

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the Matter of Application 531 of the City of Los Angeles and Board of Water and Power Commissioners of the City of Los Angeles to appropriate from Owens River, Tributary to Owens Lake in Mono and Inyo Counties for Power Purposes; Application 2432 of Sierra Land and Water Company to appropriate from Rush Creek and Tributaries, Tributary to Mono Lake in Mono County for Irrigation and Domestic Purposes; Application 3211 of the City of Los Angeles and the Board of Public Service Commissioners of the City of Los Angeles to appropriate from Leevining Creek, Walker Creek, Parker Creek and Rush Creek, Tributaries to Mono Lake in Mono County for Municipal Purposes; Application 3212 of the City of Los Angeles and the Board of Public Service Commissioners of the City of Los Angeles to appropriate from Leevining Creek, Walker Creek, Parker Creek and Rush Creek, Tributaries to Mono Lake in Mono County for Power Purposes; Application 3850 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles to appropriate from Rock Creek, Tributary to Owens River in Mono County for Power Purposes; Application 7053 of the City of Los Angeles and Department of Water and Power of the City of Los Angeles to appropriate from Leevining Creek, Tributary to Mono Lake in Mono County for Domestic and Municipal Purposes; Application 7055 of the City of Los Angeles and Department of Water and Power of the City of Los Angeles to appropriate from Rush Creek, Tributary to Mono Lake in Mono County for Domestic and Municipal Purposes; Application 7721 of Sierra Land and Water Company to appropriate from Leevining Creek and Rush Creek, Tributary to Mono Lake in Mono County for Irrigation and Domestic Purposes; Application 8042 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles to appropriate from Mill Creek, Leevining Creek, Walker Creek, Parker Creek and Rush Creek, Tributaries to Mono Lake in Mono County for Municipal Purposes and Application 8043 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles to appropriate from Mill Creek, Leevining Creek, Walker Creek, Parker Creek and Rush Creek, Tributaries to Mono Lake in Mono County for Power Purposes.

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Decision A, 531, 2432, 3211, 3212, 3850, 7053, 7055, 7721, 8042, 8043 D-455

DECIDED: April 11, 1940.

APPEARANCES AT HEARING HELD AT LOS ANGELES FEBRUARY 6 and 7, 1923, IN CONNECTION WITH APPLICATION 2432 OF SIERRA LAND AND WATER COMPANY.

For Applicant

Sierra Land and Water Company

Kelby & Lawson by
James E. Kelby

For Protestants:

City of Los Angeles and the Board of
Public Service Commissioners of the
City of Los Angeles

Jesse E. Stephens
W. B. Matthews
S. B. Robinson
Trent G. Anderson

Cain Irrigation Company and
Nevada California Power Company

W. L. Huber
Henry M. Coyle

L. S. Amiot

No appearance

EXAMINER: Harold Conkling, Hydraulic Engineer, Division of Water Rights,
Department of Public Works, State of California

APPEARANCES AT HEARING HELD AT INDEPENDENCE SEPTEMBER 22 and 23, 1938, IN CON-
NECTION WITH APPLICATIONS 531, 2432, 3211, 3212, 3850, 7053, 7055, 7721, 8042 & 8043

For Applicants

(1) City of Los Angeles and Dept. of Water
and Power of the City of Los Angeles

C. A. Davis

(2) Sierra Land and Water Company

C. C. Loomis
J. E. Clover
George B. Bush

For Protestants

(1) Gene Crosby, Gladys Crosby and Katie Adair
Katie Adair & Gladys Crosby, executors of the
Estate of Mary Conway, et al

Robert Richards

(2) Frankie G. Leibley, William H. Birchim
and James F. Birchim

Allan G. Campbell

(3) Caroline Arcularius Knecht and Caroline
Arcularius Knecht as administratrix of the
Estate of George Arcularius and guardian of
the Estate of Lisetta, Mary and Georgia Arcularius

Walter T. Lyon

(4) Emmet W. Knapp, June Knapp, T. J. Watterson
and Estate of Kate Watterson, deceased

Emmet W. Knapp and
Robert Richards

(5) Rusk Creek Mutual Ditch Company and
Sierra Land and Water Company

C. C. Loomis
George B. Bush

(6) County of Mono

Arthur De Chambeau

(7) Veneta Reche McPherson, Joe Scanavino, Gus
I. Hess, George Mitchell, Olive Mitchell, Mary
Donnelly, Clay Calhoun, Margaret Calhoun, Anna
M. Currie, Pearl M. Silva, George D. LaBrique,
John Dondero, Robert Gerth and Eva Gerth, and
Hugh McDonald, Robert Hankins, Arthur J. Frey
and Louise C. Fry, D. C. DeChambeau, Vernon A.
Meacham, Frank Williams, Claude and Luanna
Walborn, L. L. Tatum, William Banta, Harry Blaver,
Michael Lazovitch, Pete Zano, Robert Calhoun,
Mrs. Ruby Cunningham, Edythe V. Smith, C. P.
Riner, Anna S. Diasselliss

Thomas W. Cochran

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| (8) M. Zuckerman, Inc., John S. Zuckerman, Maurice Zuckerman, R.W. Brown | R. W. Brown |
| (9) J. B. Clover as stockholder in Rush Creek Mutual Ditch Company and Sierra Land and Water Company.
Sierra Land and Water Company | J. B. Clover |
| (10) Title Insurance and Trust Company | Ward Chapman |
| (11) Anna M. Currie
T. J. and Hazel J. Yerby | Glenn E. Tinder |
| (12) Henry Hayman | In propria persona |
| (13) Gordon McBride | In propria persona |
| (14) Harry S. Brown | In propria persona |
| (15) Ode C. Nichols | In propria persona |
| (16) Charles O. Perkins | In propria persona |
| (17) Wallace McPherson, Sr. | George B. Bush |
| (18) City of Los Angeles and Dept. of Water and Power of the City of Los Angeles | C. A. Davis |

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

APPEARANCES AT HEARING CONTINUED AT BRIDGEPORT, NOVEMBER 17, 1938

For Applicant

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| (a) City of Los Angeles and Dept. of Water and Power of the City of Los Angeles | C. A. Davis,
Deputy City Att'y. |
| (b) Sierra Land and Water Company | J. B. Clover |

For Protestants

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| (1) Katie Adair and Gladys Crosby as executrix of the Estate of M. A. Conway. Katie Adair, Gladys Crosby, R. P. Conway, Pearl Silvia, Gladys Crosby as testamentary trustee, Gene G. Crosby and Gladys Crosby | Robert Richards |
| (2) Venita Reche McPherson, Claude and Luanna L. Walborn, Margaret Calhoun, Clay Calhoun, Robert Calhoun, Gus Hess, George Mitchell, Olive Mitchell, Gerth Brothers, Mrs. Ruby Cunningham, Thomas H. and Elizabeth McKee, Joe Scanavino, Mrs. Anna Currie, George LaBraque, B. C. Honea, Anna Diasselliss, H. S. Brown, Arthur J. Frey | |

and Louise C. Frey, Vernon A. Meacham, Mike Lazavich, Pete Zano, Pearl M. Silva, John Dondero, Mary Donnelly, Earl Heavin, Wm. Y. Currie, Robert Hankins, Hugh McDonald, Frank Williams, William Banta, Harry Blaver, L. L. Tatum, Edythe L. Smith, C. P. Riner.

Thomas W. Cochran

(3) Mr. and Mrs. Tom Yerby, B. C. Honea

W. R. Evans

(4) Sierra Land and Water Co., J. B. Clover, Philip Wiseman and P. Kenneth Wiseman

J.B. Clover and
Thos. W. Cochran

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer, for Harold Conkling, Deputy in Charge of Water Rights.

O P I N I O N

Description of Projects

Under Application 531 of City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles, it is proposed to develop a regulated flow of 500 c.f.s. by direct diversion from Owens River at the Long Valley Reservoir dam within the $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 19, T 4 S, R 30 E, M.D.B.M. and by the storage of 329,926 acre feet per annum in the Long Valley Reservoir (Capacity 329,926 A.F.). It is proposed to use the water for the development of electrical energy through a series of three power houses located on the westerly bank of Owens River and one located on the easterly bank of Rock Creek near its junction with Owens River.

Water directly diverted without storage and/or water released from storage in Long Valley Reservoir will be used through Power House No. 1 within the $SE\frac{1}{4}$ $SW\frac{1}{4}$ of Section 25, T 4 S, R 30 E, M.D.B.M. and returned to Owens River just below the power house. At a point within the $SW\frac{1}{4}$ $NE\frac{1}{4}$, Section 36, T 4 S, R 30 E, M.D.B.M. the water will be rediverted for use through Power House No. 2 within the $SW\frac{1}{4}$ $NE\frac{1}{4}$ of Section 9, T 5 S, R 31 E, M.D.B.M. and returned to Owens River just below the power house. At a point within the $NW\frac{1}{4}$ $SE\frac{1}{4}$, Section 9, T 5 S, R 31 E, M.D.B.M. the water will be rediverted for use through Power House No. 3 within the $SE\frac{1}{4}$ $NW\frac{1}{4}$ of Section 27, T 5 S, R 31 E, M.D.B.M. and returned to Owens River just below the power house. At a point within the $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 27, T 5 S, R 31 E, M.D.B.M. the water will be rediverted for use through Power House No. 4 within the $NE\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 10, T 6 S, R 31 E, M.D.B.M. and returned to Owens River via Rock Creek at a point within the $NW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 10, T 6 S, R 31 E, M.D.B.M.

