interior, Fish and Wildlife Service		Frederick J. Anderson
F. E. Buffum, et al.		Ralph Rutledge

Frank J. Byington, Trustee

Geo. K. Ford

Gertrude M. Sherer

Edmund Davies

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

Also in Attendance from Division of Water Resources:

Henry Holsinger	Principal Attorney
James M. Carl	Associate Attorney
Arthur M. Baker	Associate Hydrographer
William R. Gianelli	Associate Hydraulic Engineer
Kenneth L. Woodward	Assistant Civil Engineer

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OPINION

General Description of the Proposed Developments

The projects involve pumping, by individual plants, from the sources filed upon. The sources are channels, partly natural and partly artificial, which carry drainage waters and discharge eventually into Sacramento River near Knights Landing and/or into Yolo Bypass, opposite the mouth of Cache Creek. The proposed use in every instance is irrigation and rice is named in every application. In a small minority of the applications alfalfa is also mentioned. Additional particulars as to the individual applications are as follows:

Application 11242:

22 cubic feet per second from March 15 to November 30.

Point of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T 18 N, R 2 W.

Place of use: 881.62 acres within Sections 5 and 8, T 18 N, R 2 W.

Application 11263:

12 cubic feet per second from March 15 to November 30.

Point of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T 18 N, R 2 W.

Place of use: 444.27 acres within Sections 7 and 8, T 18 N, R 2 W.

Application 11662:

8 cubic feet per second from March 15 to November 30.

Point of diversion: Within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T 20 N, R 2 W.

Place of use: 320 acres within Section 1, T 19 N, R 2 W and
Section 36, T 20 N, R 2 W.

Application 11819:

7 cubic feet per second from April 1 to October 15.

Point of diversion: Within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T 20 N, R 1 W.
acres

Place of use: 273.3 /within Sections 30 and 31, T 20 N, R 1 W. and
Sections 25 and 36, T 20 N, R 2 W.

Application 11854:

16 cubic feet per second from April 15 to October 15.

Point of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T 12 N, R 1 E.

Place of use: 664.2 acres within Sections 19 and 30, T 12 N, R 1 E,
and Sections 24 and 25, T 12 N, R 1 W.

Application 11855:

16.28 cubic feet per second from April 1 to October 15.

Point of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T 12 N, R 1 E.

Place of use: 651.3 acres in Sections 30 and 31, T 12 N, R 1 E.

Application 11863:

8 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 13 N, R 1 W.

Place of use: 284.6 acres within Sections 23 and 24, T 13 N, R 1 W.

Application 11864:

8 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 13 N, R 1 W.

Place of use: 298.2 acres in Sections 25, T 13 N, R 1 W and
Section 30, T 13 N, R 1 E.

Application 11865:

7.5 cubic feet per second from April 1 to November 1.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T 13 N, R 1 W.

Place of use: 284 acres in Section 14, T 13 N, R 1 W.

Application 11875:

8 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 13 N, R 1 W.

Place of use: 343.5 acres within Sections 23 and 24, T 13 N, R 1 W.

Application 11878:

34 cubic feet per second from April 1 to November 15.

Point of diversion: Within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T 11 N, R 2 E.

Place of use: 1952 acres within Sections 23 to 27 and Sections 35
and 36, T 11 N, R 2 E.

Application 11881:

13 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T 14 N, R 1 W.

Place of use: 468 acres within Sections 5, 6 and 7 of T 14 N, R 1 W.

Application 11885:

7.5 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T 11 N, R 2 E.

Place of use: 301 acres within Sections 7, 8 and 17, T 11 N, R 2 E.

Application 11886:

15 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T 17 N, R 2 W.

Place of use: 632.1 acres in Sections 22, 27 and 34, T 17 N, R 2 W.

Application 11888:

14 cubic feet per second from April 1 to October 1.

Point of diversion: Within SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T 16 N, R 2 W.

Place of use: 505 acres within Sections 21 and 22, T 16 N, R 2 W.

Application 11889:

8.25 cubic feet per second from April 1 to October 1.

Point of diversion: Within SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T 16 N, R 2 W.

Place of use: 330 acres in Sections 21 and 22, T 16 N, R 2 W.

Application 11899:

75 cubic feet per second from March 15 to October 15.

Point of diversion: Within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T 13 N, R 1 W.

Place of use: 3000 acres within the District boundaries.

Application 11900:

17 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T 16 N, R 2 W.

Place of use: 608.6 acres in Section 16, T 16 N, R 2 W.

Application 11901:

8 cubic feet per second from April 1 to October 1.

Point of Diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T 16 N, R 2 W.

Place of use: 273 acres within Sections 9 and 10, T 16 N, R 2 W.

Application 11902:

15 cubic feet per second from April 1 to October 1.

Points of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16 and NW $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 9, T 16 N, R 2 W.

Place of use: 467.2 acres within Sections 9 and 15, T 16 N, R 2 W.

Application 11903:

10 cubic feet per second from April 1 to October 1.

Point of diversion: Within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T 16 N, R 2 W.

Place of use: 364.8 acres within Section 15, T 16 N, R 2 W.

Application 11905:

16 cubic feet per second from April 1 to October 1.

Point of diversion: Within NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T 13 N, R 1 W.

Place of use: 575 acres within Sections 3, 4, 10 and 11,
T 13 N, R 1 W.

Application 11909:

4.5 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T 15 N, R 2 W.

Place of use: 159.6 acres within Section 1, T 15 N, R 2 W.

Application 11910:

30 cubic feet per second from April 1 to September 30.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T 11 N, R 2 E.

