

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 15572,
16168, 16182, 17890, 18061, 18062,
18122, 18154, 18255, 18372, 20128, and
20821 of NATOMAS CENTRAL MUTUAL WATER
COMPANY and Others to Appropriate from
Streams, Sloughs and Drains Tributary
to the Sacramento River in Colusa,
Yuba, Sutter, Yolo, and Sacramento
Counties

Decision D 1185

1185

ADOPTED JUN 30 1964

NATURE OF THE PROCEEDINGS

A summary of the data contained in the twelve applications which are the subject of this decision is set forth in Table 1. These applications were filed between October 1953 and June 1962.

All applications are for water to be used for irrigation purposes. Stockwatering is an additional use in Applications 18372 and 20821. The points of diversion described in each application are depicted on the map which is attached to and made a part of this decision.

Protests were received to Applications 18061, 18062, 18122, 18154, 18255, 18372, and 20128 from the United States Department of the Interior, Bureau of Reclamation. The Bureau

TABLE 1

APPLICATIONS FOR APPROPRIATION OF UNAPPROPRIATED WATER
FROM SACRAMENTO RIVER AND VARIOUS TRIBUTARIES

Applica- tion No.	Applicant	Source	Direct :Diversion: Rate (cfs)	Season
15572	Natomas Central Mutual Water Co.	Sacramento River and Cross Canal	132.00	3/1-9/15
16168	Joe Lopes	Sacramento River	13.40	5/1-9/30
16182	William L. Spangler	Cross Canal and Main Drain Canal of Reclamation District 1001	7.50	1/1-12/31
17890	Charles T. Froh	Sacramento River	1.00	4/1-10/30
18061	Frank Giusti	Sacramento River	1.45	4/1-10/15
18062	Angelo Giusti	Sacramento River	1.45	4/1-10/15
18122	Robert Chesney	Sacramento River	1.00	5/15-9/15
18154	Angelo Fava, et al.	Sacramento River	2.00	4/1-11/1
18255	O. C. and Ethel Gallagher	Unnamed Drain	2.00	4/1-10/1
18372	Olive Percy Davis, et al.	Sacramento River	7.60	4/1-10/1
20128	T. L. and H. M. Nelson	Sacramento River	3.00	4/1-10/1
20821	Helen Mathews Cornia, et al.	Jack Slough	1.00	3/15-10/15

asserts that there is no unappropriated water in most years during the critical dry months to supply any of the applicants. Although Applications 15572, 16168, 16182, and 20821 were unprotested, they were heard pursuant to Water Code Section 1342 because of the question of availability of unappropriated water during a portion of the diversion season proposed by the applicants.

On October 16, 1963, after due notice to the applicants and protestants, a public hearing was held before Kent Silverthorne, Chairman, and Ralph J. McGill, Member, of the State Water Rights Board, in Sacramento, at which time the parties appeared and evidence was received.

SOURCES AND WATER SUPPLY

The source of water described in all of the applications is either the Sacramento River or one of the canals, drains, or sloughs in hydraulic continuity with the river.

Application 15572 of Natomas Central Mutual Water Company is for a permit to divert 132 cubic feet per second from the Sacramento River and the Cross Canal. The latter is located between Reclamation Districts Nos. 1000 and 1001 carrying drainage water originating east of those Districts. The amounts of water in the dry season vary with the area irrigated. This drainage water commingles with back water from the Sacramento River. The place of use totals 21,841 acres within a gross area of 23,063 acres which is planted mainly to rice with some alfalfa. It is located in Sacramento and Sutter Counties.

The described points of diversion and conduit system are identical to those authorized in Licenses Nos. 3109 and 3110. By reason of improvement and cleaning, the conduit system now has a greater capacity than when originally constructed.

In 1961, applicant company merged with Elkhorn Mutual Water Company and now proposes to use the additional water sought by Application 15572 on the lands of the combined Natomas-Elkhorn Water Company service area (RT 12-15). Accordingly, on January 9, 1962, Natomas Central petitioned the Board to add to Application 15572 the point of diversion set forth in License 1050 and to increase the place of use to a net area of 27,511.44 acres with a gross area of 28,732.35 acres. This is within the area served by Natomas Central after the merger.