Under Application 2432 of Sierra Land and Water Company, it is proposed to appropriate from Rush Creek and its tributaries, 500 cubic feet per second by direct diversion from about April 15th to about September 15th of each season and 44,045 A.F. per annum for storage to be collected throughout the entire year of which it is proposed to store 22,708 A.F. in Silver Lake Reservoir on Rush Creek (Capacity 22,708 A.F.) and 21,337 A.F. in Gull-June Lake Reservoir on the headwaters of Reversed Creek (Capacity 21,337 A.F.). The point of direct diversion and diversion to storage in Silver Lake Reservoir is located within the $NW\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 4, T 2 S, R 26 E, M.D.B.M. The point of diversion to storage in Gull-June Lake Reservoir is located within the $NW\frac{1}{4}$ $SW\frac{1}{4}$ of Section 14, T 2 S, R 26 E, M.D.B.M. Water stored in the two reservoirs will subsequently be released and

together with water directly diverted without storage from Rush Creek at the Silver Lake Reservoir dam will be conveyed through the canal of the Rush Creek Mutual Ditch Company to lands lying north, east and south of Mono Lake where it will be distributed for irrigation and domestic purposes by this company.

Under Application 3211 of the City of Los Angeles and the Board of Public Service Commissioners of the City of Los Angeles, it is proposed to appropriate from Leevining Creek at a point within Lot 3 ($SW\frac{1}{4}$) of Section 19, T 1 N, R 26 E, M.D.B.M. 300 cubic feet per second by direct diversion throughout the entire year and 3870 acre feet per annum by storage to be collected at a maximum rate of 300 cubic feet per second in the Silver Lake Reservoir on Rush Creek (Capacity 10,000 A.F.) from March 1st to September 1st of each season; from Walker Creek at a point within the $SE\frac{1}{4}$ $SW\frac{1}{4}$ of Section 32, T 1 N, R 26 E, M.D.B.M. 100 cubic feet per second by direct diversion throughout the entire year and 1290 acre feet per annum by storage to be collected at a maximum rate of 100 cubic feet per second in Silver Lake Reservoir from March 1st to September 1st of each season; from Parker Creek at a point within the $SW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 8, T 1 S, R 26 E, M.D.B.M., 75 cubic feet per second by direct diversion throughout the entire year and 970 acre feet per annum by storage to be collected at a maximum rate of 75 cubic feet per second in Silver Lake Reservoir from March 1st to September 1st of each season; from Rush Creek, at a point within Lot 2 of Section 17, T 2 S, R 26 E, M.D.B.M., 300 cubic feet per second by direct diversion throughout the entire year and from Rush Creek at a point within the $SW\frac{1}{4}$ $NE\frac{1}{4}$ of Section 4, T 2 S, R 26 E, M.D.B.M., 3870 acre feet per annum to be collected to storage in Silver Lake Reservoir from March 1st to September 1st of each year. The point of redirection of storage in Silver Lake Reservoir is located within Lot 2 of Section 17, T 2 S, R 26 E, M.D.B.M. It is proposed to use the water for municipal purposes within the City of Los Angeles.

Application 3212 of the City of Los Angeles and the Board of Public Service Commissioners of the City of Los Angeles is identical with Application 3211 with the exception that the water is to be used for power purposes through the same power houses as are described in Application 531 and is thereafter to be returned to the Owens River at a point within the $NE\frac{1}{4}$ $SW\frac{1}{4}$ of Section 10, T 6 S, R 31 E, M.D.B.M.

Under Application 3850 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles it is proposed to appropriate from Rock Creek at a point within the $SW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 32, T 4 S, R 30 E, M.D.B.M., 50 cubic feet per second by direct diversion and 40,000 acre-feet per annum by storage to be collected in the Long Valley Reservoir on Owens River (Capacity 329,926 A.F.) at a maximum rate of 100 cubic feet per second. The season of direct diversion and diversion to storage is throughout the entire year. It is proposed to divert the water from Rock Creek by gravity into Long Valley Reservoir through the "Little Round Valley Ditch" from which reservoir the water will be rediverted for use through the three power houses on the Owens River (described in Application 531) and when sufficient water is available to satisfy the prior rights on Rock Creek, through Power House No. 4 on Rock Creek (also described in Application 531). In the event that insufficient water is present in Rock Creek to supply the Rock Creek priorities it is proposed to return the water to this stream through a ditch which will extend from a point above Power House

No. 4 to a point on Rock Creek within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 32, T 5 S, R 31 E, M.D.B. & M. where it will be made available for the users of water from this source, Water diverted through Power House No. 4 will be returned to Rock Creek at the tail race of this power house and thence to Owens River at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T 6 S, R 31 E, M.D.E.M.

Under Application 7053 of the City of Los Angeles and Department of Water and Power of the City of Los Angeles it is proposed to appropriate from Leevining Creek at a point within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T 1 N, R 26 E, M.D.B.M., 14,000 acre feet per annum to be diverted to storage throughout the year at a maximum rate of 20 cubic feet per second in the Grant Lake Reservoir on Rush Creek (Capacity 49,300 A.F.) in the Long Valley Reservoir on Owens River (Capacity 329,926 A.F.), in the Tinemaha Reservoir on Owens River (Capacity 16,500 A.F.) and in the Haiwee Reservoir on the Los Angeles Aqueduct (Capacity 59,000 A.F.). It is proposed to pump water from Leevining Creek into the Mill Creek conduit at a point above its junction with Leevining Creek and whence it will be taken by gravity to storage in Grant Lake, Long Valley and Tinemaha Reservoirs where a portion of the water will be stored, and subsequently released into the Owens River whence it will be rediverted through the Los Angeles Aqueduct to the City of Los Angeles for municipal and domestic purposes. En route to the City a portion of the water will be stored in the Haiwee Reservoir.

Under Application 7055 of the City of Los Angeles and Department of Water and Power of the City of Los Angeles, it is proposed to appropriate from Rush Creek at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 1 N, R 26 E, M.D.B.M. 36,000 A.F. per annum to be diverted to storage throughout the year at a maximum rate of 50 cubic feet per second in the four reservoirs described in Application 7053. It is proposed to pump water from Rush Creek into the Leevining conduit at a point above its junction with Walker Creek, a tributary of Rush Creek, whence it will flow by gravity to storage in Grant Lake, Long Valley and Tinemaha reservoirs where a portion of the water will be stored and subsequently released into the Owens River whence it will be rediverted through the Los Angeles Aqueduct to the City of Los Angeles for municipal and domestic purposes. En route to the City a portion of the water will be stored in the Haiwee Reservoir.

Under Application 7721 of Sierra Land and Water Company it is proposed to appropriate from Leevining Creek at a point within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9, T 1 N, R 26 E, M.D.B.M., 150 cubic feet per second and from Rush Creek at a point within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 26, T 1 N, R 26 E, M.D.B.M., 75 cubic feet per second, diversion to be made throughout the entire year and the water to be used for irrigation and domestic purposes on 12,000 acres of land lying on the north, east and south shores of Mono Lake.

Under Application 8042 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles it is proposed to appropriate (1) from Mill Creek at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14, T 2 N, R 25 E, M.D.B.M., 50 cubic feet per second by direct diversion throughout the year and 3,860 acre feet per annum by storage to be collected throughout the year at a maximum rate of 50 cubic feet per second; (2) from Leevining Creek, at a point

within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T 1 N, R 26 E, M.D.B.M., 200 cubic feet per second by direct diversion throughout the year and 32,000 acre feet per annum by storage to be collected at a maximum rate of 300 cubic feet per second; (3) from Walker Creek at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T 1 S, R 26 E, M.D.B.M., 100 cubic feet per second by direct diversion throughout the year and 7,740 acre feet per annum by storage to be collected throughout the year at a maximum rate of 400 cubic feet per second; (4) from Parker Creek at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, T 1 S, R 26 E, M.D.B.M., 75 cubic feet per second by direct diversion throughout the year and 5,800 acre feet per annum by storage to be collected throughout the year at a maximum rate of 475 cubic feet per second and (5) from Rush Creek at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T 1 S, R 26 E, M.D.B.M., 200 cubic feet per second by direct diversion throughout the year and 48,000 acre feet per annum by storage to be collected throughout the year in Grant Lake Reservoir on Rush Creek (Capacity 49,300 A.F.), provided, however, that the simultaneous direct diversion from all five sources shall not exceed 200 cubic feet per second.

It is proposed to store water in Grant Lake Reservoir on Rush Creek (described above), Long Valley Reservoir on Owens River (Capacity 329,925 A.F.), Tinemaha Reservoir on Owens River (Capacity 16,500 A.F.) and Haiwee Reservoir on Los Angeles Aqueduct (Capacity 59,000 A.F.).

Water appropriated by direct diversion and that released from storage will be conveyed to the City of Los Angeles where it will be used for municipal purposes.

Application 8043 of the City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles is identical with Application 8042 with the exception that the water is to be utilized for the development of power through the power houses described in Application 531 and is thereafter to be returned to Owens River at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T 6 S, R 31 E, M.D.B.M.

