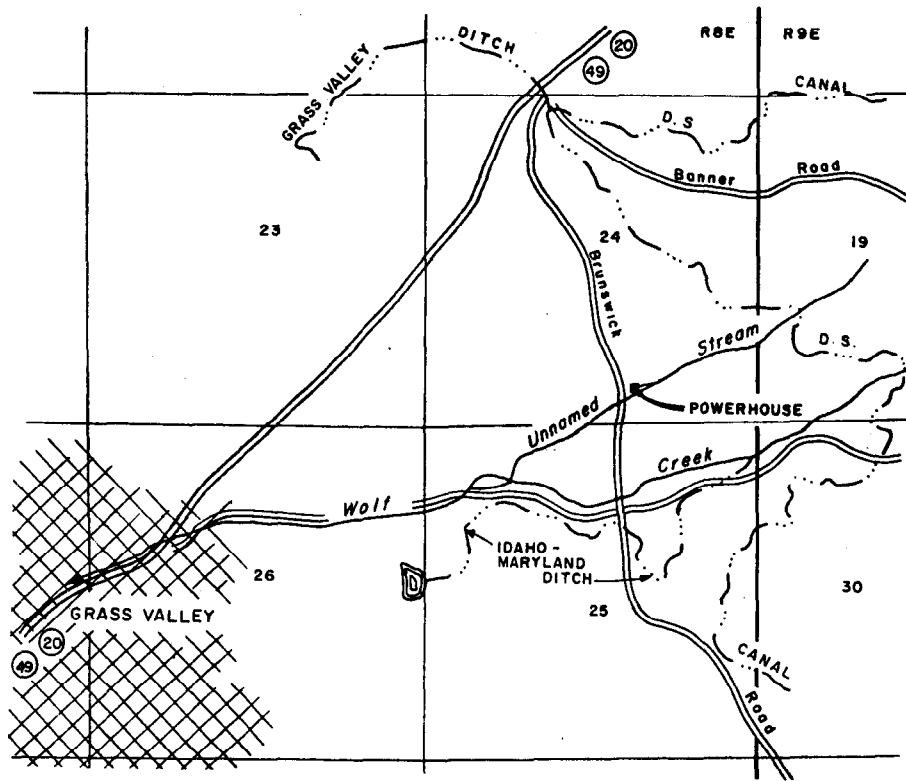


**HAEMMIG HYDROELECTRIC PROJECT
IN NEVADA COUNTY
APPLICATION 26876
DECISION 1602**



AUGUST 1984



STATE OF CALIFORNIA
George Deukmejian, Governor

STATE WATER RESOURCES
CONTROL BOARD

Carole A. Onorato, Chairwoman
Warren D. Noteware, Vice Chairman
Kenneth W. Willis, Member
Darlene E. Ruiz, Member

•
Michael A. Campos, Executive Director

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CITING THE RECORD

When citing evidence in the hearing record, the following convention has been adopted:

Information derived from the hearing transcript:

T,22/03-24/12

└─ ending page and line number (may be omitted if a single line reference is cited)

└─ beginning page and start line number

└─ identifying abbreviation of the information source

Information derived from an exhibit:

Staff, 8, 1

└─ page number; table, graph, or figure number; or application number if a file

└─ exhibit number

└─ identifying abbreviation of the information source

Abbreviation of the information sources are:

Applicant	Adrian B. and Janice L. Haemmig
District	Nevada Irrigation District
Department	California Department of Fish and Game
Board	State Water Resources Control Board
T	Hearing Transcript
County	Nevada County
CEQA	California Environmental Quality Act (Section 21000 et seq. of the Public Resources Commission)
FERC	Federal Energy Regulatory Commission
MDB&M	Mount Diablo Base and Meridian
PG&E	Pacific Gas and Electric Company



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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 26876,
ADRIAN B. & JANICE L. HAEMMIG,
Applicants,
NEVADA IRRIGATION DISTRICT,
Protestant.