The petitions were protested by the Bureau of Reclamation. A public hearing was held before the Board on February 14, 1963, at which time the parties appeared, evidence was received, and the matter was submitted. However, Application 15572 will be considered in this decision as originally filed. The petitions to change the point of diversion and to increase the place of use will be the subject of a separate order.

The point of diversion for Application 16182 is located on the main drain canal of Reclamation District 1001. From November to June of most years, water is pumped from the main drain into Natomas Cross Canal. During the period of June through September when control gates are open, the flow of water from the

main drain into Cross Canal is by gravity. From Cross Canal, the water flows into the Sacramento River. Water from the named source has been used for irrigation of approximately 300 acres by the applicant each season for the past 15 years with no interruption in supply (RT 22-26).

The point of diversion for Application 18154 is located on the Sacramento River approximately 0.5 mile downstream from its confluence with the Colusa Basin Drainage Canal. Water is pumped from the river to irrigate approximately 80 acres owned by the applicant. For the past 30 years, the water has been diverted in accordance with an agreement between applicant and the owner of the adjoining farm who also owns the pumping plant. The applicant shares in the cost of operating the pump. Present capacity is estimated to be 4,500 gallons per minute (RT 29-33).

Application 20128 is for diversion from the Sacramento River for irrigation of approximately 335 acres of land. About 310 acres are presently irrigated pursuant to previously issued permits which allow a total of 4.65 cfs. Additional water is needed because of seepage losses which approximate 30 per cent.

Application 20821 is for 1 cfs to be diverted from Jack Slough, which contributes to the flow of Feather River, during the season March 15 to October 15 each year. The quantity sought has been continuously used over the past 30 years on various portions of the ranch which totals 165 acres (RT 44-46).

The point of diversion for Application 18255 is an unnamed drain extending eastward from Stone Lake. A ditch extends southward to the applicant's place of use on 112 acres of land. Water flows by gravity from the source into the ditch from which the water is pumped onto the land for irrigated pasture. A field investigation of the project made on January 27, 1959, disclosed that about June 1 of each year a flood control gate located on Lambert Station Road is blocked open, thereby allowing free flow of water between Stone Lake and Snodgrass Slough. At the same time each year a control gate between Stone Lake and applicant's point of diversion is closed, thus preventing water from the unnamed drain from entering Stone Lake. But for this control structure, irrigation water return flows collected in the unnamed drain would contribute to the summer flows of the Sacramento River and Delta by way of Stone Lake and Snodgrass Slough.

The point of diversion for Application 18372 is on the Sacramento River approximately 0.5 mile south of its junction with Sycamore Slough. Direct diversion is by pump for the irrigation of 610 acres planted to row crops in rotation with alfalfa. Included are 30 to 40 acres of irrigated pasture. Irrigation of the land began as early as 1885. However, it has been continuously irrigated (except in dry years) only since 1937 (RT 102-108).

The point of diversion for Application 16168 is the Sacramento River from which water is pumped for the irrigation of approximately 543 acres on Grand Island in Sacramento County.

Applicant follows the practice of first flooding the land in late May or early June, operating his pump at maximum capacity continuously so as to bring the soil moisture level of the entire acreage to the surface. Subsequent irrigations are thus reduced. Crops irrigated include corn, alfalfa, sugar beets, tomatoes, and cucumbers, in addition to pear orchards. The application is unprotested.

The common point of diversion for Applications 18061 and 18062 is at mile 36.2 on the left bank of the Sacramento River from which water is pumped to a 5,100-foot canal extending to the places of use in Sutter County. Branching canals convey the water by gravity to the adjoining parcels. Application 18061 is for irrigation of 80 acres planted mainly to rice with other crops rotated as required. A similar use is made of water under Application 18062 on 87.3 acres adjoining. The applicants and their predecessors in interest have used water from the river continuously since 1935.

The point of diversion for Application 17890 is on the west bank of the Sacramento River channel in Colusa County. Water is pumped into a canal which conveys it approximately 4,800 feet west to the place of use totaling 82.12 acres where it is used to irrigate various crops.