Protests

Protests against the Approval of Application 531

Application 531 was protested by Owens River Canal Company, Mono Power Company, Bishop Creek Ditch Company, Frank Shaw Land and Cattle Company, Owens River and Big Pine Canal Company, McNally Ditch Company, Farmers Ditch Company, Rawson Ditch Company, Silver Lake Power and Irrigation Company, Round Valley Irrigation Company, Owens Valley Irrigation District and Southern Sierras Power Company.

The rights of Owens River and Big Pine Canal Company, McNally Ditch Company, Farmers Ditch Company and Rawson Ditch Company have been purchased by the applicant and these companies are non-existent. By letter dated August 8, 1938, the protests of Silver Lake Power and Irrigation Company and the Nevada-California Electric Corporation as successors in interest of Southern Sierras Power Company and Mono Power Company were withdrawn. The Owens Valley Irrigation District and the Round Valley Irrigation District have been dissolved.

The only remaining protests against the approval of Application 531 are those of Frank Shaw Land and Cattle Company, Bishop Creek Ditch Company and Owens River Canal Company.

Protestant Frank Shaw Land and Cattle Company claims the ownership of some 1300 acres of land known as the "Frank Shaw River Ranch" located within Sections 19 to 24 inclusive and Sections 29 and 30, T 6 S, R 32 E, M.D.B.M., which he claims is riparian to Owens River and have been used for grazing purposes and the production of valuable crops of hay by means of "annual natural overflow and irrigation" from the waters of Owens River. It alleges in effect that should applicant interfere with the normal average flow of the Owens River its lands will be rendered unproductive and it will necessitate the construction of ditches and artificial means at considerable expense for conducting the water to the lands for irrigating purposes.

The Bishop Creek Ditch Company claims an appropriative right initiated prior to the effective date of the Water Commission Act to 6000 miners inches of water measured under a 4" pressure of the waters of Owens River and the ownership of a canal the intake of which is located on the Owens River at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 22, T 6 S, R 32 E, M.D.B.M. It claims that water is supplied to approximately 65 stock holders for irrigation and domestic purposes on some 10,000 acres of land and alleges in effect that any interference with the normal flow of Owens River will prevent the diversion and use of water under its prior vested right.

The Owens River Canal Company claims an appropriative right initiated prior to the effective date of the Water Commission Act to 5000 miners inches of water measured under a 4" pressure of the waters of Owens River and the ownership of a canal, the intake of which is located on the Owens River at a point within Section 24, T 6 S, R 31 E, M.D.B.M. It claims that water is supplied to approximately 100 stock holders for irrigation and domestic use on some 6000 acres of land and alleges in effect that any interference with the normal flow of Owens River will interfere with its prior vested right.

Protests Against the Approval of Application 2432

Application 2432 was protested by Cain Irrigation Company, Nevada California Power Company and L. S. Amiot.

The Cain Irrigation Company claimed appropriations from Rush Creek initiated prior to the effective date of the Water Commission Act and confirmed by decree of Superior Court of Mono County in Case 2091 (Cain Irrigation Company vs. J. S. Cain, et al). Water was diverted at the following points:

NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, T 1 S, R 26 E, M.D.B. & M.
NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 10, T 1 S, R 26 E, M.D.B. & M.
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 9, T 1 S, R 26 E, M.D.B. & M.
SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, T 1 S, R 26 E, M.D.B. & M.

Protestant alleged in effect that there was no unappropriated water in Rush Creek and that the necessary rights of way had not been obtained.

The water rights of the Cain Irrigation Company on Rush Creek and its tributaries were acquired by the City of Los Angeles by deed dated May 6, 1935.

Nevada California Power Company had Application 51, License 622 and Application 5068, License 623 to appropriate from Leevining Creek and Application 52, License 25, Application 1026, License 61 and Application 3969, License 564 to appropriate from Rush Creek. It also claimed riparian rights to the waters of Rush Creek and alleged in effect that the proposed appropriation would interfere with its prior rights. Subsequent to the filing of its protest the rights of the Nevada-California Power Company were acquired by the Nevada California Electric Corporation and the licenses now stand upon the records of this office in the name of the latter company.

L. S. Amiot claims a right to the use of water from Rush Creek based upon a "Patent Right" to property within Sections 23 and 24, T 1 N, R 26 E, M.D.B. & M. and by "use of water commenced prior to the effective date of the Water Commission Act" and alleges in effect that should Application 2432 be approved it would interfere with his prior rights to divert water from Rush Creek at three points located "along the southern half of Section line between Sections 23 and 24, T 1 N, R 26 E, M.D.B. & M."

Protests Against the Approval of Applications 3211 and 3212

Applications 3211 and 3212 were protested by Elizabeth Farrington, Chris Mattly, J. A. Mattly, Louis S. Amiot, Southern Sierras Power Company, Nevada California Power Company, Cain Irrigation Company, J. B. Clover, Title Insurance and Trust Company, Sierra Land and Water Company, Rush Creek Mutual Ditch Company, Venita Reche McPherson, Robert L. Currie, Philip and Philip Kenneth Wiseman, Wallis D. McPherson, administrator of the Estate of S. W. McPherson, deceased, Jacob E. Birkenmaier, Edythe V. Smith, Harry S. Brown and Anna S. Diasselliss.

It is not deemed necessary to set forth the several grounds of protest against the approval of these two applications as applicant has requested that they be cancelled. (Transcript of hearing November 17, 1938, p. 21).

Protests Against the Approval of Application 3850

Application 3850 was protested by Round Valley Irrigation District, W.D. and Mrs. H. L. Roberts, Owens Valley Irrigation District, Rock Creek Water Users, Inc., Caroline Arcularius, administratrix of the Estate of George Arcularius and guardian of the Estate of Lisetta, Mary and Georgia Arcularius, R. W. Brown, Gene and Gladys Crosby, Inyo National Forest, Frankie G. Leibly, William H. Birchim and James F. Birchim, T. J. and Hazel J. Yerby, M. Zuckerman, Inc. by M. Zuckerman, President, and John S. Zuckerman, Henry Heyman and Ode C. Nichols. Gordon McBride appeared as protestant at the hearing.

The Owens Valley Irrigation District and the Round Valley Irrigation District have been dissolved and the organization under the name of Rock Creek Water Association are non-existent; therefore there is no need to state their ground of protest.

W.D. and H.L. Robert, W.H. and J.F. Birchim claim rights by appropriation initiated prior to the effective date of the Water Commission Act.

Gene G. and Gladys Crosby, Frankie G. Leibly and William H. Birchim and James F. Birchim and Caroline Arcularius claim rights by virtue of riparian ownership.

T. J. and Hazel J. Yerby, M. Zuckerman, Inc., John S. Zuckerman, Maurice Zuckerman, R. W. Brown, Henry Heyman and Gordon McBride and Inyo National Forest claim rights initiated under the Water Commission Act.

The right upon which the use of water by Ode C. Nichols is based is not stated in his protest. On August 30, 1939 he filed Application 9716.

All of these protestants allege in effect that the proposed diversion of applicant if approved will deprive them of water to which they are entitled.

Protests Against the Approval of Applications 7053 and 7055

Applications 7053 and 7055 were protested by Harry S. Brown, Thomas H. and Elizabeth W. McKee, Arthur J. Frey and Louise C. Frey, trustee, Claude and Luanna Walborn, Vernon A. Meacham, County of Mono, L. L. Tatum, D. C. De Chambeau and J. Scanavino, Venita Reche McPherson, B. C. Honea, Frank Williams, Mike Lazovich and Pete Zano, J. B. Clover as a stock holder in both Sierra Land and Water Company and Rush Creek Mutual Ditch Company and as a property owner and tax payer in Mono County, John Dondero, Robert and Eva Gerth and Wallace and Marie Gerth, Robert Hankins, Hugh McDonald, Sierra Land and Water Company, Philip Wiseman and P. Kenneth Wiseman, Owners of Town Lots in Leevining townsite (including Joe Scanavino, Gus I. Hess, William M. Hess, George Mitchell, Olive Mitchell, Mary Donnelly, Clay Calhoun, Margaret Calhoun, Anna M. Currie, Earl Hearnin, Wm. Y. Currie, Pearl M. Silva, George D. La Brique and Robert Calhoun).

The following protestants own or occupy property within the recreational area surrounding June and Gull Lakes and vicinity above the proposed points of diversion of the City. A number of them are appropriating water from springs under filings before this office.

Thomas H. and Elizabeth W. McKee
Robert and Eva Gerth
Wallace and Marie Gerth
Arthur J. Frey and Louise C. Frey, Trustee
Claude and Luanna Walborn
Vernon A. Meacham
Robert Hankins
Frank Williams
L. L. Tatum

These protestants claim that the diversion of water as proposed by the City under Applications 7053 and 7055 would result in the drying up of Mono Lake and in destroying the value of Mono Basin as a recreational center. They have invested in summer resorts and homesites, the value of which is dependent upon the natural beauty of the surrounding property and allege in effect that the exportation of water from Mono Basin will render their investments valueless.

The following protestants own or occupy lots in the townsite of Leevining, located within the SW $\frac{1}{4}$ of Section 9, T 1 N, R 26 E, M.D.B. & M.