DECISION 1602

SOURCES: Unnamed Tributary to
Wolf Creek, thence the
Bear and Feather Rivers

COUNTY: Nevada

DECISION APPROVING APPLICATION 26876

1.0 BY BOARD MEMBER KENNETH W. WILLIS

Adrian B. and Janice L. Haemmig having filed Application 26876, Nevada Irrigation District (District) and the California Department of Fish and Game (Department) having filed protests to the application; the Department's protest having been resolved by agreed upon conditions; a hearing having been held on March 14, 1984 to resolve issues raised by the District; the parties having appeared and the evidence and briefs having been duly considered, the Board finds as follows:

2.0 SUBSTANCE OF THE APPLICATION

Adrian B. and Janice L. Haemmig (Applicant) filed Application 26876 on June 17, 1981. Application 26876 is for a permit to divert up to 16 cubic feet per second (cfs) by direct diversion from January 1 through December 31 from an unnamed stream tributary to Wolf Creek, and thence

the Bear and Feather Rivers for power purposes. Water will be diverted, put to use and returned to the stream within the SW1/4 of SE1/4, Section 24, T16N, R8E, MDB&M.

3.0 APPLICANT'S PROJECT

3.1 Project Description

The Applicant owns property adjoining the unnamed stream within the District's boundaries. Facilities for diverting a maximum of 16 cfs from the stream by means of a dam approximately three feet high into a ditch and flume to a power house have been constructed. The power house is located on the right bank of the stream about 190 feet downstream from the diversion dam on land owned by the Applicant. The project has an installed capacity of 10 kW and can produce up to 60,000 kWhs annually. The project is located about one mile north and two miles east of Grass Valley.

3.2 Project Operation

During the irrigation season the District releases from 7 to 47 cfs of water to the unnamed stream. These flows are relatively steady and provide a suitable condition for project operation. The upstream watershed is at a relatively low elevation and no more than five square miles in area. Consequently, runoff during November through April from rainfall is erratic, of short duration and unsuitable for sustained plant operation. Operation during these months is made more difficult by the necessity to clear debris frequently from the trash racks at the point of diversion (T,25/23-26/7). The plant was operated about 16 hours from November of 1983 through April 1984. By

contrast, during May through October of 1983 the project operated for 3,432 hours (T,61/14-61/25). Clearly, the plant's operation depends almost completely upon releases of imported water to the stream by the District.

4.0 PROTESTS

4.1 Department of Fish and Game

Application 26876 was protested by the Department. The Department's protest was resolved when the Applicant agreed to have the following conditions included among permit conditions:

"[a] From April 15 to October 15 the permittee may divert 16 cfs or 50 percent of the flow, whichever is less.

"[b] From October 16 to April 14 the permittee shall bypass down the natural stream channel 2 cfs or the natural flow, whichever is less.

"[c] No water shall be diverted under this permit until permittee has installed a device(s) satisfactory to the State Water Resources Control Board, which is capable of measuring the flow(s) required by the conditions of this permit. Said measuring device(s) shall be properly maintained."

4.2 Nevada Irrigation District

The protest by the District is unresolved. The District questions the Board's jurisdiction to issue a permit for unappropriated water and, in the alternative, seeks permit conditions requiring the Applicant to pay for the nonconsumptive use of imported water placed in the unnamed stream by the District and to comply with other District requirements.

5.0 AVAILABILITY OF UNAPPROPRIATED WATER

5.1 District Water

From about April 15 to October 15 of each year practically all of the water flowing in the stream is imported by the District and is foreign to the stream. During this season, the District releases between 7 cfs and 47 cfs into the stream for consumptive uses by downstream customers. In addition to post-1914 appropriative rights, the District claims pre-1914 appropriative water rights to divert and use the water it releases into the stream. The water imported by the District and paid for by its customers is the water which is used during May through October by Applicant's project.

