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

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In the Matter of Applications 4309 and 4310 by
Nevada Irrigation District to Appropriate from
South Fork of Yuba River in Nevada County for
Power Purposes

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DECISION NO. A 4309-4310 D 154

Decided May 23, 1927

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APPEARANCES AT HEARING HELD August 28, 1926.

For Applicant:

Nevada Irrigation District

C. F. Metteer

For Protestants:

Board of Supervisors, Yuba County
Excelsior Water & Power Company
Yuba Consolidated Goldfields
Yuba River Power Company
Pacific Gas & Electric Company

Ray Manwell, District Attorney
Nilon & Nilon, Douglas Brookman
Hon. C. W. Slack
Wm. F. Humphrey, Robert M. Light
P. M. Downing, Geo. A. Hunt

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights
assisted by E. N. Bryan, Deputy Chief, and
Spencer Burroughs, Attorney for Division.

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O P I N I O N

On May 19, 1925, the Division of Water Rights approved six applica-
tions of the Nevada Irrigation District, applicant in this matter allowing ap-
propriations as follows subject of course to existing rights.

Under Application 1270 by direct diversion from natural flow 250 cubic
feet per second from Canyon, Texas, Fall and South Branch of Fall Creeks for ir-
rigation purposes within the District during the period about April 15th to
about September 30th of each year together with 65,000 acre feet per annum for
storage to be collected during the period January 1st to December 31st.

Under Application 2272 from South Fork of Middle Yuba River 5,000 acre feet per annum for storage to be collected during the period January 1st to December 31st of each year for use for power purposes at Spaulding Rim Power House on the shore of Lake Spaulding.

Under Application 2275 from Middle Fork of Yuba River 75,000 acre feet per annum for storage to be collected during the period January 1st to December 31st of each year for use for power purposes at Spaulding Rim Power House on the shore of Lake Spaulding.

Under Application 2276 from Middle Fork of Yuba River 75,000 acre feet per annum for storage to be collected between about December 1st and about July 15th of each year for use for irrigation purposes within the District.

Under Application 2277 from South Fork of Middle Yuba River 5,000 acre feet per annum for storage to be collected from about December 1st to about July 15th of each season for use for irrigation purposes within the District.

Under Application 2372 by direct diversion from natural flow 300 cubic feet per second throughout the year from Canyon, Texas, Fall and South Branch of Fall Creeks for use for power purposes at Spaulding Rim Power House on the shore of Lake Spaulding together with 65,000 acre feet per annum for storage to be collected from about December 1st to about July 15th of each season.

These applications and the permits issued pursuant thereto contemplate diversions from Middle Yuba, South Fork of Middle Yuba, Canyon Creek, Texas Creek, Fall Creek and South Branch of Fall Creek. Diversion will be by means of a conduit with intake on Middle Yuba River near the so-called Milton site. The waters of South Fork of Middle Yuba will be picked up enroute and the whole discharged into the storage reservoir at Bowman Lake. At this point

the waters of Canyon Creek will be picked up and the conduit will proceed thence to Lake Spaulding picking up the waters of Texas, Fall and South Branch of Fall Creeks enroute, and the whole will be discharged into Lake Spaulding through the Spaulding Rim Power House which is a new power house to be constructed by the Pacific Gas and Electric Company on the shore of Lake Spaulding. The waters of the District necessary for irrigation use pass thence either via the South Yuba Canal and Deer Creek or via Drum Canal, Bear River and South Wolf Creek Canal into the District for irrigation use.

On November 7, 1924, the District filed two additional applications (4309 and 4310) for power purposes, naming South Fork of Yuba River as the source but briefly describing the purpose as follows:

"The within application is made as supplementary to applications of Nevada Irrigation District numbered 2272, 2275, 2372, 2981 and 2982, but without waiver of, or prejudice to any rights existing or acquired under said applications. The present application is made to clear the records and more fully set forth in detail the right of Nevada Irrigation District to generate power at the several localities herein mentioned, but the filing of this application is specifically disclaimed as being an admission by said District of any defect, flaw or insufficiency in the right of said District under its hereinabove enumerated applications to generate power at either or all locations herein specified by means of the waters referred to in said applications herein enumerated."

The point of diversion named was at Spaulding Dam of Pacific Gas & Electric Company on South Yuba River and the season of diversion was throughout the year.

Application 4309 was for 135 cubic feet per second and named Spaulding No. 1, Drum, Bear River No. 1, Bear River No. 2, Halsey, Wise and Alta power houses as the places of use. Application 4310 was for 126 cubic feet per second and named Spaulding No. 2 and Deer Creek power houses. The use of the water through all of these power houses and payment therefor is covered in an agreement between Nevada Irrigation District and Pacific Gas & Electric Company signed April 29, 1924.

While the original applications, 4309 and 4310, apparently contemplated use of unappropriated natural flow in South Yuba River in addition to waters introduced by applicant from the Middle Yuba, South Fork of Middle Yuba, and Canyon, Texas, Fall and South Branch of Fall Creeks tributary to the South Yuba, the applicant and Pacific Gas & Electric Company on August 28, 1925, at the time of the hearing before the Division of Water Rights upon these applications, filed stipulations signed by both parties wherein it is agreed that any permit which may be issued upon the said applications shall distinctly specify that "all of the waters to be appropriated thereunder shall be only such foreign waters as shall be delivered into said Lake Spaulding by said Nevada Irrigation District". The two applications (4309 and 4310) have therefore been amended accordingly and are considered now as intended merely to provide for the recovery from Lake Spaulding and subsequent use for power purposes of waters introduced by the District into Lake Spaulding from other tributaries of Yuba River to the northward.

These two applications were completed, advertised, and protested, and being protested were set for public hearing on August 28, 1925, in Room 707 Forum Building, Sacramento, at 10:00 o'clock a.m. Of this hearing applicants and protestants received due notice.

The applications were protested by the Board of Supervisors of Yuba County, the Yuba Consolidated Goldfields, the Excelsior Water and Power Company, the Hallwood Irrigation District and the Yuba River Power Company.

The Board of Supervisors of Yuba County claims that the right to the water which the Nevada Irrigation District proposes to appropriate should be granted to the Yuba River Power Company instead of the District thereby making available water for the irrigation of 150,000 acres of agricultural land in Yuba County which would be more in accord with navigation, reclamation and debris control interests of the State.

The Yuba Consolidated Goldfields claims that they have been operating under contract with the United States Government on the Yuba River continuously for twenty years and that all of the summer flow of the river is required to keep their dredgers in operation, that they have riparian rights on seven miles of river and an appropriative right to 20,000 miners inches of water which is diverted near Hammonton and that they have other projects under way whereby all waters appropriated will be fully applied to important agricultural uses as dredging operations and flood control needs diminish. It is claimed also that the proposed diversion would interfere with the government plan for debris and flood control on the lower Yuba River.

The protest of the Excelsior Water and Power Company was withdrawn under date of September 22, 1925, and will therefore be dismissed.

The Hallwood Irrigation District claims that the proposed diversion of the Nevada Irrigation District would interfere with a prior appropriative right to irrigate more than 6,000 acres in Yuba County, but that on the other hand the proposed diversions of the Yuba River Power Company would benefit the Hallwood Irrigation District and would ultimately result in the irrigation of 150,000 acres of high grade land in Yuba County.

The Yuba River Power Company claims riparian ownership, prior applications and greater beneficial use as set forth in its applications now pending before the Division of Water Rights and that the proposed diversion would interfere with its proposed power and irrigation project.

Prior to approval of Applications 1270, 2272, 2275, 2276, 2277 and 2372 of the District on May 19, 1925, we investigated carefully the matter of the availability of unappropriated water in these sources (Middle Yuba River, South Fork of Middle Yuba River, Canyon Creek, Texas Creek, Fall Creek and South Branch of Fall Creek) which are the original sources of the water which

it is sought to re-appropriate under Applications 4309 and 4310. Briefly stated our conclusion at that time was that under the earliest application (1270) applicant might divert subject of course to prior rights, at any time of the year from Canyon, Texas, Fall and South Branch of Fall Creeks for irrigation purposes, that under the remaining two applications for irrigation use (2276 and 2277) the season of diversion from Middle Yuba and South Fork of Middle Yuba should be restricted to the period from about December 1st to about July 15th on account of danger of interference with prior rights, and that for similar reasons the storage of water for power purposes under Applications 2272, 2275 and 2372 should be limited to the period from about December 1st to about July 15th but direct diversion for power purposes might be made throughout the year as it would be returned to South Yuba River and flow thence into Yuba River above the protestants and without interference with prior rights.