Place of use: 1007.2 acres within Sections 4, 8, 9, 10, 14, 15 and
16, T 11 N, R 2 E.

Application 11913:

25 cubic feet per second from April 1 to October 1.

Points of diversion: Within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T 14 N, R 1 W.

Place of use: 1093.7 acres in Sections 7, 8, 9, 17 and 18 of
T 14 N, R 1 W.

Application 11925:

8 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T 14 N, R 1 W.

Place of use: 314 acres in Section 15, T 14 N, R 1 W.

Application 11926:

22 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T 14 N, R 1 W.

Place of use: 771 acres within Sections 10, 15, 16 and 17,
T 14 N, R 1 W.

Application 11928:

5 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T 14 N, R 1 W.

Place of use: 159 acres within Section 9 of T 14 N, R 1 W.

Application 11931:

12 cubic feet per second from March 1 to November 1.

Point of diversion: Within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T 17 N, R 2 W.

Place of use: 487.96 acres within Sections 15 and 16, T 17 N, R 2 W.

Application 11954:

8 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T 17 N, R 2 W.

Place of use: 280 acres within Sections 2, 3 and 4, T 17 N, R 2 W.

Application 11955:

14 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T 17 N, R 2 W.

Place of use: 530 acres within Sections 27, 32, 33 and 34, T 17 N,
R 2 W.

Application 11956:

12 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T 17 N, R 2 W.

Place of use: 440 acres within Sections 9, 10 and 15, T 17 N, R 2 W.

Application 11957:

75 cubic feet per second from April 15 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T 17 N, R 2 W.

Place of use: 3036 acres within Sections 8, 9, 16, 17, 20, 21, 28
and 29 of T 17 N, R 2 W.

Application 11958:

18 cubic feet per second from April 15 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 17 N, R 2 W.

Place of use: 696 acres in Sections 29 and 32, T 17 N, R 2 W.

Application 11959:

15 cubic feet per second from April 1 to October 15.

Point of diversion: Within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T 17 N, R 2 W.

Place of use: 480 acres in Sections 15 and 22, T 17 N, R 2 W.

Application 12087:

2.4 cubic feet per second from April 1 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,
T 14 N, R 1 W.

Place of use: 149 acres within Section 20, T 14 N, R 1 W.

Application 12115:

8 cubic feet per second from April 15 to November 1.

Point of diversion: Within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T 15 N, R 2 W.

Place of use: 319.7 acres within Sections 12 and 13, T 15 N, R 2 W.

Application 12125:

38 cubic feet per second from April 20 to September 20.

Point of diversion: Within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T 17 N, R 2 W.

Place of use: 1500 acres within Sections 19, 30, 31 and 32,
T 17 N, R 2 W.

Application 12256:

11.56 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T 11 N, R 1 E.

Place of use: 462.3 acres within Sections 10 and 11, T 11 N, R 1 E.

Application 12310:

8 cubic feet per second from March 15 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T 14 N, R 1 W.

Place of use: 313 acres within Section 19, T 14 N, R 1 W.

Application 12363:

11.5 cubic feet per second from April 1 to October 15.

Point of diversion: Within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T 16 N, R 2 W.

Place of use: 960 acres within Sections 4 and 9, T 15 N, R 2 W.

Application 12411:

13 cubic feet per second from April 1 to November 1.

Point of diversion: Within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T 15 N, R 2 W.

Place of use: 647.8 acres within Sections 12 and 13, T 15 N, R 2 W.

Application 12412:

6 cubic feet per second from April 1 to November 1.

Point of diversion: Within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 15 N, R 2 W.

Place of use: 278.55 acres within Sections 24 and 25, T 15 N, R 2 W.

Application 12429:

16 cubic feet per second from April 15 to October 1.

Point of diversion: Within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4,
T 17 N, R 2 W.

Place of use: 642 acres within Sections 4, 5, 8 and 9, T 17 N, R 2 W.

Application 12459:

3 cubic feet per second from April 1 to October 30.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T 14 N, R 1 W.
20 and

Place of use: 120 acres in Section/29, T 14 N, R 1 W.

Application 12839:

3 cubic feet per second from March 15 to October 15.

Point of diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T 13 N, R 1 E.

Place of use: 4 acres within W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 31 and 90.1 acres
within SE $\frac{1}{4}$ of Section 36, T 13 N, R 1 W.

Application 12946:

7 cubic feet per second from April 1 to October 15.

Point of diversion: Within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T 17 N, R 2 W.

Place of use: 283.4 acres within Sections 2, 3 and 4 of T 17 N, R 2 W.

Application 12995:

1.72 cubic feet per second from April 1 to October 15.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T 11 N, R 1 E.

Place of use: 68.8 within Sections 3 and 10, T 11 N, R 1 E.

Application 12996:

2.11 cubic feet per second from April 1 to October 15.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T 11 N, R 1 E.

Place of use: 84.4 acres in Section 10, T 11 N, R 1 E.

Application 12997:

2.98 cubic feet per second from April 1 to October 15.

Point of diversion: Within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T 11 N, R 1 E.

Place of use: 119.1 acres within Section 3, T 11 N, R 1 E.

Application 13000:

5 cubic feet per second from March 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T 15 N, R 1 W.

Place of use: 206.3 acres in Section 31, T 15 N, R 1 W and Section 6,
T 14 N, R 1 W.

Application 13001:

3 cubic feet per second from March 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 15 N, R 2 W.

Place of use: 113.9 acres in Sections 24 and 25, T 15 N, R 2 W and
Section 19, T 15 N, R 1 W.

Application 13002:

1 cubic foot per second from March 1 to October 1.

Point of diversion: Within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 15 N, R 2 W.