5.2 Water Code Section 1201

Water Code Section 1201 declares that all water flowing in any natural channel is available for appropriation excepting water being applied to useful purposes. Section 1201 is derived from Section 11 of the 1913 Water Commission Act. In Bloss v. Rahilly (1940) the California Supreme Court held that the language employed in the act shows an intention to declare the waters of the state, including foreign water, to be subject to appropriation insofar as that can be done without interfering with vested rights; however, this case dealt with foreign water that had been abandoned. (104 P.2d 1049; 16 Cal.2d 70.)

Stevens v. Oakdale Irrigation District (1935) makes it clear that an importer of foreign water is under no legal obligation to continue to import and abandon water for the use of another.

5.3 District's Right to Use Water for Power

District water released to the stream is both pre- and post-1914 appropriative foreign water. The record does not reveal the relative proportions of water released to the stream under pre- and post-1914 appropriative rights. The District does not currently appropriate water for power use at the location of the Applicant's project under pre- or post-1914 appropriative rights nor has the District petitioned the Board to put water to use for power at the location of the Applicant's project. As will be discussed in more detail subsequently, the District is evaluating the feasibility of developing power projects which will use the same water that supplies Applicant's project.

Water appropriated under the Water Code (post-1914) for one purpose is not deemed appropriated for other purposes; however, the purpose of use may be changed as provided by the Code. Changes are initiated by filing a petition with the Board (Section 1700, et seq.) No statutory procedure is required to change the use of a pre-1914 appropriative right. Nevertheless, changes may be enjoined where other legal users of water may be injured. Stevens v. Oakdale Irrigation District indicates, however, that noncontractual rights to the use of foreign water are not a valid basis for claiming injury as a legal user of water.

5.4 Water Code Section 7075

Water placed in a natural water course for delivery is not abandoned water. Water Code Section 7075 codifies earlier case law and provides that natural waterways may be used to convey imported water. Persons

using natural waterways to convey imported water are entitled to remove the amount of water placed in the waterway minus losses due to percolation, seepage, evaporation, transpiration, and the like (Burnett v. Whitson, 15 Cal. 35). Contests over the amount of foreign water the importer may remove have focused on the importer taking too much water because allowance was not made for instream losses. Other cases deal with the right of the importer to exclude others from the consumptive use of his imported water. No case deals with the question of whether a nonconsumptive use may be made of an importer's water. The Applicant's use of water is nonconsumptive and if the facility is properly operated will not reduce the quantity of water available to the District for other uses so long as the District does not need to deliver water to a customer between the point of diversion and the point of return to the stream.

5.5 Unappropriated Water is Available

As found previously, the District has not appropriated the water for power at the location of the Applicant's project (or any alternative location) nor will the project reduce the quantity of water available to the District. Having considered the foregoing we conclude the foreign water being delivered through the stream is available for appropriation for power under Section 1201. Our understanding of Section 1201 is guided by the fundamental policy provisions in Article X, Section 2 of the California Constitution and in Water Code Section 100 declaring the general welfare requires the water resources of the State be put to beneficial use to the fullest extent of which they are capable. Our conclusion that unabandoned foreign water is

available for appropriation under these circumstances assures the fullest implementation of this policy.