Joe Scanavino
Gus I. Hess
William M. Hess
George Mitchell
Olive Mitchell
Mary Donnelly
Clay Calhoun
Margaret Calhoun
Anna M. Currie
Earl Hearnin
William Y. Currie
Pearl M. Silva
George D. La Braque
Robert Calhoun
Mike Lazovich
Pete Zano
B. C. Honea

These protestants claim a right by appropriation initiated prior to the effective date of the Water Commission Act and by virtue of riparian ownership to approximately 13 miners inches of water from Leevining Creek. They allege in effect that should Applications 7053 and 7055 be approved it would result in depriving the townsite of a future water supply, in drying up Mono Lake and in destroying the recreational value of Mono Basin and hence their means of livelihood.

Protestants Hugh McDonald, John Dondero, Joe Scanavino, D. C. De Chambeau and Harry S. Brown own lands lying north and west of Mono Lake. These protestants allege in effect that the proposed diversions will take from Mono County two of its largest streams thereby laying waste and desert a large area of the County, reducing the recreational value of the basin and lowering the underground water table in the vicinity of Mono Lake. They assert that applicant should not be allowed to export water which is needed for irrigation purposes in Mono Basin except for domestic purposes.

Philip Wiseman owns the E $\frac{1}{2}$ (fractional) of NE $\frac{1}{4}$ of Section 12, T 1 N, R 27 E, and NE $\frac{1}{4}$ and S $\frac{1}{2}$ of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 7, T 1 N, R 28 E, M.D.B. & M. Kenneth Wiseman Owns the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6 and the N $\frac{1}{2}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T 1 N, R 28 E, M.D.B. & M. These protestants allege in effect that the proposed diversions under Applications 7053 and 7055 would result in depleting the underground basin over which their property lies, furthermore that applicants have no right to divert water from Mono Basin which is needed within the Basin itself.

Protestant Venita Reche McPherson owns the "Mono Inn" property on the westerly shore of Mono Lake being Lots 1, 2, 4, 5 and 6 of Section 30, T 2 N, R 26 E, M.D.B.M. upon which there are perennial springs which supply more than

60 miners inches of water measured under a 4 inch head which are used for domestic and irrigation purposes. It is her opinion that these springs are fed by the underground waters of Rush Creek. She claims that these springs were expressly excepted and reserved to her use in the condemnation suit which resulted in an interlocutory decree wherein all of the littoral rights appurtenant to the Mono Inn property were condemned. She claims the right to have this source of supply retained and protests against any diversion of water which may constitute any part of the source of supply of the springs on the Mono Creek property and specifically requests that any permit which may be issued to the applicant shall expressly recite that it is subject to all vested rights without prejudice to any right of this protestant.

The County of Mono alleges in effect that should Applications 7053 and 7055 be approved it would result in depriving the County of the waters of two of its largest streams and in laying waste to and making desert a large area of Mono County; that the recreational area will be greatly reduced causing great injury to owners of property located in Mono Basin who rely upon the revenue obtained from tourists; that the small holdings not purchased by the City will depreciate in value, that the County will suffer the loss of taxable property and the revenue derived therefrom and that the increased burden will necessarily be thrown upon the remaining residents of the County.

Protestant believes that the greater portion of the water will be used by the applicant for irrigation purposes and only a small amount for domestic purposes and in no event should applicant be allowed to divert water to the detriment of Mono County for any purpose than for domestic use.

The Sierra Land and Water Company claims rights initiated under Applications 2432 and 7721, action upon which is still pending before the Division and also under a right initiated April 6, 1914 by the posting of a notice to appropriate from Rush Creek at a point within Section 15, T 1 S, R 26 E, M.D.P.M. Protestant states that while no use of water has been made under the old right except for domestic purposes, 15 miles of ditch have been constructed under a permit granted by the U. S. Forest Service and rights of way granted by the U.S. Land Office.

Protestant claims that Application 2432 was filed long before Applications 7053 and 7055 and therefore should have the earlier priority. It claims also that Applications 7053 and 7055 were originally filed by the California Municipal Water Supply Company for the purpose of serving the Coastal Plain area exclusive of the City of Los Angeles, a purely speculative purpose and not until the applications were assigned to the City of Los Angeles and amended applications filed did the applications reveal the present intent of the applicant; that the amended applications filed were so varient from the original applications as to constitute in effect new applications having a priority as of January 16, 1937, the date upon which the new applications were filed, which date is subsequent to the date upon which its Application 7721 was filed.

Protestant alleges in effect that the rights initiated by the Company are for the irrigation and development of lands within the Mono Lake watershed requiring practically all of the unappropriated water flowing in the streams tributary thereto whereas applicant proposes to divert the water into a foreign

watershed when it already has under its control and available to its use water in excess of any present or future need of the City and that the laws of the State of California do not sanction the diversion of water from one watershed to another until the needs of the watershed wherein the water has its source have been provided for.

J. B. Clover, a stockholder in the Sierra Land and Water Company and Rush Creek Mutual Ditch Company, claims the ownership of land in Mono Basin and alleges in effect that the proposed diversions by applicant are not made in good faith for the purpose of securing water for domestic and municipal purposes but that the City intends to acquire the same for irrigation purposes outside of Mono Basin; that his lands are susceptible of irrigation under the applications of the Sierra Land and Water Company and were acquired under the provisions of the desert land laws of the United States; that at the time of entry of said lands the United States Land Office approved stock in said companies as an ample and satisfactory right for the irrigation and reclamation of said land and that the diversion of water as proposed by applicant will prevent the companies from completing their irrigation project.

Moreover, protestant alleges in effect that the proposed diversions will deplete the underground water underlying his lands and that this water is a natural resource of Mono County and should be used for the development of the County.

Protests Against the Approval of Application 7721

Application 7721 was protested by Cain Irrigation Company, Nevada-California Electric Securities Company, California Municipal Water Supply Company, Thomas G. and Kate Watterson and June Knapp, City of Los Angeles and Archibald Farrington.

The protests of Cain Irrigation Company, Nevada California Electric Securities Company and California Municipal Water Supply Company need not be considered as the rights of these interests have been assigned to the City of Los Angeles.

The City of Los Angeles and the Board of Water and Power Commissioners of the City of Los Angeles claims rights to appropriate from Leevining Creek and Rush Creek initiated by the filing of Applications 7053, 7055, 8042 and 8043; that although subsequent in time Applications 8042 and 8043 have a preferred priority and alleges in effect that there is insufficient unappropriated water in the sources from which it proposes to divert to warrant the approval of Application 7721. Also that the necessary rights of way and easements have not yet been acquired by the Company.

Thomas G. and Kate Watterson and June Knapp claim rights by virtue of riparian ownership and use for many years on lands located within Sections 16, 17 and 19, T 1 N, R 26 E, M.D.E.M. and allege in effect that should Application 7721 be approved it would deprive them of water to which they are entitled to divert and use from Leevining Creek.

Archibald Farrington claims rights to use water from Walker Creek and Boulder Canyon, tributaries of Rush Creek and from Gibbs Canyon, a tributary of Leevining Creek and alleges in effect that any diversions from Leevining and Rush Creeks will interfere with his prior vested rights.

Protests Against the Approval of Applications 8042 and 8043

Applications 8042 and 8043 were protested by Title Insurance and Trust Company (N.W. Thomson), Harry S. Brown, Hugh McDonald, E. W. Billebe (predecessor in interest to Mrs. Ruby H. Cunningham), Sierra Land and Water Company, Ruby H. Cunningham, June Knapp and T. J. Watterson, Katie Adair and Gladys Crosby, as executors of the Estate of Mary A. Conway, deceased, and individually, Gladys Crosby as Testamentary Trustee of Pearl Conway Silva and Pearl Conway Silva and Richard P. Conway, J. B. Clover as a stockholder in both Sierra Land and Water Company and Rush Creek Mutual Ditch Company and as a property owner and tax payer in Mono County, and Anna S. Diasselliss.

N. W. Thompson in behalf of Title Insurance and Trust Company claims an adjudicated right to the use of water from Mill Creek, which is diverted at a point within $NW\frac{1}{4} SW\frac{1}{4}$, Section 13, T 2 N, R 26 E, M.D.B.M. A right is claimed to 45 miners inches measured under a 4" head for the irrigation of 110 acres of land located within the $W\frac{1}{2}$ of $E\frac{1}{2}$ of Section 24, T 2 N, R 25 E, M.D.B.M. This water together with spring water has also been used on the so-called "Mono Inn" property on the shores of Mono Lake being Lots 1, 2, 4, 5 and 6 of Section 30, T 2 N, R 26 E, M.D.B.M., containing 134.71 acres. Protestant alleges in effect that should Applications 8042 and 8043 be approved it would result in not only depriving protestant of the water to which he is entitled to divert from Mill Creek but would also result in the drying up of the springs on the "Mono Inn" property. Harry S. Brown claims the ownership of Lots 1 and 2 of $SW\frac{1}{4}$, Section 18, T 3 N, R 28 E, M.D.E. & M.

Hugh McDonald owns lands within the $E\frac{1}{2}$ of $NE\frac{1}{4}$ of Section 28 and $W\frac{1}{2}$ of $NW\frac{1}{4}$ of Section 27, T 3 N, R 27 E, M.D.B.M.

Anna S. Diasselliss claims the ownership of the $E\frac{1}{2} NW\frac{1}{4}$ and $N\frac{1}{2} NE\frac{1}{4}$ of Section 27 and $SE\frac{1}{4} NW\frac{1}{4}$, $NE\frac{1}{4} SW\frac{1}{4}$ and $S\frac{1}{2}$ of $SW\frac{1}{4}$ of Section 23, T 3 N, R 27 E, M.D.M.