Place of use: 278.55 acres in Sections 24 and 25, T 15 N, R 2 W and
Section 30, T 15 N, R 1 W.

Application 13003:

5 cubic feet per second from April 15 to October 15.

Point of diversion: Within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T 13 N, R 1 W.

Place of use: 207.3 acres within Sections 4 and 9, T 13 N, R 1 W.

Application 13006:

6.77 cubic feet per second from April 1 to October 15.

Point of diversion: Within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T 11 N, R 2 E.

Place of use: 270.71 acres in Sections 8, 16 and 17, T 11 N, R 2 E.

Application 13452:

4 cubic feet per second from April 1 to October 1.

Point of diversion: Within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T 19 N, R 2 W.

Place of use: 135.51 acres in SW $\frac{1}{4}$ of Section 1 and 21.76 acres in Section 2 of T 19 N, R 2 W.

Protests

Charles F. Lambert as an individual protests Applications 11242 and 11263. He asserts a diversion within NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T 18 N, R 2 W, M.D.B.&M., and use, for irrigation of rice and general farm crops, within Sections 16 to 21 and 28 to 33, both inclusive, of T 18 N, R 2 W, M.D.B.&M. He asserts a right based upon use of recaptured drainage water from Glenn-Colusa Irrigation District, diversions being made by structures constructed by that District and by himself under agreement of payment for the water, diversions being made within the District boundaries. The injury which he apprehends is the denial to his lands of water necessary for their irrigation. He represents that he used the full discharge of drainage water in the Glenn-Colusa B-one drain during 1943, 1944 and 1945 and in addition during 1943 and 1944 purchased water from Provident Irrigation District.

J. M. Board, Administrator of the Estate of Henry Jameson, deceased, protests Application 11662, contending that a permit was issued authorizing the Estate to divert from the same source and that when water is low the diversion which the applicant proposes will interfere with the exercise by the Estate of that prior right. The protestant asserts that the appropriation claimed was initiated in 1918 or 1919, that approximately nine cubic feet per second are used for rice irrigation, and that the

Estate diverts at a point within the SE $\frac{1}{4}$ of Section 23 of the Glenn Ranch Survey.

Chas. F. Lambert, acting for and on behalf of Glenn-Colusa, Jacinto, Provident, Princeton-Codora-Glenn, Compton-Delevan, and Maxwell Irrigation Districts and Compton Water District protests the following applications:

11662, 11819, 11854, 11855, 11863, 11864, 11865,
11875, 11878, 11881, 11885, 11886, 11888, 11889,
11899, 11900, 11901, 11902, 11903, 11905, 11909,
11910, 11913, 11925, 11926, 11928, 11931, 11954,
11955, 11956, 11957, 11958, 11959, 12087, 12115,
12256, 12310, 12363, 12411, 12412, 12429, 12459,
12946, 12995, 12996, 12997, 13000, 13001, 13002,
13003, 13006, 13452.

This protest is directed against the diversion of water for irrigation from Reclamation District 2047 and/or from the Colusa Trough for reasons asserted as follows:

1. Districts have acquired an exclusive easement from Reclamation District 2047 to flow its irrigation water through the drainage channels, canals and laterals of Reclamation District 2047 for the use and benefit of purchasers of irrigation water from Districts.

2. Districts have acquired an exclusive easement from Reclamation District 2047 for the installation of pumping plants, removable weir structures, siphons or flumes upon, through or over the drainage channels, canals and laterals

of Reclamation District 2047 for the purpose of diverting its irrigation waters flowing therein for the use and benefit of purchasers of irrigation water from Districts.

3. Districts, as consideration for the granting of said easements by Reclamation District 2047, have contracted to maintain and keep in repair the drainage channels, canals and laterals of Reclamation District 2047 for the purpose of providing drainage of all the lands within the exterior boundaries of Reclamation District 2047.

4. Districts have adopted a plan for the diversion from the drainage channels, canals and laterals of Reclamation District 2047 of all the waters created by pumping from the Sacramento River and the use of said waters upon lands within and without the boundaries of the contracting districts for irrigation purposes.

5. Districts intend to construct such diversion works as may be necessary to divert all waters flowing in drainage channels, canals and laterals of Reclamation District 2047 within the boundaries of Districts and to utilize all waters diverted for the irrigation of crops both within and without the boundaries of Districts. After these plans are carried out, the protest asserts, only small amounts of drainage waters will return to the drainage channels of Reclamation District 2047 and such returned waters will be uncertain and insufficient in amount to be of value to applicants for irrigation purposes.

I. G. Zumwalt protests the following applications:

11819, 11886, 11888, 11889, 11900, 11901, 11902,
11903, 11931, 11954, 11955, 11956, 11957, 11958,
12363.

In general the substance of these protests is that the proposed diversions, which head upstream, will reduce the flow of the source from which he diverts (variously called Colusa Drain, Colusa Trough or Main Drain of Reclamation District 2047) to an amount insufficient for his needs and rights including those under his Application 11028. In the matter of Application 12363, Protestant asserts ownership of site of proposed diversion and apprehends the approval of the application would cloud his title.

Davidella Hershey individually and as administratrix of the estate of Cornelia A. Hershey, deceased, Grace H. Hershey, D. N. Hershey and Florence F. Hershey protests the following applications:

11863, 11865, 11875, 11881, 11886, 11888, 11889,
11899, 11901, 11902, 11903, 11905, 11925, 11926,
11928, 11931, 11954, 11955, 11956, 11957, 11958,
11959, 12087, 12115.

These protestants object to appropriations of water flowing into West Levee Borrow Pit of Reclamation District 2047, claiming that all of the water flowing into that borrow pit is currently utilized.