6.0 REQUESTED CONDITIONS

6.1 District's Dilemma

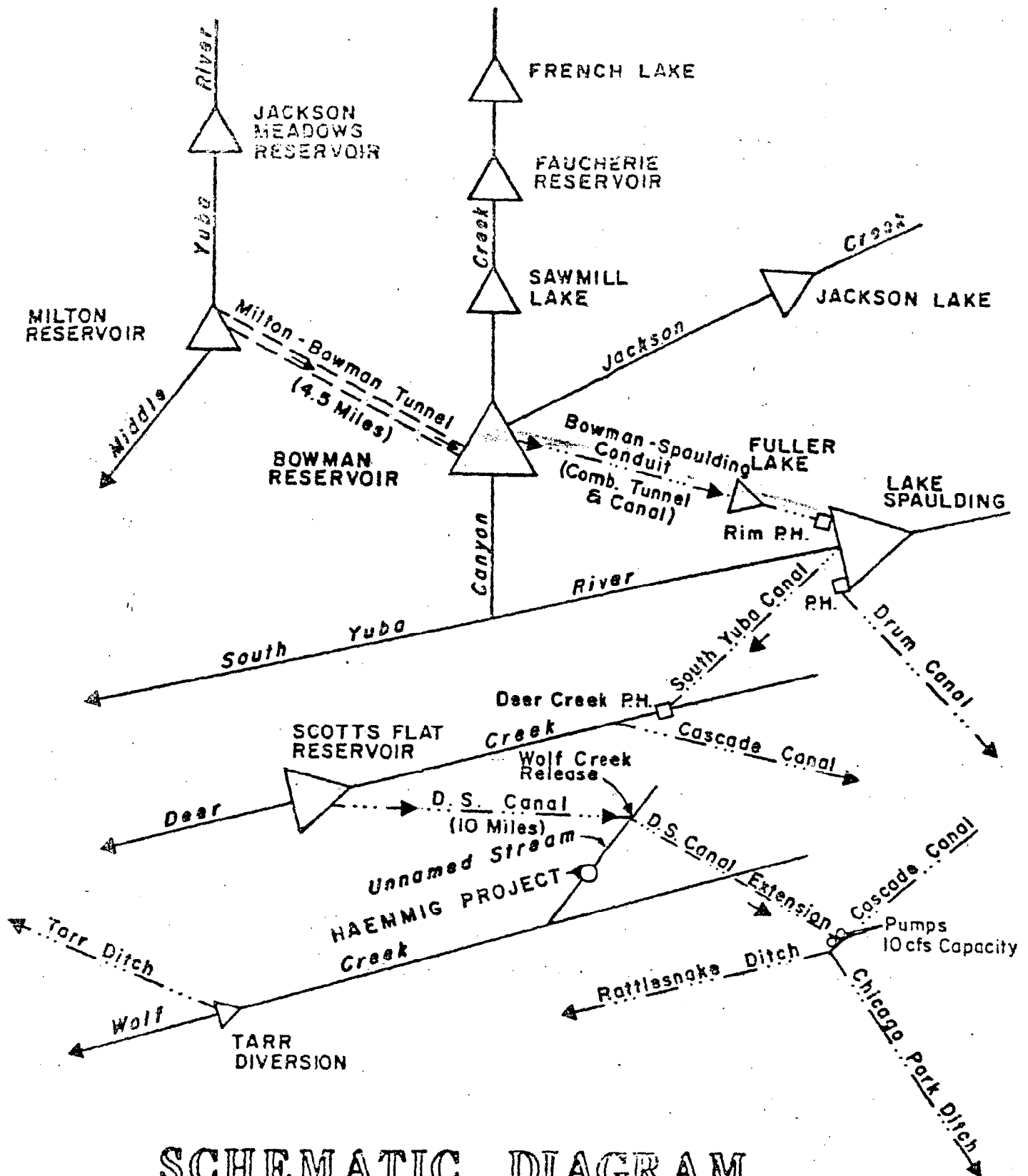
But for the water placed in the stream at District expense, the Applicant's project would not be possible. Our finding that this water is available for appropriation by the Applicant raises the question of whether the District has any legal recourse to recoup costs from the Applicant and whether the Board should require the Applicant to pay the District for the use of the water or to pay for insurance. The District has requested that such conditions be included in any permit issued.

6.2 District's Water System

The District's water system consists of two components, the Mountain Division, where most of the water is diverted and stored, and the Lower Distribution System, where most of the consumptive use is made.

6.2.1 The Two Components

A system of reservoirs on the Middle Fork Yuba River, Canyon Creek and Jackson Creek comprise the Mountain Division. The water is transported from the Mountain Division to the Lower Distribution System through a number of tunnels, open canals, ditches and natural streams, including the D. S. Canal and the Tarr Ditch. The following schematic diagram shows the District's water system. Parts of the



SCHEMATIC DIAGRAM

N.I.D. - WATER SYSTEM

NOT TO SCALE

system are used or owned jointly with the Pacific Gas & Electric Company (PG&E), such as part of the Bowman-Spaulding Conduit, Lake Spaulding and the South Yuba Canal.