These protestants allege in effect that diversions as proposed under Applications 8042 and 8043 would result in depriving them of the underground water as overlying land owners, would prevent future development of their property, would result in the lowering of the water surface level in Mono Lake and deprive the Basin of its recreational advantages.

E. W. Billeb, predecessor in interest of Ruby H. Cunningham, claimed the ownership of property bordering on the westerly shore of Mono Lake and riparian rights to the waters of the streams from which applicant seek to appropriate; also to the drainage and underground sources thereof for the maintenance of the water level and littoral rights to Mono Lake.

Protestant alleges in effect that the proposed diversions from the Mono Basin would eventually cause the drying up of Mono Lake and destroy the value of his property which is situated in Sections 30 and 31, T 2 N, R 26 E, M.D.B.M.

and also affect adversely the value of his property within Sections 7 and 18, T 1 S, R 26 E, M.D.B.M; that the City already has an adequate supply of water and is now selling water for irrigation purposes instead of using the same for domestic purposes. Protestant states that the City now has suits pending in the courts involving his lands as well as the lands of other property owners in Mono Basin and requests that action upon Applications 8042 and 8043 be deferred until the final disposition of these suits.

The protests of Sierra Land and Water Company and J. B. Clover as a stock holder in both the Sierra Land and Water Company and Rush Creek Mutual Ditch Company and as a property owner and tax payer in Mono County are identical to those filed against the approval of Applications 7053 and 7055 to which reference is made.

Ruby H. Cunningham owns Lot 6 of Section 31, T 2 N, R 26 E, M.D.B.M. bordering on the west shore of Mono Lake and claims littoral ownership to navigable water. She states in effect that in the case City of Los Angeles et al, vs. Aitken, et al, the applicants sought to condemn the littoral rights of the owners of land bordering on Mono Lake including the littoral rights to the lands described above, that the case involved the diversion of all waters of Rush Creek and its tributaries, Parker Creek and Walker Creek, and Leevining Creek and its tributary Gibbs Canyon Creek; that Mill Creek was the only creek named as a source of appropriation in Applications 8042 and 8043 which was not involved in the condemnation suit, that the suit was tried in January-June 1934 and resulted in a judgment awarding damages to her and other littoral owners on Mono Lake. She alleges in effect that the littoral rights on Mono Lake will be entirely destroyed by the recession of the waters thereof resulting from the diversion proposed under Applications 8042 and 8043.

June Knapp and T. J. Watterson claim the ownership of lands riparian to Leevining Creek within the $S\frac{1}{2}$ of $NE\frac{1}{4}$ of Section 16, T 1 N, R 26 E, M.D.B.M. and that use of water has been made for irrigating trees and pasture from about June 1 to about December 1 of each year. The lands are involved in the case of City of Los Angeles et al, vs. Nina B. Aitken, et al, which is now on appeal, which case is still pending. They allege in effect that the City has no right or rights to divert waters outside of the watershed wherein they originate and that the water does not actually exist in the amounts sought to be appropriated.

Katie Adair and Gladys Crosby as executors of the Estate of Mary A. Conway, deceased, and individually, Gladys Crosby as Testamentary Trustee of Pearl Conway Silva, and Pearl Conway Silva and Richard P. Conway own what is commonly known as the Conway Ranch consisting of approximately 1000 acres of land through which the waters of Virginia Creek and Mill Creek flow. They claim that for a period of over 40 years last past they have applied to beneficial use 700 miners inches of water from Mill Creek and 300 miners inches from Virginia Creek and allege in effect that diversion from Mill Creek as proposed under Applications 8042 and 8043 would in effect render their lands valueless.

The protests of Sierra Land and Water Company and J. B. Clover are similar to those filed in connection with Applications 7053 and 7055.

Hearings Set in Accordance with Section 1a
of the Water Commission Act

The several applications were completed sufficiently for advertising in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for public hearings in accordance with Section 1a of the Water Commission Act as follows:

Application 2432 on February 6, 1923, at 9:30 o'clock A.M. at 1122 Pacific Finance Building, Los Angeles, California.

Applications 531, 2432, 3211, 3212, 3850, 7053, 7055, 7721, 8042 and 8043 on September 22, 1938, at 10:00 o'clock A.M. in Court Room, Court House, Independence, California, and reconvened on November 17, 1938, at 10:00 o'clock A.M. in Superior Court Room, Court House, Bridgeport, California.

Of these hearings applicants and record protestants were duly notified.

General Discussion

Application 531 of the City of Los Angeles and the
Board of Water and Power Commissioners of the City of Los Angeles

The rights of the Owens River and Big Pine Canal Company, McNally Ditch Company, Farmers Ditch Company and Rawson Ditch Company have been purchased by applicant and these companies are non existent.

The protests of Silver Lake Power and Irrigation Company and the Nevada-California Electric Corporation as successor in interest of Southern Sierra Power Company and Mono Power Company were withdrawn and the Round Valley Irrigation District and the Owens Valley Irrigation District have been dissolved.

As to the other protestants, Frank Shaw Land and Cattle Company, Bishop Creek Ditch Company and Owens River Canal Company, no appearances were made in their behalf at the hearing although these companies received notice thereof and no cause was shown for failure to appear. The failure on the part of these protestants to appear or show cause for non appearance may be taken as presumptive evidence that they are no longer concerned in the matter and their protests are accordingly dismissed and Application 531 may be approved.

Applications 3211 and 3212 of the City of Los Angeles and the
Board of Public Service Commissioners of the City of Los Angeles

The City of Los Angeles asks to be allowed to proceed under Applications 8042 and 8043 rather than under Applications 3211 and 3212. They have

no present plans for proceeding under the earlier filings having apparently held on to them in the thought that as Applications 2432 and 7721 of the Sierra Land and Water Company were prior in time to Applications 8042 and 8043, the earlier priority under Applications 3211 and 3212 should be preserved.

However, at the hearing held at Bridgeport on November 17, 1938, applicant's attorney moved that Applications 3211 and 3212 be dismissed and was assured by the Examiner that this would be done. (Transcript, page 21.)

Applications 3211 and 3212 may therefore be cancelled.

Applications 2432 and 7721 of
Sierra Land and Water Company

The Rush Creek Mutual Ditch Company organized in 1912 made application to the Forest Service for rights of way on Grant Lake on September 6, 1912. This application was rejected as a similar application had not been made to the Department of the Interior for lands outside of the Forest Reserve. On May 15, 1914, a complete filing for rights of way was made by Sierra Land and Water Company, organized in 1914, but the application was finally rejected on October 27, 1920, by the Department of the Interior upon the grounds that the Company failed to show that it had a valid water right and by letter dated March 16, 1921, the General Land Office rejected the projects proposed by the Rush Creek Mutual Ditch Company and Sierra Land and Water Company as one not capable of delivering water for reclamation purposes. The denial of the application for right of way on Grant Lake by the Secretary of the Interior and injunctions against the use of right of way over certain private lands resulted in depriving the Sierra Land and Water Company of right of access to Rush Creek.

In order to initiate an appropriative right to the waters of Rush Creek Application 2432 was filed by Sierra Land and Water Company on July 6, 1921, notwithstanding the fact that all of the waters of the Creek were adjudicated under the so-called "Hancock Decree" and there were well established water rights on the stream. The application was advertised under date of January 11, 1922, and being protested was set for public hearing in Los Angeles on February 6, 1923.

After giving due consideration to the matters brought out at the hearing and the various briefs filed in connection therewith the Company was advised under date of November 23d that the following conclusions had been reached:

1. In view of the judgment entered in the case of Cain Irrigation Company v. J. S. Cain et al. (No. 2091 Sup. Ct. of Mono County) no action could be taken on any application on Rush Creek which contemplated a depletion of the waters thereof, while this decree still stands.

2. The standing of the Sierra Land and Water Company as an applicant for the use of water from Rush Creek for agricultural purposes should give it sufficient interest in the matter to initiate whatever

proceedings that might be necessary to obtain a modification of said decree, provided that it was in no manner a party thereto.

3. In the event that the Sierra Land and Water Company was a party to the decree, its failure to appeal same would render it impossible for the Division to issue a permit.

4. That before Application 2432 could be considered, disposal would have to be made of the earlier Application 1274 by G. W. Bowman as trustee for the proposed Inyokern Irrigation District for agricultural purposes, which application was pending before this office. (Note: Application 1274 was subsequently cancelled on February 6, 1926, for failure to complete.)

5. That all of the proposed points of diversion lay within the National Forest and the area embraced within the Reclamation Service withdrawal of April 5, 1920, and that the proposed diversions in Section 4, T 2 S, R 26 E, M.D.B.&M. lay within a power site withdrawal and that while the Division would not require the actual issuance of the necessary easements by Federal authorities as a condition precedent to action by itself, it would not consider favorable action until it was advised of the willingness of the Federal authorities to grant those easements provided permit issues from the Division.

On November 30, 1923, the Sierra Land and Water Company filed in the local land office at Independence, California, four applications for rights of way over the public domain. The applications were made under Act of Congress of March 3, 1891, 26 Stat. 1095, and Section 2 of the Act of May 11, 1898, 30 Stat. 404, as amended (43 U.S.C.A. Sec. 951), which provide for the granting of rights of way for canals and reservoirs to carry and store water for irrigation. In each application Rush Creek was named as the source of water supply, and the applications were based upon an appropriation of 75,000 miners inches of water from Rush Creek in accordance with the laws of the State of California.