Elmer Johnson and E. G. Cochran, tenants of Davidella Hershey and holders, respectively, of Applications 11854 and 11855, protest the granting of Application 11899. They assert that all of the water flowing in the west levee borrow pit of Reclamation District 108 (from which diversion is proposed under Application 11899) is required in order to satisfy

present requirements including those represented by their own pending, prior applications.

The U. S. Department of the Interior, Fish and Wildlife Service, protects the granting of Application 11909, because the project apparently involves construction of a conduit across lands used for the operation of the Colusa National Wildlife Refuge, and such crossing, the protest implies, is objectionable.

F. E. Buffum, et al, protest Application 12125, alleging particularly that all of the water in the source filed on by the applicant is required for purposes to which it has been applied over a long period. They claim a right by prescription against the applicant and also such right as may be based upon their filing of an application prior to Application 12125.

Frank J. Byington, et al, protest Application 12125, claiming that they at times require the entire flow of the source in question, and that this is especially true during periods of drought and early in the irrigation season before return flow from upstream irrigation commences. They claim rights both riparian and appropriative, the latter including those initiated by the filing of their Applications 11900 and 11909.

Gertrude M. Sherer protests Application 12125. She claims that the application is not subject to the jurisdiction of the Division of Water Resources (for reasons unstated), states that she herself has filed Application 12087, on the same source.

Answers

Among the points advanced by one or another of the applicants in answering the protests are the following:

1. Denial in some instances, of insufficiency of supply; denial that protestants put to beneficial use the amounts they claim to so use.

2. Assertion that of quantities diverted under a pending application, 80 per cent will return to the source from which diverted.

3. Denial that Charles F. Lambert has been in fact authorized to act for or on behalf of the districts mentioned in the protests which he signed.

4. Contention that alleged acquisition by the districts of an easement to flow waters through channels of Reclamation District 2047 for sale outside of districts for irrigation use is ultra vires, null and void; and that no rights, privileges or benefits result therefrom.

5. Contention that waters filed upon are waste and abandoned, not susceptible of recapture within district boundaries for use within the districts; that abandoned waters are subject to appropriation.

6. Contention that sale by districts of water for use on lands beyond their boundaries is illegal.

7. Objection to the Charles F. Lambert, et al, protest as not conforming substantially with applicable rules and regulations.

8. Contention that Reclamation District 2047 long ago granted, consented to and acquiesced in the diversion now described in the application.

9. Contention that a right initiated by a lessee is personal and that title does not revert to the owner of the real property upon forfeiture or abandonment of lease.

10. Contention that districts have no right in and to waters flowing in drainage channels and that they have no right to divert

therefrom, within or without their boundaries, except waters discharged into the drainage ditches from irrigation ditches.

11. Assertion of prior rights by applicants, both riparian and appropriative.

12. Contention that Reclamation District 2047 cannot rightfully grant an exclusive easement of the kind alleged.

13. Assertion of provisions in easement granted to Reclamation District 2047 long ago in which easement the right to take and use necessary waters from Colusa Trough was reserved.

14. Contention that protestants are estopped from protesting, having stood by and allowed valuable improvements to be installed, without objection.

15. Contention that protestants' assertion as to ownership of all waters within channels of Reclamation District 2047 despite payment of assessments by property owners within that district for regulatory works along such channels raises issues that do not come within the jurisdiction of the Division of Water Resources.

16. Contention that waters within channels of Reclamation District 2047 are free and unowned waters except as heretofore appropriated and that surpluses exist which have not been properly appropriated.

17. Allegation that protests were not filed in good faith, but as a part of a conspiracy to exact payments unwarranted by the facts.

Hearing Held in Accordance with the Water Code

The applications at issue were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water

Resources. All of the applications except Application 12889, a closely related application, having been protested, they all were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Monday, May 15, 1950 at 10:00 o'clock A.M., in Room 414, State Capitol Building, Sacramento, California. Of the hearing the applicants and the protestants were duly notified.

Discussion

The applications at issue are related in that they all contemplate diversions from one certain drainage channel and/or from branches or extensions thereto or therefrom. The channel itself is variously called "Colusa Trough", "Main Canal", "Colusa Trough Drainage Canal", and by other names. Lower reaches or extensions are called respectively "Back Borrow Pit" and "Knights Landing Ridge Cut", the latter draining into Yolo Bypass some 2.5 miles south of Fremont Weir. The channel and its branches and extensions carry natural runoff from the predominantly low and flat country which it drains, during fall, winter and spring, and return flow from extensive areas of irrigated lands, during spring, summer and fall. The channel and its tributaries collectively have many attributes of a natural drainage system, but improvements in the interests of drainage and of irrigation have made it partly artificial. The channels and the points of diversion proposed thereon are shown on the Division's Hearing Exhibit No. 2, and on Hearing Exhibit No. 1 of Reclamation District 108.

With reference to the letter from the Active Regional Counsel, Bureau of Reclamation, quoted on Page 39 of the Transcript and objected to by counsel for various parties at the hearing, it is evident that

while one or another of Applications 9363, 9364, 9366, 9367 and 9368 are prior to and therefore may at some future time affect operations under the 56 applications now under consideration, the mere existence of the former applications is not a bar to the approval of the latter applications. Junior applications on occasion may be approved with a view to utilizing interim surpluses beneficially.

The motion to dismiss the protests filed by Chas. F. Lambert for and on behalf of certain irrigation districts (page 55 of Transcript) is not sustained, those protests being deemed of sufficient substance to warrant consideration.