6.2.2 D. S. Canal

The D. S. Canal has been used continuously since 1928. The canal delivers water to Wolf Creek and then to Tarr Ditch which serves approximately 300 customers (T,110/13-110/21). Water transported through the canal is released into the unnamed stream at a point called the "Wolf Creek Release". The Applicant's project is located on this stream.

6.3 District's Water Rights

Formed in 1921, the District has acquired a number of pre-1914 and post-1914 water rights. Under these rights, water is diverted and then distributed to customers. The pre-1914 water rights were acquired from predecessors using water for power generation (PG&E). The District also has numerous post-1914 appropriative rights to cover the consumptive and nonconsumptive use of water. A partial listing of these water rights is shown in the following table:

WATER RIGHTS OF
NEVADA IRRIGATION DISTRICT

Application (A) or Statement (S)	Permit (P) or License (L)	Source	Use
A 1270	P 2082	Jackson Creek	Mu,D,I
A 1614	P 1481	Deer Creek	Mu,D,I
A 1615	P 8808	Deer Creek	D,I
A 2275	P 2084	Middle Yuba River	P
A 2276	P 2085	Middle Yuba River	Mu,D,I
A 2372	P 2087	Jackson Creek, Canyon Creek, Texas Creek, Trap Creek, Fall Creek	P
A 4309	L 4544	South Yuba River	P
A 4310	P 1707	South Yuba River	P
A 5193	P 13770	Middle Yuba River	P
A 6701	P 5806	Clear Creek, Fall Creek, Trap Creek	P
A 6702	P 5807	Clear Creek, Fall Creek, Trap Creek	I
A 8177	P 5812	Wilson Creek	D, I
A 8178	P 5813	Texas Creek, Clear Creek, Fall Creek, Trap Creek	P
A 8179	P 5814	Wilson Creek	P
A 8180	P 5815	Texas Creek	D,I
A 15525	L 10016	South Yuba River	P
A 20017	P 13772	South Yuba River	D,I
A 20072	P 13773	Middle Yuba River	P
A 27132	P 18608	Deer Creek	P
A 27559	P 19158	Canyon Creek	P
S 4716	---	Canyon Creek	D,I,P
S 4717	---	Canyon Creek	D,I,P

NOTE: 1. Mu = Municipal, D = Domestic, I = Irrigation, P = Power

2. This tabulation shows only part of the District's water rights. The Bear River rights, for instance, are not included in the tabulation.

The District has adopted regulations governing the sale of water for power generation. The regulation provides, in part:

"The charge will be determined by multiplying 10 percent of the standard weighted average price, as published by Pacific Gas and Electric Company pursuant to California Public Utilities Commission Decision Number 91109, by the energy produced by District water. If the charge, as determined above on an annual basis, is less than the standard weighted average price multiplied by 2,500 kwh, the latter will be collected as a minimum charge for that particular twelve month period."

The District requests the Board to adopt, as a condition in any permit issued, the requirement that the Applicant enter into an agreement with the District to pay for the use of water supplied by the District. Considering the amount of water used by Applicant's project for the production of electricity, the charge is about four to five cents per acre-foot as compared to \$8 to \$10 charged for the use of water for irrigation (T,131/25-132/9).

6.6 Liability Insurance

The District has requested the Board to require the Applicant to acquire \$1,000,000 in liability insurance which includes the District as a co-insured. The District presented no testimony showing the need for such insurance (T,93/1-93/26).

6.7 Paramount Right to Use

The District has also requested that the Board include a condition in any permit issued recognizing that the District's right to the use of water for power has priority over the Applicant's right to the use of

water for power, and recognizing that the District may reduce the amount of water placed in the stream and used by the Applicant in order to fulfill its primary purpose of supplying water to consumptive use customers (T,134/16-135/1).