Application 18122 is for diversion from the Sacramento River for use in the irrigation of 60 acres of land in Sutter County planted to rice. Water is pumped from the east bank of the river channel and conveyed to the place of use through approximately 1,300 feet of ditch. Water has been applied to the land in past years pursuant to a permit issued on Application 12281 and the additional quantity sought in this proceeding is to cover the quantities actually diverted.

DISCUSSION

The available water supply of the Sacramento River and its tributaries has been studied by dividing the river into three reaches, as follows: Reach 1, Keswick to Knights Landing; Reach 2, Knights Landing to Sacramento, and Reach 3, the Delta below Sacramento. In this proceeding, Applications 17890, 18061, 18062, 18122, 18372, and 20128 propose appropriations from Reach 1, Applications 15572 and 18154 propose appropriations from Reach 2, and Application 16168 proposes an appropriation from Reach 3. The sources proposed in Applications 16182 and 20821 are in hydraulic continuity with Reach 2 and that from which Application 18255 proposes diversion is in continuity with Reach 3.

The existence of unappropriated water to satisfy these applications depends upon the existence of unappropriated water in these three reaches of the Sacramento River and Delta.

An analysis of the water supply available has been made using the reports of the 1956 Cooperative Study Program (Staff 5) and "Central Valley Project Operation Study, Shasta Reservoir Operation," (Staffs 7 and 8).

Considering only the season of diversion requested in the applications, the evidence shows that unappropriated water is available in sufficient quantities to justify approval of the applications in Reach 1 from April 1 to June 15 and during September and October; in Reaches 2 and 3 during the months of April, May, June, September, and October. Unappropriated water does not occur during the balance of the diversion season designated in the applications.

Natomas Central Mutual Water Company takes the position that a permit should be issued pursuant to its application for the entire irrigation season (i.e., March 1 to September 1 of each year). This applicant advances several arguments which are substantially as follows: First, that at least seven applications from the same source with priority junior to that of Application 15572 have been approved for the entire irrigation season; second, that because of its earlier priority date, it should be given an equivalent position to permits already issued should water ever become available in the future for appropriation during July and August; third, that in view of the Board's Decision D 1045, which found water available for appropriation in the reach of the Sacramento River below Knights Landing during the month of July in 55 per cent of the years studied, a permit should be issued to include that portion of the irrigation season; fourth, that there must necessarily be a substantial amount of water not used in any one year by holders of "pre-1950" assumed rights which the

applicant could appropriate. Water Code Section 1201 is cited as authority for the position taken by the applicant in this regard.

In response to the first two arguments, it must be pointed out that the filing date of Application 15572 is October 8, 1953. Any permit issued upon this application takes a priority of right as of that date. That seven permits were issued upon other unprotested applications in 1954 and 1955 cannot serve as authority for issuance of a permit to Natomas Central in the absence of a clear showing that there is unappropriated water available to supply the present applicant (see Water Code Section 1375(d)). The recipients of such earlier permits have not secured any legal advantage over this applicant. Their permits authorize only the appropriation of unappropriated water, and if there is no such water at certain times of the year, they have no right to divert during those times under authority of their permits. This is so even though their permits are not restricted as to seasons.

The third argument advanced by Natomas Central is the same as that urged on behalf of various applications considered in Board Decision D 1045. The matter was given further consideration upon petitions for reconsideration of that decision. However, the Board concluded in its order of December 12, 1962, reinstating D 1045, that in the light of the whole record, unappropriated water was not available to satisfy those applicants in sufficient amounts and frequency during the season for which permits were refused to warrant issuance of permits for diversion

of water during that season. Natomas Central has offered no evidence in this proceeding tending to show a change in circumstances which would warrant a different conclusion.

Finally, the 1956 Cooperative Study Program takes into account that the full face value of all pre-1950 assumed rights would not be used during the entire irrigation season of every year.

For example, only 85 per cent of the irrigable acres is considered for riparian rights. In the case of assumed appropriate rights, all overlap with assumed riparian rights was eliminated.