Protestant Glenn-Colusa Irrigation District's Exhibit No. 2 - "Flow of Colusa Trough at Colusa-Williams Highway, 1944 to 1949" - upon being checked was found to contain occasional errors in the portrayal of flow during 1944, 1946, 1947 and 1948 and to be entirely wrong for the period May to October (both inclusive), 1945. A tabular presentation of the figures which that exhibit purported to show graphically, although in a lesser degree of detail (monthly instead of daily averages) is as follows, the tabulation including figures for 1949 as well as for the years covered in the exhibit.

Monthly Mean Flow in Cubic Feet per Second
of Colusa Trough at Colusa - Williams Highway

	<u>1944</u>	<u>1945</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>Average</u>
April	368	229	319	140	523	295	312
May	888	697	758	474	427	894	689
June	630	717	619	594	953	540	675
July	478	562	568	452	492	582	522
August	629	725	715	668	684	857	713
September	840	811	834	825	911	912	855
October	234	330	260	289	306	280	283
Average	581	582	582	492	614	623	578

A corrected graph for the year 1945 has been entered on the Glenn-Colusa Hearing Exhibit No. 2.

The gaging station on Colusa Trough at Colusa-Williams Highway is upstream from 33 of the 56 applications. The amounts sought under those 33 applications total approximately 410 cubic feet per second and the 23 applications upstream from the gaging station call for some 377 cubic feet per second, making a total for the 56 applications of 787 cubic feet per second. Monthly average flows at the gaging station have exceeded the latter figure in but 10 of the 42 months above tabulated. Flow for those 42 months averaged 578 cubic feet per second. According to the Sacramento-San Joaquin Water Supervision records many of the projects above the gaging station mentioned have long been in operation. It is common knowledge that substantial fractions of amounts diverted for rice irrigation return to the drainage channels as return flow and are available for reuse at points downstream. It is common knowledge also that in a group of projects such as the 56 projects under consideration the entire acreage thereunder and consequently the entire amount applied for (787 cubic feet per second in this case) will not be required at one time or in one year. For these reasons the average flow of 578 cubic feet per second at the Colusa-Williams highway crossing suggests that the flow in Colusa Trough in several recent seasons may have been sufficient on average to meet demands under the 56 applications. This conclusion accords with the following extracts from the testimony of witness Blackie:

"I think that in the majority of times there is ample water. A majority of the time there would have been ample

water for everybody wanting water..... There has to be some rotation so there is very little likelihood of all of this land going into irrigation the same year - at least into rice irrigation." (page 1670 of Transcript).

* * * *

".....when the price of rice is high you will find it going in several years in succession, and when the price of rice is down low, it may be one year in five."(page 168 of Transcript).

* * * *

".....The general proposition in irrigation practice all over the world is anywhere from twenty-five percent to sixty or sixty-five percent of the water diverted is wasted and lost through percolation, poor irrigation practice, and in the rice it is more or less necessary to spill a certain amount of water out of the lower end of the rice field. You have to keep circulation of water; keep the water fresh.For instance, in 108, we have measured our diversions from the river and we have measured the amount we had to pump back into the river, and at least forty percent of the water we take out of the river is pumped back into the river as waste, if you want to call it waste, or return flow, in any event." (page 170 of Transcript).

In addition to records of discharge at Colusa-Williams Highway the Sacramento-San Joaquin Water Supervision reports contain records of flow of Colusa Trough near College City, Knights Landing Ridge Cut, and

Colusa Basin Drainage at Knights Landing. Monthly means, abstracted from those records, have been as follows:

Monthly Mean Flow in Cubic Feet per Second
of Colusa Trough (Back Borrow Pit) near College City

	<u>1944</u>	<u>1945</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>Average</u>
April			391	177	825	345	435
May			776	416	769	950	728
June			621	605	1235	541	750
July	(No record for years		551	418	503	561	508
August	1944 and 1945)		716	644	748	892	750
September			912	888	1080	1101	995
October			345	298	359	355	339
Average			616	492	788	678	644

Monthly Mean Flow in Cubic Feet per Second
of Colusa Basin Drainage at Knights Landing

	<u>1944</u>	<u>1945</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>Average</u>
April	132	137	205	89	48	314	154
May	510	405	557	214	41	789	419
June	469	652	371	444	309	354	433
July	211	433	287	154	365	379	305
August	408	667	474	388	611	762	552
September	794	981	901	750	933	1128	915
October	320	541	400	377	383	532	425
Average	406	545	456	345	384	608	457

Monthly Mean Flow in Cubic Feet per Second
of Knights Landing Ridge Cut

	<u>1944</u>	<u>1945</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>Average</u>
April			150	118	583	168	255
May			73	47	456	36	153
June			64	33	792	39	232
July	(No record for years		71	54	1.3	47	43
August	1944 and 1945)		72	64	4.6	44	46
September			56	27	4.5	22	28
October			3	0	0	0	1
Average			70	49	263	51	108

It is noteworthy that monthly means near College City, on average, have been more than the corresponding means at Williams-Colusa bridge, and that the flow at the lowermost extremity of Colusa Basin Drainage Canal (opposite Knights Landing), while somewhat less at times than the flow at the upper stations has nevertheless closely approached that flow. The flow at the lowermost extremity is arrived at by adding the corresponding figures for "Colusa Basin Drainage at Knights Landing" and "Knights Landing Ridge Cut". For the months considered, it has averaged as follows:

<u>Month</u>	<u>Amount (c.f.s.)</u>
April	409
May	572
June	665
July	348
August	598
September	943
October	426
Average	566

The figures just written represent surpluses, in that they are flows that occur below all of the applicants' projected diversions, below the protestants' diversions and below the protestants' lands.