7.0 APPLICANT'S DILEMMA

The Applicant also has a dilemma, one created by his own action. Having constructed a project prior to the determination of whether unappropriated water is available or, if available, prior to a determination of what conditions should attach to any permit, the Applicant does not know whether the project will pay for itself.

7.1 Project Cost

Mr. Haemmig built the entire project himself and installed various components such as the turbine and automatic controls. The cost for purchasing materials and equipment was around \$10,000. This amount does not include payment for his time and labor in designing and building the project (T,49/25-50/5). The project was not financed, instead costs are met out-of-pocket. All necessary operation and maintenance is performed by Mr. Haemmig (T, 51/1-51/8).

7.2 Project Revenue

The Applicant has a 15-year contract with PG&E, for energy and capacity. The contract provides for quarterly adjustments in the rate paid for delivered electricity. During 1983, PG&E paid about 5.7 cents per kilowatt hour, for the delivery of 35,000 kWh of energy

resulting in about \$2,000 of revenue to the Applicant. Another \$14 to \$20 was received during months of production for capacity (T,43/1-45/19).

7.3 Power Charges

Applying the 10 percent power charges (paragraph 6.5) to the Applicant's gross revenues for 1983, about \$2,084, means the Applicant would pay around \$208 for the use of water to the District.

7.4 Insurance Cost

The premium for a \$1,000,000 liability insurance policy will cost about \$753 annually (T,48/17-48/21). Reduction of the liability coverage does not proportionately reduce the premium. For example, reducing the coverage to \$500,000 only reduces the premium by \$100 (T,53/3-53/10).

7.5 Taxing Considerations

As project proprietor the Applicant benefits from: (1) the Federal investment tax credit, a one time credit of 10 percent of total project equipment cost; (2) ordinary depreciation and, probably, (3) the 15-percent federal energy tax credit. No testimony was presented indicating the extent to which the credits may be utilized (T,51/9-51/17).

7.6 Recovery of Project Costs

Mr. Haemmig testified that they would be able to recover project costs within 5 to 7 years, that payment of 10 percent of revenues for the

use of water for power generation would extend the recovery by about 1 to 1-1/2 years, and that payment of the insurance premium, in addition to the power payment, would make the project infeasible to operate (T,50/6-52/25). Under the latter circumstance, the Applicant reasoned that the project would not pay for itself and pay enough to make it worth operating (T,52/20-52/25). Compounding Applicant's uncertainty is the fact that the District is evaluating its own project for the use of the water in the stream. Such a project could, obviously, make full recovery of project costs impossible and pay the Applicant to operate and maintain the plant.

7.7 Conditions Proffered

Recognizing the District's paramount interest in the use of the water, the Applicant proposes the following permit conditions (ABH, 1):

Permittee shall operate his project in such a manner as not to cause injury to District's prior water rights or flow requirements. Should operation cause injury to the District, permittee shall immediately modify his operation so that no such injury will continue.

Permittee shall keep an operations log. The log shall record events which change the amount of water diverted from the unnamed tributary to Wolf Creek. The log shall contain entries and details sufficient for understanding the routing of water through the project. Permittee shall make these records available to the District upon request. These records will be used to verify whether the operation of the project adversely affects the District's prior rights and operations.

Permittee, upon advance notice, shall allow the District or its designated representative reasonable access to his project for the purpose of obtaining information and other data as required by the terms and conditions of this permit.

To the extent that water available for use under this permit is imported water, this permit shall not be construed as giving any assurance that such supply will continue. Nevertheless, neither this condition nor any other language in this permit shall be construed as waiving the application of any section of the California Water Code, including Sections 1701 et seq.

8.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Board as lead agency has prepared and approved a mitigated Negative Declaration for the Applicant's project in accordance with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) After the Board adopts this decision it will file a Notice of Determination with the Secretary for Resources. Consideration of the Mitigated Negative Declaration and Initial Study, inclusion of the Negative Declaration's mitigation measures in the water right permit, and filing of the Notice of Determination will satisfy the Board's responsibilities under the California Environmental Quality Act.