It is clear that the total value of these assumed rights exceeds the total quantity of water available in most years to satisfy them.

That some of the assumed rights are in the development stage and therefore all of the flow during July and August is not presently required to satisfy them does not mean that this applicant should have a permit for that portion of the season.

It would be a useless act for this Board to grant a permit for July and August when the applicant has no reasonable prospect of his diversion ripening into a water right.

SUMMARY AND CONCLUSIONS

The seasonal runoff of the Sacramento River and its tributaries does not coincide with the largest diversion demands.

Consequently, there is usually insufficient water to meet irrigation requirements without the benefit of seasonal storage provided by Shasta Dam.

The evidence shows that water surplus to the quantities necessary to satisfy existing rights does not occur in the Delta with sufficient frequency or in sufficient quantity during the critical summer months to justify issuing permits to appropriate water from the Sacramento River or its tributary sources during that period.

Unappropriated water does occur in sufficient quantity during the remainder of the irrigation season to supply the applicants, and subject to suitable conditions, such water may be diverted and used in the manner proposed during such time without causing substantial injury to any lawful user of water. The intended uses are beneficial. Construction work is complete.

The diversion season permitted under Applications 17809, 18061, 18062, 18122, 18372, and 20128 should not include the period between June 16 and August 31. Applications 15572, 16168, 16182, 18154, 18255 and 20821 should not be approved for diversions during the period July 1 through August 31.

ORDER

IT IS HEREBY ORDERED that the applications be, and they are, approved in part, and that permits be issued to the applicants limited to the amounts of water which can be beneficially used,

subject to vested rights and to the limitations and conditions herein set forth, as follows:

1-a. The amount of water to be appropriated under permit issued pursuant to Application 15572 shall not exceed 132 cubic feet per second to be diverted from about March 1 to about June 30 and from about September 1 to about September 15 of each year.

b. The amount to be appropriated under permit issued pursuant to Application 16168 shall not exceed 13.4 cubic feet per second to be diverted from about May 1 to about June 30 and from about September 1 to about September 30 of each year.

c. The amount to be appropriated under permit issued pursuant to Application 16182 shall not exceed 7.5 cubic feet per second to be diverted from about January 1 to about June 30 and from about September 1 to about December 31 of each year.

d. The amount to be appropriated under permit issued pursuant to Application 17890 shall not exceed 1 cubic foot per second to be diverted from about April 1 to about June 15 and from about September 1 to about October 30 of each year.

e. The amount to be appropriated under permit issued pursuant to Application 18061 shall not exceed 1.45 cubic feet per second to be diverted from about April 1 to about June 15 and from about September 1 to about October 15 of each year.

f. The amount to be appropriated under permit issued pursuant to Application 18062 shall not exceed 1.45 cubic feet per second to be diverted from about April 1 to about June 15 and from about September 1 to about October 15 of each year.

g. The amount to be appropriated under permit issued pursuant to Application 18122 shall not exceed 1 cubic foot per second to be diverted from about May 15 to about June 15 and from about September 1 to about September 15 of each year.

h. The amount to be appropriated under permit issued pursuant to Application 18154 shall not exceed 2 cubic feet per second to be diverted from about April 1 to about June 30 and from about September 1 to about November 1 of each year.

i. The amount to be appropriated under permit issued pursuant to Application 18255 shall not exceed 2 cubic feet per second to be diverted from about April 1 to about June 30 and from about September 1 to about October 1 of each year.

j. The amount to be appropriated under permit issued pursuant to Application 18372 shall not exceed 7.6 cubic feet per second to be diverted from about April 1 to about June 15 and from about September 1 to about October 1 of each year.

k. The amount to be appropriated under permit issued pursuant to Application 20128 shall not exceed 3 cubic feet per second to be diverted from about April 1 to about June 15 and from about September 1 to about October 1 of each year.

1. The amount to be appropriated under permit issued pursuant to Application 20821 shall not exceed 1 cubic foot per second to be diverted from about March 15 to about June 30 and from about September 1 to about October 15 of each year.

2. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

3. The maximum amounts herein stated are limited to the quantities which can be beneficially used and may be reduced in the license if investigation warrants it.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

5. Permittee shall allow representatives of the State Water Rights Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

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

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held in Sacramento, California, on the day of , 1964.

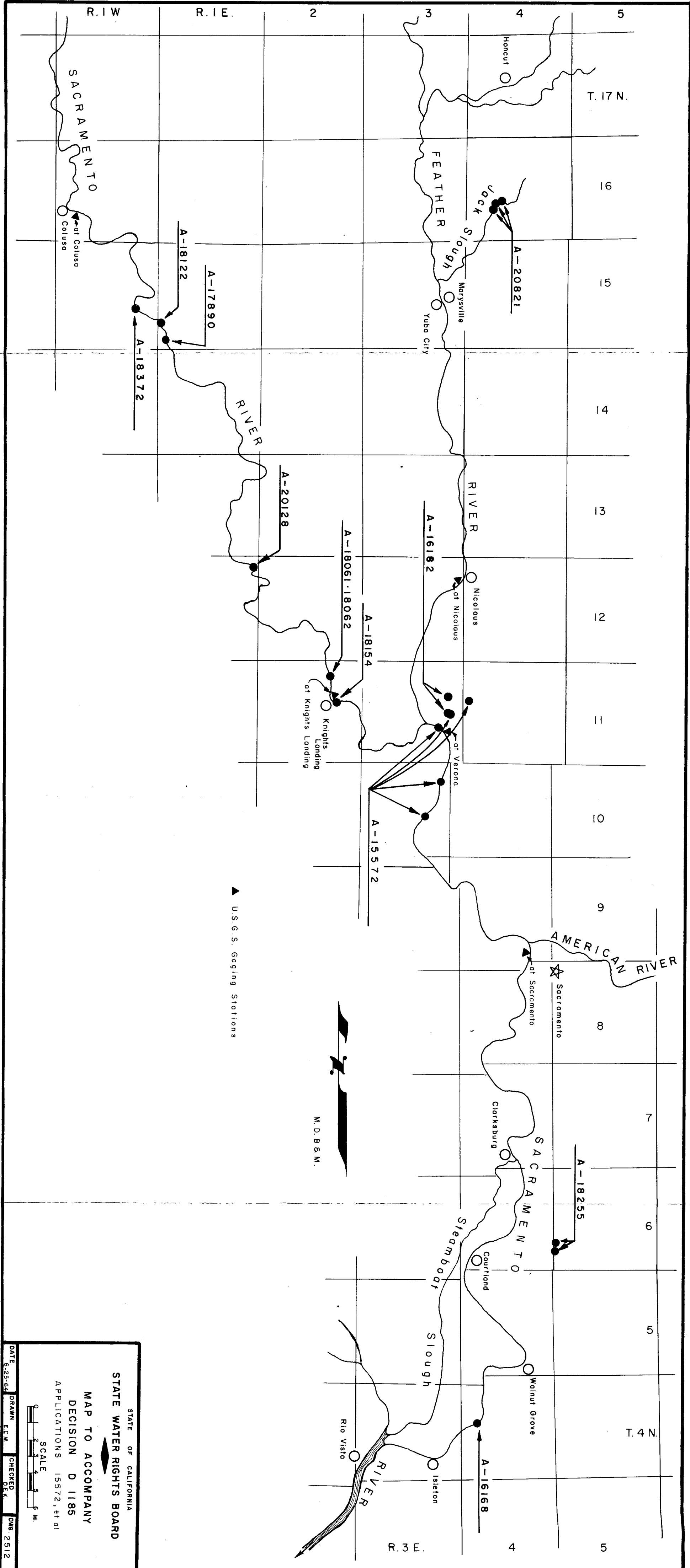
/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member

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▲ U.S.G.S. Gaging Stations

M. D. B. & M.

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

MAP TO ACCOMPANY
 DECISION D 1185
 APPLICATIONS 15572, et al

SCALE
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DATE 6-25-64 DRAWN E.C.W. CHECKED D.E.K. DWG. 2512