According to tabulations contained in the Report of Sacramento-San Joaquin Water Supervision for 1949, diversions from the channels in question in cubic feet per second averaged as follows:

<u>Month</u>	<u>Colusa Trough (North of Colusa- Williams Highway)</u>	<u>Back Borrow Pit (South of Colusa- Williams Highway)</u>	<u>Knights Landing Ridge Cut</u>	<u>Total</u>
March	1	0	0	1
April	60	43	43	146
May	250	265	62	577
June	304	250	98	652
July	310	230	51	591
August	298	247	87	632
September	170	84	26	280
October	92	23	0	115
Average	186	143	46	375

The report lists the names of the diverters and many of the names listed are identical with the names of applicants herein considered. It cannot be stated with certainty that the diverters who are also applicants diverted in reliance upon rights already vested or whether they diverted in anticipation of the approval of pending applications. From statements in the applications or correspondence relating thereto, from the tenor of statements at the hearing and from the similarity of names in the list of applicants and the list of diverters it is inferred that many of the projects described in the applications are already in operation. Insofar as that inference is correct the additional amount which must be diverted in future to satisfy the applications in full is lessened, and the probability that supply will equal demand, is increased.

The protest by Chas. F. Lambert against Applications 11242 and 11263 was withdrawn by that protestant by letter dated June 20, 1950.

The protest by J. M. Board, Administrator, against Application 11662 by Terrill P. Knight is found to^{be} insufficient. While the protestant's diversion heads some 5 miles downstream from the applicant's, the data point to ample channel capacity to permit both parties to divert

simultaneously; the data point also to the occurrence at times, in the channel filed upon, of considerable surpluses. The protestant was not represented at the hearing.

The protest by Chas. F. Lambert acting for and on behalf of Glenn-Colusa Irrigation District, et al., which is based primarily upon an intention on the part of the districts to divert additional amounts at some future time for the irrigation of lands not currently served, is found to be insufficient. It is an established principle that prospective future use is not a bar to the approval of an application to appropriate.

The protest by I. G. Zumwalt against 15 applications is found to be insufficient. His diversion under Application 11028 (for 150 cubic feet per second) heads at a location downstream from the applications which he protests. Those applications aggregate 244.75 cubic feet per second. As compared with these figures the flow of Colusa Trough at Colusa-Williams Highway (according to the tabulation, supra), which is some 1.5 mile below the Zumwalt intake, averaged 578 cubic feet per second for the 6 most recent seasons of record.

The protest by Davidella Hershey against 24 applications is likewise found to be insufficient. The assertion upon which her objections are based, i.e. that the water flowing into the borrow pit of Reclamation District 2047 is all currently utilized is contradicted by the records of flow at Williams-Colusa Highway, at (near) College City and at Knights Landing, summarized in earlier paragraphs.

The protest by Elmer Johnson and E. G. Cochran against Application 11899 is found to be insufficient for the same reason as set forth in the last preceding paragraph.

The protest by the U. S. Department of the Interior, Fish and Wildlife Service against Application 11909 was withdrawn at the hearing (Transcript, page 231).

The protest of F. E. Buffum, et al. against Application 12125 is found to be insufficient. The applicant's proposed point of diversion is some 7 miles upstream from the protestant's intake. The applicant seeks to divert 38 cubic feet per second and the protestant, under Application 11889, 8.25 cubic feet per second. According to the Williams-Colusa Highway gaging station record, that station being some 2.6 miles below the protestants' intake, amounts passing that station averaged some 578 cubic feet per second (irrigation months only) - considerably more than enough to supply the parties named.

The protest by Frank J. Byington, et al., against Application 12125 alleges that the Diversion therein proposed would interfere with diversions under their prior Applications 11900 and 11909. As explained in the last preceding paragraph the average flow in the reach in question for several recent years has been more than sufficient for the applicants and protestants named therein, and the protest is therefore found to be insufficient.

The protest of Gertrude M. Sherer against Application 12125 is found to be insufficient inasmuch as the flow of Colusa Trough near College City has averaged some 615 cubic feet per second during irrigation months of recent years - an amount far in excess of the combined demands of applicant and protestant.

Subsequent to the Hearing of May 15-16, 1950, briefs (opening and closing) were filed by counsel for Glenn-Colusa, Provident and Maxwell Irrigation Districts and Compton Water District. Reply briefs, 7 in all,

were filed on behalf of various other interested parties.

The opening brief in essence argues that the water in question has been dedicated to the districts, that the districts have the right to recapture within or without their boundaries, that district boundaries are not frozen but may be expanded, that districts may sell surplus water outside of their boundaries, that the districts are entitled to use the waterways of Reclamation District 2047 as conduits, that the recapturing of water by the districts has begun, is progressing and will progress further, and that any permit issued under any of the applications under discussion should contain an express provision to the effect that it is issued subject to rights of recapture of water by districts. The opening brief also represents that many of the applicants in the matter at issue lack and cannot obtain right of access to sources from which they seek to divert; it contends in effect that it is the Division's responsibility to determine that right of access in fact exists before approving any application wherein the existence of such right is denied.

The reply brief relating to Applications 11900 and 11909 questions that all water flowing in the drainage channels in summer is water that has been pumped from the river; it contends that some water existed in these channels before Reclamation District 2047 came into being; asserts that Applicant Byington's installation antedates that District; argues that Glenn-Colusa Irrigation District's intentions as to recapture of water and expansion of area are irrelevant to the issues.

The reply brief relating to Application 11954 concedes rights to recapture but only within district boundaries; argues that action on the pending applications should be based upon facts as they now exist, and not upon facts that may exist in future; asserts that by virtue of

reservations in right of way deeds Applicants Lynn and Bohne have right of access to Drain 2047 and the right to use waters flowing therein.

The reply brief relating to Applications 11886 and 12459 contends that the opening brief presents no question, matter or issue that is within the Division's jurisdiction to act upon; argues that the Division in acting upon an application does not exercise a judicial function; argues that the right to recapture, alleged by the Districts, presents questions that the Division is not vested with power to determine, including conflicts between different provisions of the Water Code itself; argues likewise that other questions such as the territorial expansion of districts, the right to sell surplus waters outside of district boundaries and the right to use the canal as a conduit, may be determined only by court action. As to the insertion of conditions in any permits which may be issued the reply brief takes the position that the inclusion of such conditions is unwarranted in view of the investigation by a purchaser of land in a locality where water is scarce and water rights complex that is dictated by ordinary prudence. As to right of access to Reclamation District drains the reply brief argues that under the law "a servient landowner has the right to use all of the land which is subject to the easement so long as it does not interfere with the use by the dominant tenant." As to the alleged reversionary clause conveying rights of way for drains from the Reclamation District to Provident Irrigation District it is represented that such reversion has not taken place. As to right of access to the points of diversion under Applications 11886 and 12459 it is asserted that the applicants thereunder already have that right. The reply brief maintains that the protestant districts are not properly before the division, Mr. Lambert not having been properly

authorized to enter protests on their behalf.

The reply brief relating to Reclamation District 108 (Application 11899) cites Haun v. Devaurs (97 A.C.A. 929) as clearly settling every issue in the matter at hand. It is argued in the reply brief that what may be done in future is no answer as to what actually exists today. It is argued that in the history of every district there is always return flow, and that even if more lands come under irrigation there will still be drainage water coming into Colusa Basin. It quotes, "The right to recapture can shut off the supply but this merely affects the value of the appropriation and not the right." It opposes inclusion, in permits, of the clause recommended by the Districts, arguing that it is unnecessary, too general, and an objectionable cloud upon title.

The reply brief relating to Applications 12412, 13000, 13001 and 13002 sets forth that what in large measure are plans envisioned for the future are mislabeled in the opening brief as facts; that the Districts' present intent may fail of consummation. It invites attention to evidence that the main drain of Reclamation District 2047 is located in the "trough", which natural water course carried some water in summer. It contradicts representations by the Districts that they (the Districts) have acquired an exclusive easement. It discounts sharply the plans and the intentions which the Districts allege and it argues that such plans and intentions merit little weight. It asserts that access to the points at which diversion is sought under the 4 applications presently discussed is adequately established by the easement deeds. It maintains that a District cannot recapture its spill, waste and runoff after comminglement in the Reclamation District canal with like waters from other sources, as proposed, such water under the Water Code having become unappropriated water. It

objects to the clause proposed by the Districts for inclusion in such permits as may be issued, on the ground that the proposed clause is too involved and may lead to litigation rather than to the avoidance of litigation, and offers what its writer considers a more appropriate clause.

The reply brief relating to Application 12115 submits that the material question is one of present availability of appropriable water and not one of possible future or supposed conditions and asserts that right of access is adequately covered by easement deed.

The reply brief relating to Application 11865 and 15 other applications largely duplicates arguments, citations and conclusions set forth in the briefs already discussed. It argues that the evidence introduced by the Districts to support their claim of an exclusive right to use and control of the Reclamation District drains centers upon the two resolutions adopted in 1948, that those resolutions do not constitute a contract, and that if a contract existed it would be of doubtful legality. It questions the accuracy of the Districts' implication that the Reclamation District is in process of dissolution. It opposes the inclusion of the proposed permit clause arguing that the facts involved in determining the matters to be therein incorporated are extraneous to the issues under the present proceedings. As to right of access it contends that the easement held by the Reclamation District provides only for construction, maintenance and operation of its drainage canal and the right to flow water therein. It continues, "The abutting landowners on the drainage canal own the fee title and the right to use their property.....in any manner not inconsistent with or an interference with the use by the Reclamation District to flow water therein.These

applicants can supply the proof of right of access whenever the same may be required."

The reply brief relating to Application 11854 and 8 other applications recites that the sole purpose of the hearing was to determine whether the various applications should be granted, that all of the applicants herein discussed seek to divert from the Reclamation District 108 canal or from the Knights Landing Ridge Cut, that those applicants are mainly concerned with the quantities of water flowing in those channels and that the hearing testimony established that that quantity is sufficient for their purposes. It quotes sections of the Water Code delimiting the jurisdiction of the Division, and defining unappropriated water. It asserts that all of the requirements to which an applicant is subject have been met and that diversions as proposed in the applications will not injure the protestants. As to the inclusion of the proposed permit clause it argues that established law covers the situation and that the clause if included would be meaningless, contrary to justice and in contravention of Section 102 of the Water Code.

In the closing brief (by counsel for the protestant Districts) the position is taken that the sources from which the applicants seek to appropriate are not natural water courses, that water from such sources therefore is not subject to appropriation and that the applications should be denied. In support of that position the brief cites Section 1201 of the Water Code (stating "All water flowing in any natural channel.....to be subject to appropriation....."), certain references defining a natural water course, and the recent case of Haun vs. De Vours, 218 P. (2d) 996; 97 A.C.A. 929. The reply brief also reasserts that all water and water rights belonging to the State within a district are

dedicated to the district, that the districts are entitled to continue the development of water so dedicated and that such entitlement extends to the recapture and redirection within their boundaries as they now exist or as they hereafter may be enlarged, citing in support of the latter contention the Haun ^{De} v. Vours case, above mentioned. The closing brief contends finally that the case at issue presents a public interest aspect of such unusual importance as to call strongly for the employment of permit clauses in any permits issued, warning future purchasers of applicants' lands of the possible diminution of water supply, due to recapture by the districts of waters which they now waste.