9.0 CONCLUSIONS

Water Code Section 1253 provides this Board with broad discretion to determine what conditions should attach to the appropriation of water. Under the facts of this case we conclude that permit conditions should not be adopted requiring the Applicant to pay the District for the use of water for power generation or requiring the Applicant to purchase liability insurance naming the District as a co-insured.

9.1 Condition Requiring Payment for Water Denied

In concluding that the Applicant should not, by permit condition, be required to pay the District for the use of water, we are mindful of the fact that the water used by the Applicant is developed at the expense of the District and its customers. We conclude, however, that this fact does not overcome our analysis (Section 5.0, above) that, under Water Code Sections 1201 and 1700, interpreted in light of the fullest beneficial use command of Article X, Section 2 of the Constitution and of Section 100 of the Water Code, unappropriated water is presently available for the power use being made by Applicant. A repayment condition would be inconsistent with our affirmative finding on the question of availability of unappropriated water. The only apparent justification for imposing a repayment condition would be a conclusion that use of the water sought by Applicant is pursuant to a "service furnished by the district", within the meaning of Water Code Section 2280. Where the water sought by Applicant has been introduced by the District for the sole purpose of supplying consumptive use needs of downstream customers, and where the District does not presently possess the right to appropriate water for power use at Applicant's point of diversion, we cannot conclude that the District is furnishing a service to the Applicant. Accordingly, we deem this an appropriate case for application of the policy articulated in Bloss v. Rahilly, supra, and conclude that the water involved here is subject to appropriation insofar as the appropriation does not interfere with vested rights.

Our conclusion is also influenced by the following equities present in this matter. The District makes delivery of water for its customers through a natural watercourse on the Applicant's property and the District makes no payment to the Applicant. We have found that the Applicant's project does not reduce the quantity of water available to the District for sale to its consumptive use customers. Finally, so long as a customer pays for the use of water he can usually expect continued delivery of water from a supplier; in this case, the District expressly disclaims any such warranty because it may wish to use the same water for its own power project.

9.2 Condition Requiring Insurance Denied

We have also concluded that no condition should be adopted requiring the Applicant to obtain a \$1,000,000 insurance policy naming the District as a co-insured. The District did not present evidence of the risk of loss arising from private activities carried out by the Applicant, on the Applicant's own land, against which it wished to be insured. Thus, we have no evidence upon which to conclude that the condition should be adopted. Again, imposition of an insurance condition appears doctrinally inconsistent with our conclusion that water is available for appropriation by the Applicant. An appropriation by Applicant in its own right, for use on its own property, by means of works in which the District has no interest, does not appear to pose a substantial risk of liability to the Applicant justifying the insurance provision sought by the District.

9.3 Condition Recognizing District's Paramount Right to Use

Being mindful that the water used by the Applicant is imported at the expense of the District and its customers, explicit recognition of the request that the Board recognize the District's paramount right to the use of the water is appropriate (see paragraph 6.7, supra).

Condition 4 in our order recognizes the District's paramount right to the use of the water released from the D. S. Canal to serve its customer's consumptive uses and to use the water to operate a competing hydroelectric project even though the Applicant's project may be affected adversely.

10.0 ORDER

IT IS HEREBY ORDERED that Application 26876 be approved. The permit shall contain all applicable mandatory standard permit terms (6, 10, 11, 12, 13)* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 16 cubic feet per second to be diverted from January 1 to December 31 of each year.
2. Complete application of the water to the authorized use shall be made by December 1, 1987.
3. Permittee shall operate his project in such a manner as not to cause injury to the Nevada Irrigation District (District) prior water rights or flow requirements. Should operation cause injury

* The Board maintains a list of standard permit terms, copies of which may be obtained upon request.

to the District, permittee shall immediately modify his operation so that no such injury will continue.

4. Permittee shall keep an operations log. The log shall record events which change the amount of water diverted from the unnamed tributary to Wolf Creek. The log shall contain entries and details sufficient for understanding the routing of water through the project. Permittee shall make these records available to the District upon request. These records will be used to verify whether the operation of the project adversely affects the District prior rights and operations.
5. Permittee, upon advance notice, shall allow the District or its designated representative reasonable access to his project for the purpose of obtaining information and other data as required by the terms and conditions of this permit.
6. To the extent that water available for use under this permit is imported water, this permit shall not be construed as giving any right to the continuance of such supply. Permittee is put on notice that the District may discontinue releases of water into the unnamed stream at any time in order to serve its customers more effectively or to operate a competing hydroelectric project.
7. From April 15 to October 15 permittee may divert 16 cfs or 50 percent of the flow, whichever is less.

8. From October 16 to April 14 permittee shall bypass down the natural stream channel 2 cfs or the natural flow, whichever is less.
9. No water shall be diverted under this permit until permittee has installed a device(s) satisfactory to the State Water Resources Control Board, which is capable of measuring the flow(s) required by the conditions of this permit. Said measuring device(s) shall be properly maintained.
10. Water diverted under this permit is for nonconsumptive use and shall be released to the source stream within the SW1/4 of Section 24, T16N, R8E, MDB&M.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 16, 1984.

AYE: Carole Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz

NO:

ABSENT:

ABSTAIN:



Michael A. Campos
Executive Director

Several of the listed rights authorize the use of water for power at various locations in the Mountain Division. For example, permitted Application 2275 authorizes use of water from Middle Fork Yuba River for power purposes in Spaulding and Deer Creek Powerhouses, in Dutch Flat Powerhouse 1 and 2, and in Chicago Park, Rollins, Drum, Wise and Halsey Powerhouses (T,75/15-76/20). Power is also generated at the same powerhouses under permitted Application 2372 (filed on June 3, 1921) authorizing diversion of water from Jackson Creek, Canyon Creek, Texas Creek, Fall Creek and Trap Creek (T,76/23-77/3). Some of the previously mentioned powerhouses are owned by the District and some by PG&E and are operated under a consolidated contract (T,77/9-77/25). The location of the Applicant's project is not an authorized place of use for power in any of the District's post-1914 appropriative rights.

6.4 Proposed Hydroelectric Project

The District is presently studying the feasibility of three projects, all of which would utilize D. S. Canal water to generate energy. A preliminary permit has been obtained from FERC to study the three alternative sites. The study will require about one year. (T,123/2-123/25; T,81/3-81/16).

One of the alternatives is to build a pipeline from the D. S. Canal to Tarr Ditch and pass the water through a powerhouse utilizing the 600 to 700 feet of available head. If this alternative were implemented, a substantial portion of the releases relied upon by the Applicant would be eliminated. A second alternative is to divert water directly into Wolf Creek from the D. S. Canal through a powerplant utilizing

about 280 feet of head. This alternative would also eliminate most of the available supply of water to the Applicant. The third alternative is to build a powerplant along the unnamed stream utilizing the 280-foot drop from the D. S. Canal to the stream. This is the only alternative which may not discontinue the available flow to Applicant's project.

The District has the ability to construct and commence operation of a project within the next 5 to 7 years. Revenues from the sale of power would help defray the cost of delivering water for consumptive uses.

6.5 Charge for Use of Water for Power

The District sells water to its customers for municipal, domestic, recreational and irrigation purposes using a multiple rate structure. The rates vary depending on the use made (irrigation, residential, commercial), amount used (higher rates for smaller amounts), treatment required (raw water or treated), seasons of use, whether the place of use is within or outside the District's boundaries, and whether the water is return flow (T,104/3-104/26; T,105/11-106/9).

Water Code Section 22280 provides in part:

"Any district may in lieu in whole or in part of levying assessments fix and collect charges for any service furnished by the district, including any and all of the following:

* * *

"(d) use of water for power purposes."