On November 30, 1923, the Commissioner of the General Land Office rejected the four applications on the ground that there was no evidence to establish the existence of the water right claimed, or of the possibility of the Company's securing water for the carrying out of the irrigation project.

In the meanwhile the Sierra Land and Water Company brought suit to have the Hancock Decree set aside and to have the case retried on its own merits and an appeal was taken from the decision of the Commissioner to the Secretary of the Interior, and the Secretary ⁷⁹⁸ requested by the Company to suspend action on the appeal pending an adjudication in the courts of California of the waters of Rush Creek.

On September 27, 1933, a final decision in the California litigation was reached by the Supreme Court holding that the Sierra Land and Water Company possessed no enforceable right to the waters claimed by it. (Sierra Land and Water Company v. Cain Irrigation Company, 219 Cal. 82, P. (2d) 223.)

After notice of the decision of the Supreme Court, the Secretary of the Interior by decision dated December 8, 1933, affirmed the office decision of November 30, 1923. Thereafter the Company raised the question as to the authority of the Secretary of the Interior to require evidence of a water right, or the sufficiency of the source of supply, as a condition precedent to the approval of its applications for ditch and reservoir rights of way and petitioned for rehearing. Upon refusal of the Secretary to reopen the case a suit was instituted, alleging the invalidity of these requirements by the Secretary and seeking a writ of mandamus to compel the Secretary to approve its several applications for rights of way notwithstanding the failure of the Company to furnish evidence of its right or ability to obtain water for carrying out its project. This case was tried in the U. S. Court of Appeals for the District of Columbia and resulted in affirmation of the decree of the Secretary of the Interior, United States ex rel. Sierra Land and Water Company (84 Fed. Rep. 2d 228) decided April 13, 1936.

On October 24, 1933, the Sierra Land and Water Company filed Application 7721 seeking to appropriate 150 cubic feet per second from Leevining Creek and 75 cubic feet per second from Rush Creek for the irrigation of 12,000 acres of land on the shores of Mono Lake. No storage was contemplated.

Under date of February 21, 1934, the Register of the Land Office at Sacramento was instructed by the Department of the Interior to accept no desert land annual proofs where the expenditures alleged were based upon the purchase of the capital stock of the Rush Creek Mutual Ditch Company and/or the Sierra Land and Water Company and to accept no desert land final proof where the water right was based on the ownership of the capital stock of the Rush Creek Mutual Ditch Company and/or the Sierra Land and Water Company.

The proposed irrigation project of the Sierra Land and Water Company according to competent investigators is entirely without merit as an irrigation enterprise. Its applications for rights of way and easements over government lands have been denied in connection with Rush Creek and the record indicates that the proposed point of diversion on Leevining Creek is on government land and in order to convey water from Leevining Creek to the proposed place of use it would not only be necessary for the Sierra Land and Water Company to obtain necessary easements from the Government but also from lands owned by the City of Los Angeles or the Nevada California Electric Corporation (Transcript Nov. 17, 1938, pages 22 and 23).

Under date of August 17, 1934, the Division was informed by the State Railroad Commission that the Sierra Land and Water Company had not applied for any certificate of public convenience and necessity covering service to the proposed place of use and no showing by the Company has been made to indicate that such an application has been made.

On August 20, 1934, the Secretary of State's office informed the Division that the franchise of the Sierra Land and Water Company was suspended on May 8, 1934, for failure to pay the franchise tax and under date of November 14, 1938, the office of the State Franchise Commissioner advised the Division that the corporate rights and powers of the Sierra Land and Water Company and the

Rush Creek Mutual Ditch Company were suspended as of March 5, 1937, for failure to satisfy tax liability of record. Subsequent to the hearing an affidavit was filed with this office over the signature of Mr. Clover stating that the State Franchise Tax of the Sierra Land and Water Company had been paid and that the Corporation was in good standing and entitled to do business.

This does not remedy the condition as to right of way and easements however, and under Section 20 of the Water Commission Act the City of Los Angeles has a preferred priority to the appropriation of the waters of Leevin- ing and Rush Creeks for municipal purposes and it appears that should the City exercise the rights under its Applications 7053, 7055 and 8042, and we have every reason to believe that it will, there will be no unappropriated water available for diversion under Applications 2432 and 7721 of the Sierra Land and Water Company.

The Sierra Land and Water Company is of the opinion that the delay in acting upon its Application 2432 was inexcusable and gave the City of Los Angeles an opportunity to obtain an alleged preferential right under its subsequent applications. In this connection it may be said that if immediate action had been taken in connection with Application 2432 after hearing this office would undoubtedly have cancelled the application as it was clearly indicated that the waters of Rush Creek were fully appropriated under the Hancock Decree and the Company was unable to secure the necessary rights of way. Action was delayed in order to afford the Company every opportunity to proceed with such action as was necessary to make available to its use unappropriated water and to obtain assurance from the Department of the Interior that should Application 2432 be approved the necessary rights of way and easements would be granted.

The conditions as stated above have not materially changed. The City of Los Angeles however has added the Colorado River to its various sources of supply and while under its Applications 7053, 7055 and 8042 the City may eventually use the entire flow of the sources named therein, there is a possibility that either the development may not be made to the extent contemplated or that the City may be agreeable to the use of the water by the Company to a limited extent. For these reasons it is believed that action should be withheld for a reasonable time in connection with Applications 2432 and 7721 of the Sierra Land and Water Company in order to afford it an opportunity to arrange for necessary rights of way and easements, and to formulate its plans for use of the water under existing conditions.

Application 3850 of the City of Los Angeles and the
Board of Water and Power Commissioners of the City of Los Angeles

Under Application 3850 it is proposed to appropriate from Rock Creek, 50 cubic feet per second by direct diversion and 40,000 acre feet per annum by storage to be collected in Long Valley Reservoir on Owens River at a maximum rate of 100 cubic feet per second. The season of direct diversion and diversion to storage is throughout the entire year. As advertised and as presented at the hearing the point of diversion was described as being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 32, T 4 S, R 30 E, M.D.B. & M. but at the hearing the attorney for the applicant moved the privilege of amending Application 3850 to describe the point of diversion as being approximately 125 feet below the highway bridge on Rock Creek located near the northeast corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 32

which point would be approximately 0.8 of a mile below the point of diversion originally described. The request was made as applicant was of the opinion that the effectiveness of the appropriation would not be lessened by the change and the grounds of protest of T. J. and Hazel A. Yerby and of Frankie G. Leibly and William H. and James F. Berchim whose points of diversion are above the proposed new point of diversion would be eliminated.

In conformity with the motion on May 3, 1939, there was received in this office a petition from the City requesting permission to change the point of diversion named in Application 3850 to a point which is described as being S. 2° 23' 15" W. 1108' from the corner common to Sections 28, 29, 32 and 33, T 4 S, R 30 E, M.D.B. & M. and being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32, T 4 S, R 30 E, M.D.B. & M. The location of the point of diversion is approximately the same as that specified at the hearing and as it was there agreed that the application would be considered in the amended form to avoid any further hearing, the discussion of this application will be based upon the amended location of the point of diversion (Transcript p. 63).

The Owens Valley Irrigation District and the Round Valley Irrigation District have been dissolved and the organization known as the Rock Creek Water Users Association is non existent, therefore their protests may be dismissed.

W. D. and Mrs. E. L. Roberts, in their protest filed April 21, 1924, claim the right to divert water for power purposes and the irrigation of 240 acres of land in Inyo County which right is based upon use commenced prior to the effective date of the Water Commission Act. Apparently they were users of water in an irrigation district not now in existence. No appearance was made in their behalf at the hearing although they received notice thereof and apparently they have no further interest in the proposed appropriation. Their protest may therefore be dismissed.

Based upon Exhibit 47, Part 1 of the City of Los Angeles revised by records on file with this office and the fact that the proposed point of diversion under Application 3850 will be changed to a point below the Highway Bridge, the following tables have been prepared showing the users of water from Rock Creek both above and below the proposed point of diversion.

Users of Water from Rock Creek and Tributaries
above Point of Diversion

<u>Appl.</u>	<u>Permit</u>	<u>License</u>	<u>Appropriator</u>	<u>Amount</u>	<u>Season</u>
6276	3347	1124	*Gordon McBride	200	g.p.d. May 1 - Nov. 30
7066	3945	1558	J. K. Eldridge	200	" May 1 - Nov. 30
7168	3930	1530	Ingle Carpenter	200	" June 1 - Sept. 30
7349	4051	1828	Mrs. Frankie M. Beatty	200	" May 15 - Oct. 15
8112	4571	--	A. D. Snyder	200	" Jan. 1 - Dec. 31
8128	4454	--	Chas. G. Kibbe	200	" May 1 - Nov. 1
8129	4455	1853	Orville E. Yochem	200	" May 15 - Nov. 1
8245	4610	--	Ingle Carpenter	1.3	c.f.s. Apr. 16 - Nov. 15
8248	4825	--	*R. W. Brown	1500	g.p.d. Jan. 1 - Dec. 31
8270	4582	--	Rock Creek Lodge	3250	" May 1 - Oct. 31
8352	4718	--	*T. J. Yerby	3.0	c.f.s. Mar. 1 - Dec. 31
8353	4965	--	*T. J. Yerby	15000	g.p.d. Mar. 1 - Dec. 31
8902	4954	--	*U.S. Inyo Nat. For.	1800	" May 1 - Oct. 15
9311	3278	--	John P. Dodge	200	" Apr. 15 - Nov. 15
9558	5415	--	W. E. Whorff and E. T. Albright	200	" May 1 - Dec. 1
Riparian Rights			*Frankie G. Leibly	448	Ac.Ft.
Riparian Rights			*Birchim and Leibly	2065	"

* Protestants against the approval of Application 3850.