Conclusions

The system of channels providing outlet for waters of any origin from the drainage area, which includes the lands of the applicants and protestants, in the matter at issue is essentially natural. Excess waters naturally find their way and have so found their way from time immemorial into the so-called Trough of Colusa Basin. True there have been channel improvements and rectification, and certain reaches such as Knights Landing Ridge Cut represent realignment and reconstruction of the original channel. From the standpoint of applications to appropriate water, the channels composing the system are considered in legal effect as natural channels. Through the years applications have been filed to appropriate waters of Colusa Trough and its ramifications, and such applications have been accepted, processed and acted upon in all respects as applications for unappropriated water. Although these channels may have been artificially constructed in whole or in part, some at least appear artificial in part only, others follow generally the natural drainage, some were constructed and are maintained pursuant to statute, and most, if not all, have been in existence beyond the period of the statute of limitations. Under such circumstances, the flow of these channels is considered to have become dedicated to appropriation pursuant to the Water Code, and such element

of artificial origin as may exist should be disregarded.

As stated by protestants' counsel, Section 1201 of the Water Code provides that "All water flowing in any natural channel..... is hereby declared to be.....subject to appropriation.....". However neither that nor any other section of the Water Code expressly limits waters subject to appropriation to waters flowing in a natural channel. Section 1202 declares that water which having been appropriated or used flows back into a stream, lake or other body of water is unappropriated water. Section 100 of the Water Code declares that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. Section 1250 of the Water Code provides that the department shall consider and act upon all applications for permits to appropriate water and shall do all things required or proper relating to such applications. To reject the applications for the reason that they involve to some extent water derived from sources that are not strictly natural channels appears to be contrary to the spirit of the Water Code. Moreover it is well settled that a channel artificial in origin may under appropriate circumstances become, in legal effect, a natural channel. This principle appears applicable to the facts under review.

The argument advanced on behalf of the protestants based on Section 22430 of the Water Code is considered without merit. It is believed that the legislative intent evidenced in Division 2, Part 2 of the Water Code, and the intent of the electors as evidenced in Article XIV, Section 3, of the State Constitution negative any implication that Section 22430 should be applied to prevent or interfere with favorable action upon the pending applications.

The objections by protestants that the water supply from which the applicants seek to appropriate may at some future time fail due to its recapture by the protestant districts are considered irrelevant. Insofar as

surpluses currently exist, such surpluses plainly are subject to appropriation.

As to the objection by protestants that certain applicants lack right of access to the points where diversion is proposed, this office takes the position that the showing that the applicants have made in that regard is sufficient for present purposes. In certain instances the applicants have submitted documentary evidence; in other instances counsel for one or another of the applicants have offered to show proof upon demand; in some instances diversions at the sites described in the applications appear to have been made over a long period of time. Manifestly the applicants cannot divert if the protestants' claim of an exclusive right to divert from the same channels is upheld, but that is a matter beyond the jurisdiction of this office.

The proposal for the insertion of a clause in the permits apprising the applicants and their successors in interest of the possible diminution or failure of the water supply due to possible future recapture of return flow is not regarded with favor. It is contrary to existing policy to encumber permits unnecessarily. All permits are issued subject to vested rights, and any right protestants may have to recapture and reuse return flow will continue to exist without an express permit term to protect such right. What those rights may be, if any, and the extent thereof, cannot be ascertained in this proceeding and can be ascertained definitely and finally only in a comprehensive adjudication.

The data indicate that unappropriated water ordinarily exists in the sources from which appropriation is sought under Application 11242 and the applications related thereto. The data further indicate that such water may be taken and used in the manner proposed in the applications without injury to the protestants. Due to the protestant Districts' expressed intention of enlarging their boundaries and recapturing waters released from their present diversions, the amount of unappropriated water in the several channels may diminish materially. The applicants are well aware of this hazard to the future availability of supply.

The time and extent of the diminution of flow cannot be predicted. As long as unappropriated water exists it is subject to appropriation and its use in the manner proposed may be of great public benefit. The applications should be approved and permits issued, subject to the usual terms and conditions.

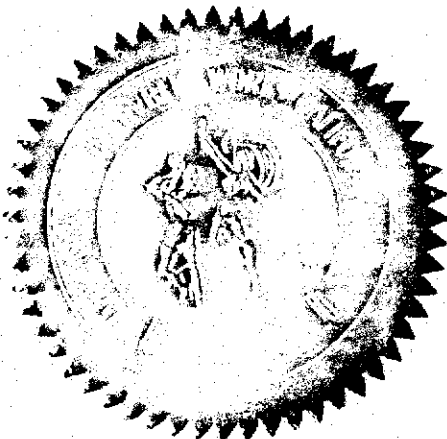
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ORDER

Application 11242 and related applications having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 11242, 11263, 11662, 11819, 11854, 11855, 11863, 11864, 11865, 11875, 11878, 11881, 11885, 11886, 11888, 11889, 11899, 11900, 11901, 11902, 11903, 11905, 11909, 11910, 11913, 11925, 11926, 11928, 11931, 11954, 11955, 11956, 11957, 11958, 11959, 12087, 12115, 12125, 12256, 12310, 12363, 12411, 12412, 12429, 12459, 12889, 12946, 12995, 12996, 12997, 13000, 13001, 13002, 13003, 13006, 13452 be approved and that permits be issued to the respective applicants 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 27th day of November, 1950.



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