The priorities and rights under the above referred to applications having been so decided and the two pending applications being for an additional use of the same waters covered thereby, no interference with aforesaid protestants will result by the granting of these applications as long as the waters in question are used enroute to irrigation use within Nevada Irrigation District under its Applications 1270, 2276 and 2277 for obviously waters turned into Lake Spaulding from storage for ultimate irrigation use and direct flow waters enroute to irrigation use under prior rights of the District may be routed through the power plants contemplated under Application 4309 and thence into the Bear River and without injury to such prior rights as may in the future be perfected by the Yuba River Power Company for said company would not be able to avail itself of these waters regardless of their routing on the way to irrigation usage by the district under rights prior to the company.

Insofar as Application 4310 is concerned any waters which may be diverted into Lake Spaulding from sources to the northward under priorities heretofore granted to the Nevada Irrigation District cannot work injury to protestant Yuba River Power Company if used for power under this application for the reason that such waters will be conveyed thence into Deer Creek and return to the Yuba River above the places of use contemplated by the Yuba River Power Company.

It therefore but remains to so limit diversions under Application 4309 that rights under prior applications of the Yuba River Power Company will not be infringed in case permits shall be subsequently issued thereupon and said company shall thereafter make beneficial use thereunder.

As stated above our conclusion at the time action was taken upon the prior applications of the Nevada Irrigation District was that the season of diversion from the Middle Yuba and South Fork of the Middle Yuba should be restricted to the period from about December 1st to about July 15th on account of danger of interference with prior rights.

As Applications 3344 and 3345 of the Yuba River Power Company intervene in priority between the applications of the Nevada Irrigation District heretofore acted upon and the pending applications of the District it would appear that this period should be restricted still further.

Our studies of the runoff records collected by the United States Geological Survey and all other known data lead us to conclude that in a year of normal runoff there will be water available for appropriation under Application 4309 except during the period from about July 1st to about December 1st after making allowance for all prior rights. During this period from about July 1st to about December 1st of a year of normal runoff the applicant will in general be under the necessity of so regulating its appropriation under Application 4309 as to divert only such water as shall subsequently be used for beneficial pur-

poses in satisfying the agricultural demands of the District under its earlier applications, 1270, 2276 and 2277.

Hence as to those waters diverted only for power usage and from direct flow into Lake Spaulding under priorities allowing such diversions because they will flow back into the South Fork and be available under prior applications of the Yuba River Power Company, obviously such water may not be diverted into Bear River under Application 4309 and thereby made unavailable to the Yuba River Power Company in the event it proceeds to make use under its priorities.

O R D E R

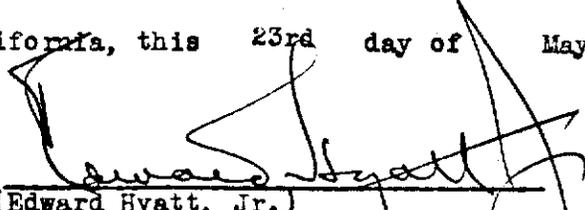
Applications 4309 and 4310 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 4309 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and the following special term and condition:

"No diversions shall be made under this permit during the period from about July 1st to about December 1st of each season unless said water is enroute to and is thereafter used for irrigation purposes under permits heretofore issued upon Applications 1270, 2276 and 2277 or unless not needed for use under permits which may hereafter be granted upon Applications 1680, 2004, 3344 and 3345 of the Yuba River Power Company, provided however that in the event that permits are not issued upon said applications of the Yuba River Power Company this restriction in favor thereof shall not apply and provided further that until water is needed for use under permits which may hereafter be issued upon said applications of the Yuba River Power Company or either thereof, this restriction shall not apply".

IT IS FURTHER ORDERED that Application 4310 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 23rd day of May, 1927.


(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

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MAY 23 1927 END.