Rock Creek Water Users Below Point of Diversion

Riparian Rights			*Arcularius Estate	1680	Ac.Ft.
Riparian Rights			*Gene G. and Gladys Crosby	35	"
6320	3325	1318	*John S. Zuckerman	100	g.p.d. Apr. 1 - Dec. 1
6674	3562	1518	Ruby Alauzet	200	" Apr. 15 - Oct. 30
6686	3580	1592	Minnie Wiitala	200	" Jan. 1 - Dec. 31
7170	3911	1529	Elbert E. English	200	" Apr. 1 - Nov. 15
7171	3947	1556	Chas. O. Perkins	200	" Apr. 15 - Nov. 15
7265	3975	1689	H.C. and E. J. Farrington	200	" Apr. 1 - Oct. 30
8288	4607	--	*Henry Heyman	1500	" Jan. 1 - Dec. 31
8906	5064	--	Mrs. M. B. Lewis	200	" May 1 - Nov. 1
9025	5076	--	*M. Zuckerman	1500	" Mar. 1 - Jan. 1
9421	5269	--	R. L. Zink	200	" May 1 - Oct. 31
9552	5382	--	G.&A. Scheunemann	200	" Jan. 1 - Dec. 31
9716	5447	--	*Ode C. Nichols	200	" Jan. 1 - Dec. 31

*Protestants against the approval of Application 3850.

The protests of those who divert and use water above applicants' proposed point of diversion may be dismissed as the City's diversion will not interfere with whatever rights they may have.

As to those protestants who take and use water below the City's proposed point of diversion, the situation is one which may well concern them. Special use tracts have been surveyed and developed by the Inyo National Forest on Rock Creek and summer homes and resorts have been constructed on the assumption that the natural values of the mountain stream would be preserved and that they would be assured of an adequate domestic supply. Many of these users of water are applicants before this office.

Aside from the use of water from Rock Creek for domestic and recreational purposes under vested rights the Forest Supervisor directs attention to the fact that Rock Creek provides fishing for no less than 1000 trout fishermen annually, that Highway No. 395 traverses the creek for a distance of some five miles and that the aesthetic beauty of the stream and the forest cover along its banks contribute much to the enjoyment of the several thousand people who travel annually over the highway.

The City of Los Angeles admittedly seeks to divert the entire flow of Rock Creek at its proposed point of diversion leaving the channel below substantially dry except possibly for some seepage which may find its way into the channel which according to the record would be almost negligible in amount. The City admits also that it is doubtful whether the proposed diversion could be made without infringing upon or interfering with the rights below and proposes to initiate proceedings to quiet title to these rights.

The present use of water from Rock Creek for domestic purposes under applications before this office is about 13,000 gallons per day or approximately 0.02 of a cubic foot per second of which amount nearly one-third is diverted from Rock Creek below the proposed point of diversion. In addition thereto protestants Gene G. and Gladys Crosby claim a right to 9 cubic feet per second for power, domestic and recreational purposes and the Arcularius Estate claims a right to the use of water for the irrigation of 240 acres of land and for domestic use. No testimony was presented at the hearing relative to the actual use of these protestants but according to Exhibit 47, Part 1 of the City, the total rights do not exceed 1715 acre feet per annum as shown in the above table.

The testimony presented at the hearing indicated that the long time average seasonal flow of Rock Creek was approximately 45 or 50 cubic feet per second. In 1921 an estimate was made by the City of the monthly flow of Rock Creek using Bishop Creek runoff as a basis of calculation during the period from October 1, 1903 to December 31, 1920. In this estimate the watershed of Bishop Creek above the mouth of the canyon was considered as being 100.7 square miles and the Rock Creek catchment area above the mouth of the canyon as 36.0 square miles. From this estimate the following table has been prepared.

Average Monthly Runoff of Rock Creek at Mouth of Canyon
for the Period October 1, 1903, to December 31, 1920

Month	Average Discharge c.f.s.	Month	Average Discharge c.f.s.
October	21.2	April	23.8
November	16.7	May	56.5
December	15.9	June	111.5
January	17.4	July	115.3
February	15.3	August	60.8
March	18.1	September	28.4

Mean seasonal runoff 42 c.f.s.

The above table indicates that the maximum flow of Rock Creek occurs during the summer months.

The City expects to acquire all vested rights below by condemnation or if they cannot be so acquired will let sufficient water down to satisfy them. However it is believed that there is a great deal of merit in the contention of that group of protestants who are concerned lest Rock Creek be destroyed as a recreational stream.

In general, the Division feels that the Water Commission Act requires it to protect streams in recreational areas by guarding against depletion below some minimum amount consonant with the general recreational conditions and the character of the stream. In some instances, where the stream flow during the summer months is not above the amount required to safeguard the public interest in this particular, the season of diversion has been limited so as to exclude the vacation months. On Rock Creek however, the vacation season comprises the months of greatest runoff as indicated by the above table and to deny entirely appropriations during these months would not be within the limits of reason. This phase of the matter was not made an issue at the hearing to the extent that the amount of water which should be allowed to flow down the stream could be deduced from testimony. The Supervisor of the Inyo National Forest has suggested that the City's diversion from Rock Creek be limited to the flood waters or to amounts in excess of approximately 5 cubic feet per second during the winter months and 25 cubic feet per second during the summer months.

It is doubtful that this office can with propriety limit the diversion to the extent proposed by the Forest Service. The vacation season apparently extends from about April 1st to about November 30th of each year but in order to preserve fish life it is necessary that a certain amount of water be allowed to pass downstream throughout the entire year. Such a condition was incorporated in the permit issued in approval of Application 8768 to appropriate 2.0 c.f.s. from Strawberry Creek in El Dorado County. The Eldorado National Forest objected to the approval of this application upon the grounds that a diversion of 2.0 c.f.s. during the summer months would result in drying up the creek for some distance below but agreed to withdraw the protest pro-

vided that a clause be incorporated in the permit to the effect "that at least one-half second foot of water would be allowed to flow past the diversion dam at all times." The Forest Supervisor was informed that while in general this office was of the opinion that such agreements should be entered into privately between applicant and protestant, in this case public policy was involved and therefore such a term and condition as set forth above would be incorporated in any permit which might be issued in approval of Application 8768. The applicant in this case agreed to the clause and the following clause was incorporated in the permit:

"It is understood that permittee shall at all times by-pass a minimum of one-half second foot at the point of diversion."

We feel that there is insufficient information before this office at the present time upon which to determine what restrictions if any should be placed in any permit which may be issued in approval of Application 3850 in order to insure an adequate domestic supply to the Rock Creek Recreational Tract and to properly sustain fish life in the creek. While the petition to change the point of diversion may be approved action upon the application itself should be temporarily withheld until further information is obtained with respect to these matters.

Applications 7053 and 7055 of the City of Los Angeles
and Department of Water and Power of the City of Los Angeles and
Applications 8042 and 8043 of the City of Los Angeles and the
Board of Water and Power Commissioners of the City of Los Angeles

As a result of condemnation proceedings instituted by the City of Los Angeles in the case of City of Los Angeles, a municipal corporation, and Department of Water and Power of the City of Los Angeles, a municipal corporation vs. Nina B. Aitken, et al., the City of Los Angeles has acquired the fee simple estate to all riparian rights to the waters of Rush, Parker and Walker Creeks and in and to all littoral or riparian rights to the maintenance of the level of the waters of Mono Lake by the discharge thereinto of Rush and Leevining Creeks and their tributaries, together with all rights to the continued flow of the surface and percolating waters of said creeks and the right to the continued use of the same within the watersheds thereof involving some 7000 acres of land.

By purchase and agreement other rights have been acquired until the City of Los Angeles now owns and controls all water rights necessary to its purpose on Leevining, Walker, Parker and Rush Creeks except the rights of the

owners of lots in the townsite of Leevining. These lots were originally included in the proceedings but were subsequently withdrawn by motion of the plaintiff as the City felt that water should not be taken from one town to be given to another and that the townsite should receive the water to which it is entitled (Transcript p. 89).

As the points of diversion of the City are located downstream from those protestants who own or occupy property within the June-Gull Lake recreational area those protestants will not suffer any injury by the proposed diversion except by the effect which these diversions may have upon the general recreational advantages of Mono Basin. These protestants as well as others claim that the exportation of water from the sources tributary to Mono Lake will result in the drying up of the Lake and destroying the scenic beauty of the Basin upon which they are largely dependent for their livelihood.

It is indeed unfortunate that the City's proposed development will result in decreasing the aesthetic advantages of Mono Basin but there is apparently nothing that this office can do to prevent it. The use to which the City proposes to put the water under its Applications 7053, 7055 and 8042 is defined by the Water Commission Act as the highest to which water may be applied and to make available unappropriated water for this use the City has, by the condemnation proceedings described above, acquired the littoral and riparian rights on Mono Lake and its tributaries south of Mill Creek. This office therefore has no alternative but to dismiss all protests based upon the possible lowering of the water level in Mono Lake and the effect that the diversion of water from these streams may have upon the aesthetic and recreational value of the Basin.

No testimony was presented in support of those protests based upon the lowering of the underground water level in Mono Basin. If injury can be proved as a result of the City's diversions adequate recourse may be had through appropriate court action.

It was urged by some of the protestants that the City proposes to use the water of Mono Basin for irrigation purposes in Owens Valley until such a time as the City may have need of this water. The City emphatically denied however at the hearing that such use would be made. In fact the approval of these applications would give the City no right to such use as all of the water applied for under Applications 7053, 7055 and 8042 is to be used for domestic and municipal purposes in the City of Los Angeles and under Application 8043 water will be used for power purposes enroute to the City which is the same water as applied for under Application 8042.

The protests of J. B. Clover and Sierra Land and Water Company may be dismissed as the City has a preferential right under its applications to appropriate from Rush and Leevining Creeks and there is insufficient unappropriated water in these sources for appropriation by the Company, should the City proceed with its proposed developments.

As to the protest of June Knapp and T. J. Watterson, Mr. Watterson advised the Division by letter dated November 10, 1938, that he wished to be eliminated as a protestant; that the land in Mono Basin formerly jointly owned by the Wattersons and Knapps was now the property of the Knapps and that by court decree this land located in Section 16, T 1 N, R 26 E, M.D.E.&M. had no water rights and consequently June Knapp had no basis of protest against the applications of the City. This statement was supported by testimony presented at the hearing (Transcript pages 81-85).

As to the proposed appropriation from Mill Creek named as one of the sources in Applications 8042 and 8043 the situation is different.

Under decrees of the court dated March 16, 1901, by Judge R. C. Rust and dated June 17, 1915, by Judge L. T. Price the water rights on Mill Creek were adjudicated as follows:

<u>Priority</u>	<u>Decree Name</u>	<u>Amount (m.i.)</u>	<u>Present Owner</u>
1	Pacific Power Company	50	City of Los Angeles
2	J. A. Conway	600	J. A. & R. P. Conway
3	Hydro-Electric Company	300	City of Los Angeles
4	Mary Felosina	120	City of Los Angeles
4	A. J. Allen	50	Title Insurance & Trust Co.
4	Thos. Sylvester	80	(1) Albert Sylvester (2) City of Los Angeles
5	Hydro-Electric Company	700	City of Los Angeles
6	F. D. Mattly	150	F. D. Mattly
7	J. A. Conway	100	J. A. & R. P. Conway
8	L. W. DeChambeau	630	L. W. DeChambeau
* 9	C. H. Currie	150	Anna W. Currie
10	Mary Felosina	150	City of Los Angeles
11	Hydro-Electric Company	100	City of Los Angeles
*12	W. O. Lundy	100	W. O. Lundy Estate
*13	B. B. McKnight	100	Wm. J. Farrington
14	J. S. Cain (Lundy Lake)	300	City of Los Angeles
15	F. D. Mattly	50	F. D. Mattly

*Not included in Price Decree

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In addition to the above the Pacific Power Company was decreed 15,000 miners inches subject to prior rights, 15,000 miners inches of surplus waters, 30,000 miners inches in Lundy Lake and flood waters and storage rights in Lundy Lake of flood waters; also the right to use Conway's 700 miners inches for power purposes and the right to the use of all of the waters of Mill Creek for power purposes subject to prior rights. These rights are now held by the Nevada-California Power Company.

The sum of the decreed rights, other than for power (Priorities 1 to 15 inclusive) amounts to 3730 miners inches measured under a four inch pressure or 74.6 cubic feet per second of which the City has acquired approximately one-half by purchase.

Exhibit 47 submitted by the City of Los Angeles consists of records kept by the Southern Sierras Power Company of the actual flow of Mill Creek computed from the average K.W. output at the Mill Creek power house. From these records the mean monthly flows of Mill Creek during the period from January 1923 to September 1937 have been deduced and are set forth in the following table:

Mean Monthly Flow of Mill Creek at Mill Creek Power House
during the period from January 1923 to September 1937

<u>Month</u>	<u>Flow c.f.s.</u>	<u>Month</u>	<u>Flow c.f.s.</u>
January	7.23	July	52.90
February	9.78	August	37.78
March	12.11	September	23.77
April	23.10	October	10.30
May	36.69	November	9.49
June	53.49	December	7.32

The above table indicates, as well as the testimony introduced at the hearing (Transcript p. 135) that the total amount of water under the decree, exclusive of power rights is considerably in excess of what is normally available for use in Mill Creek.

The testimony also indicates that in ordinary years there is insufficient water in Mill Creek to satisfy all the adjudicated rights (Transcript page 139) and that the diversions are now substantially the same as they were at the time of the decree (Transcript page 140); that although at times there is waste water from Mill Creek it is not a regular event (Transcript p. 110); that only in certain years has there been an excess and in the spring the water is all used (Transcript p. 116-117).

The City has acquired by purchase approximately one-half of the decreed rights which is not now considered a surplus but in the event that the project is carried out as contemplated the water instead of being used for irrigation purposes on Mill Creek would be used for domestic purposes in the City of Los Angeles together with water acquired by purchase or condemnation of the remainder of the decreed rights. In this connection we quote from page 42 of the transcript as follows:

"Q. (To Van Norman by Cochran) Mr. Van Norman, in respect to the waters of Mill Creek, do you know whether or not it is definitely planned as set out in the application to divert the waters of that creek?

"A. Yes, the waters we propose to divert from Mill Creek purchased from the Power Company and subsequent purchases from others on the stream. We recognize the fact that there are owners of land with water rights on Mill Creek we have not purchased and we would not ask for any action on that we have purchased before we had made arrangements, through the purchase or condemnation to acquire that additional water.

"Q. How long before any water will be diverted from Mill Creek, according to your plans?

"A. Several years, at least five years, possibly ten."

The testimony presented at the hearing indicates that there is no certainty that the proposed Mill Creek development will ever be consummated. The cost of constructing a conduit from Mill Creek to Leevining Creek would involve considerable expense for the amount of water to be secured and the City does not wish to incur the expense at this time. In fact, before proceeding with this phase of the development it wishes to have the system conveying the water to the City from the other sources in full operation. After five or ten years it may possibly decide not to construct the diversion works (Transcript p. 90).

It is contrary to the policy of the Division to issue a permit in approval of an application or to approve any phase of an application to appropriate water unless a bona fide interest is shown to proceed with construction work and use of water within a reasonable time. While in similar cases action has been deferred until the plans of the applicant were more mature, the protestants have requested that a decision be rendered as to whether this phase of the applications should be granted or denied and were assured by the Examiner at the hearing that the Division would render a definite decision (Transcript, p. 92).

The City of Los Angeles apparently controls the situation on Mill Creek having acquired approximately one-half of the decreed rights and being in a position to condemn the remaining rights if necessary. In the event that it should definitely decide to proceed with this phase of the project a new application may be filed to appropriate any surplus unappropriated water which may be available. In fact the attorney for the applicant has expressed the opinion that the rights of the Department can be fully protected whether or not the applications, in so far as they relate to Mill Creek, are approved at this time. (Letter received by Division on January 12, 1940).

In view of the above it is our opinion that those phases of Applications 8042 and 8043 relating to the proposed appropriations from Mill Creek be denied.

Summary and Conclusions

The purposes to which the City of Los Angeles proposes to apply the water under Applications 531, 3850, 7053, 7055, 8042 and 8043 are useful and beneficial ones. It has taken the necessary steps to obtain rights of way and easements over government lands and by appropriate action has made water available for appropriation. It is therefore the opinion of this office that Applications 531, 7053 and 7055 be approved subject only to the usual terms and conditions; that action on Application 3850 be temporarily suspended until further order is entered except that an order may now be issued granting the petition filed with the Division on May 3, 1939 to change the point of diversion, and that Applications 8042 and 8043 be approved in so far as they relate to appropriations from Leevining, Walker, Parker and Rush Creeks and denied in so far as they relate to appropriations from Mill Creek.

Applications 3211 and 3212 were withdrawn by the applicant at the hearing and these two applications may therefore be cancelled upon the records of this office.

As to Applications 2432 and 7721 of the Sierra Land and Water Company, action should be temporarily suspended until further order is entered pending a further showing as to the acquisition of necessary rights of way and easements and a formulation of its plans for the use of water under existing conditions.

O R D E R

Applications 531, 2432, 3211, 3212, 3850, 7053, 7055, 7721, 8042 and 8043 to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, public hearings having been held and the Division of Water Resources now being fully informed in the premises;

IT IS HEREBY ORDERED that Applications 531, 7053 and 7055 be approved and that permits be issued to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that Application 3850 be amended in accordance with the petition filed with the Division of Water Resources on May 3, 1939 but that otherwise action be withheld until further order is entered, and

IT IS FURTHER ORDERED that Applications 8042 and 8043 be denied in so far as they relate to proposed appropriations from Mill Creek and approved in so far as they propose appropriations from Leevining, Walker, Parker and Rush Creeks only and that with this limitation permits be issued to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that Applications 3211 and 3212 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that action be withheld in connection with Applications 2432 and 7721 until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 11th day of April 1940.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy

