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

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<tr>
<th>Application Number</th>
<th>Applicant</th>
<th>Source Designation</th>
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*Legend (explaining source designations):

A: El Drain on Lower End of Glenn-Colusa District.
B: Reclamation District 2047, "A" Drain.
C: Colusa Drain - 2047 Main Drain.
D: District 108 Drain Canal.
E: West Levee Borrow Pit, R.D. 108.
F: Knights Landing Ridge Cut.
G: Main Canal, R.D. 2047.
H: Back Borrow Pit, District 108.
I: Logan and Hunter Creek.
J: Stone Corral Creek Drain.
K: Colusa Trough.
L: Lateral Canal, R.D. 2047.
M: Borrow Pit of Reclamation District 787.

Decided November 27, 1950.

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

For the Applicants

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

Duward F. Geis
Joseph F. Azevedo
James C. McDermott
George Clark
R. C. West
Wm. H. and Edith M. West
H. B. and Clara Bell West
Wm. S. Wallace
L. W. and Helen M. Seaver
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River Farms Company of California
Lloyd M. Kahn
Wallace R. Lynn and Samuel Bohne
Charles Welch
Gertrude M. Sherer
U. S. Department of the Interior,
Fish and Wildlife Service
No Appearance
Ralph W. Rutledge
(Stephen W. Downey, Atty.
E. E. Blackie, Engr.
Arthur C. Huston, Jr.
Geo. K. Ford
No Appearance
Herbert Leland
Roy D. Reese
No Appearance
Edmund Davies
Frederick J. Anderson
Wilbur B. Jensen
Mildred Hahn
Olive Percy Davis, et al.
Del Valley Farms, Inc.
Michael V. Doherty
Helpenstine Rice Lands

For the Protestants
Chas. F. Lambert
Compton Water District
Chas. F. Lambert, for and on behalf of -
Glenn-Colusa Irrigation District
Jacinto Irrigation District
Provident Irrigation District
Princeton-Codora-Glenn Irrigation District
Compton-Delevan Irrigation District
Maxwell Irrigation District
I. G. Zumwalt, et al.
Davidella Hershey, et al.
Elmer Johnson
E. G. Cochran
Department of the Interior, Fish and Wildlife Service
F. E. Buffum, et al.

No Appearance
No Appearance
Alvin Weis
No Appearance
(Mrs.) J. V. Doherty
Ray Helpenstine

W. L. Callender & P. J. Minasian
P. J. Minasian & Roscoe Caldwell
P. J. Minasian
C. H. Larimer & P. J. Minasian
Duard F. Geis
P. J. Minasian
Duard F. Geis

George Clark
Frederick J. Anderson
Ralph Rutledge
EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

Also in Attendance from Division of Water Resources:

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

OPINION

General Description of the Proposed Developments

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

Application 11242:

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

Point of diversion: Within NE 4 NW of Section 5, T 18 N, R 2 W.

Place of use: 881.62 acres within Sections 5 and 8, T 18 N, R 2 W.
Application 11263:
12 cubic feet per second from March 15 to November 30.
Point of diversion: Within NE¼ NW½ of Section 5, T 18 N, R 2 W.
Place of use: 444.27 acres within Sections 7 and 8, T 18 N, R 2 W.

Application 11662:
8 cubic feet per second from March 15 to November 30.
Point of diversion: Within NE¼ SW¼ of Section 36, T 20 N, R 2 W.
Place of use: 320 acres within Section 1, T 19 N, R 2 W and
Section 36, T 20 N, R 2 W.

Application 11819:
7 cubic feet per second from April 1 to October 15.
Point of diversion: Within NW¼ SW¼ of Section 30, T 20 N, R 1 W.
Place of use: 273.3 acres within Sections 30 and 31, T 20 N, R 1 W and
Sections 25 and 36, T 20 N, R 2 W.

Application 11854:
16 cubic feet per second from April 15 to October 15.
Point of diversion: Within NE¼ NW¼ of Section 30, T 12 N, R 1 E.
Place of use: 664.2 acres within Sections 19 and 30, T 12 N, R 1 E,
and Sections 24 and 25, T 12 N, R 1 W.

Application 11355:
16.28 cubic feet per second from April 1 to October 15.
Point of diversion: Within NE¼ NW¼ of Section 30, T 12 N, R 1 E.
Place of use: 651.3 acres in Sections 30 and 31, T 12 N, R 1 E.
Application 11863:
8 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SW\(_4\) NE\(_2\) of Section 24, T 13 N, R 1 W.
Place of use: 284.6 acres within Sections 23 and 24, T 13 N, R 1 W.

Application 11864:
8 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SW\(_2\) NE\(_4\) of Section 24, T 13 N, R 1 W.
Place of use: 298.2 acres in Sections 25, T 13 N, R 1 W and Section 30, T 13 N, R 1 E.

Application 11865:
7.5 cubic feet per second from April 1 to November 1.
Point of diversion: Within the SW\(_2\) NE\(_4\) of Section 14, T 13 N, R 1 W.
Place of use: 284 acres in Section 14, T 13 N, R 1 W.

Application 11875:
8 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SW\(_2\) NE\(_4\) of Section 24, T 13 N, R 1 W.
Place of use: 343.5 acres within Sections 23 and 24, T 13 N, R 1 W.

Application 11878:
34 cubic feet per second from April 1 to November 15.
Point of diversion: Within the NE\(_4\) NW\(_2\) of Section 23, T 11 N, R 2 E.
Place of use: 1952 acres within Sections 23 to 27 and Sections 35 and 36, T 11 N, R 2 E.
Application 11881:

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

Point of diversion: Within the NE\textsuperscript{2} of SW\textsuperscript{1} of Section 6, T 14 N, R 1 W.

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

Application 11885:

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

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

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

Application 11886:

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

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

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

Application 11898:

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

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

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

Application 11899:

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

Point of diversion: Within the SW\textsuperscript{2} SW\textsuperscript{1} of Section 11, T 13 N, R 1 W.

Place of use: 3000 acres within the District boundaries.
Application 11900:
17 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NE 1/4 NW 1/4 of Section 16, T 16 N, R 2 W.
Place of use: 608.6 acres in Section 16, T 16 N, R 2 W.

Application 11901:
8 cubic feet per second from April 1 to October 1.
Point of Diversion: Within NE 1/4 NW 1/4 of Section 16, T 16 N, R 2 W.
Place of use: 273 acres within Sections 9 and 10, T 16 N, R 2 W.

Application 11902:
15 cubic feet per second from April 1 to October 1.
Points of diversion: Within NE 1/4 NW 1/4 of Section 16 and NW 1/4 NE 1/4 of Section 9, T 16 N, R 2 W.
Place of use: 467.2 acres within Sections 9 and 15, T 16 N, R 2 W.

Application 11903:
10 cubic feet per second from April 1 to October 1.
Point of diversion: Within NE 1/4 NW 1/4 of Section 16, T 16 N, R 2 W.
Place of use: 364.8 acres within Section 15, T 16 N, R 2 W.

Application 11905:
16 cubic feet per second from April 1 to October 1.
Point of diversion: Within NE 1/4 NW 1/4 of Section 4, T 13 N, R 1 W.
Place of use: 575 acres within Sections 3, 4, 10 and 11, T 13 N, R 1 W.
Application 11909:
4.5 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SW¼ SW¼ of Section 1, T 15 N, R 2 W.
Place of use: 159.6 acres within Section 1, T 15 N, R 2 W.

Application 11910:
30 cubic feet per second from April 1 to September 30.
Point of diversion: Within the NW¼ SW¼ of Section 14, T 11 N, R 2 E.
Place of use: 1007.2 acres within Sections 4, 8, 9, 10, 14, 15 and 16, T 11 N, R 2 E.

Application 11913:
25 cubic feet per second from April 1 to October 1.
Points of diversion: Within NE¼ SW¼ of Section 6, and SE¼ NW¼ and SW¼ NE¼ of Section 7, T 14 N, R 1 W.
Place of use: 1093.7 acres in Sections 7, 8, 9, 17 and 18 of T 14 N, R 1 W.

Application 11925:
8 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NW¼ SW¼ of Section 17, T 14 N, R 1 W.
Place of use: 314 acres in Section 15, T 14 N, R 1 W.

Application 11926:
22 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NW¼ SW¼ of Section 17, T 14 N, R 1 W.
Place of use: 771 acres within Sections 10, 15, 16 and 17, T 14 N, R 1 W.
Application 11928:
5 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NE₂, NW₂ of Section 7, T 14 N, R 1 W.
Place of use: 159 acres within Section 9 of T 14 N, R 1 W.

Application 11931:
12 cubic feet per second from March 1 to November 1.
Point of diversion: Within the NW₂, NE₂ of Section 16, T 17 N, R 2 W.
Place of use: 487.96 acres within Sections 15 and 16, T 17 N, R 2 W.

Application 11954:
8 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SE₂, SE₂ of Section 4, T 17 N, R 2 W.
Place of use: 280 acres within Sections 2, 3 and 4, T 17 N, R 2 W.

Application 11955:
12 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NW₁, SW₁ of Section 27, T 17 N, R 2 W.
Place of use: 530 acres within Sections 27, 32, 33 and 34, T 17 N, R 2 W.

Application 11956:
75 cubic feet per second from April 15 to October 1.
Point of diversion: Within the SW₁, NE₂ of Section 9, T 17 N, R 2 W.
Place of use: 440 acres within Sections 9, 10 and 15, T 17 N, R 2 W.
Application 11958:
18 cubic feet per second from April 15 to October 1.
Point of diversion: Within the SW$_4$ SW$_6$ of Section 29, T 17 N, R 2 W.
Place of use: 696 acres in Sections 29 and 32, T 17 N, R 2 W.

Application 11959:
15 cubic feet per second from April 1 to October 15.
Point of diversion: Within the NE$_1$ NE$_3$ of Section 21, T 17 N, R 2 W.
Place of use: 480 acres in Sections 15 and 22, T 17 N, R 2 W.

Application 12087:
2.4 cubic feet per second from April 1 to October 1.
Point of diversion: Within the SW$_4$ NW$_4$ and NW$_2$ NW$_4$ of Section 20, T 14 N, R 1 W.
Place of use: 149.7 acres within Section 20, T 14 N, R 1 W.

Application 12115:
8 cubic feet per second from April 15 to November 1.
Point of diversion: Within the NW$_4$ SE$_4$ of Section 13, T 15 N, R 2 W.
Place of use: 319.7 acres within Sections 12 and 13, T 15 N, R 2 W.

Application 12125:
38 cubic feet per second from April 20 to September 20.
Point of diversion: Within the SW$_4$ NW$_4$ of Section 30, T 17 N, R 2 W.
Place of use: 1500 acres within Sections 19, 30, 31 and 32, T 17 N, R 2 W.
Application 12256:
11.56 cubic feet per second from April 1 to October 1.
Point of diversion: Within the NW1/4 NW1/4 of Section 2, T 11 N, R 1 E.
Place of use: 462.3 acres within Sections 10 and 11, T 11 N, R 1 E.

Application 12310:
8 cubic feet per second from March 15 to October 1.
Point of diversion: Within the NW1/4 NE1/4 of Section 20, T 14 N, R 1 W.
Place of use: 313 acres within Section 19, T 14 N, R 1 W.

Application 12362:
11.5 cubic feet per second from April 1 to October 15.
Point of diversion: Within the NW1/4 NE1/4 of Section 23, T 16 N, R 2 W.
Place of use: 960 acres within Sections 4 and 9, T 15 N, R 2 W.

Application 12411:
13 cubic feet per second from April 1 to November 1.
Point of diversion: Within the SW1/4 SW1/4 of Section 12, T 15 N, R 2 W.
Place of use: 647.8 acres within Sections 12 and 13, T 15 N, R 2 W.

Application 12412:
6 cubic feet per second from April 1 to November 1.
Point of diversion: Within the NW1/4 NE1/4 of Section 24, T 15 N, R 2 W.
Place of use: 278.55 acres within Sections 24 and 25, T 15 N, R 2 W.

Application 12429:
16 cubic feet per second from April 15 to October 1.
Point of diversion: Within the SW1/4 SW1/4 and SE1/4 SE1/4 of Section 4, T 17 N, R 2 W.
Place of use: 642 acres within Sections 4, 5, 8 and 9, T 17 N, R 2 W.
Application 12459:

3 cubic feet per second from April 1 to October 30.
Point of diversion: Within the NW$\frac{1}{4}$ SW$\frac{1}{4}$ of Section 20, T 14 N, R 1 W.
Place of use: 120 acres in Section 29, T 14 N, R 1 W.

Application 12939:

3 cubic feet per second from March 15 to October 15.
Point of diversion: Within the NW$\frac{1}{4}$ SW$\frac{1}{4}$ of Section 31, T 13 N, R 1 W.
Place of use: 4 acres within W$\frac{1}{4}$ SW$\frac{1}{4}$ of Section 31 and 90.1 acres within SE$\frac{1}{4}$ of Section 36, T 13 N, R 1 W.

Application 12946:

7 cubic feet per second from April 1 to October 15.
Point of diversion: Within the SE$\frac{1}{4}$ NE$\frac{1}{4}$ of Section 4, T 17 N, R 2 W.
Place of use: 283.4 acres within Sections 2, 3 and 4 of T 17 N, R 2 W.

Application 12995:

1.72 cubic feet per second from April 1 to October 15.
Point of diversion: Within the NW$\frac{1}{4}$ NW$\frac{1}{4}$ of Section 2, T 11 N, R 1 E.
Place of use: 68.8 within Sections 3 and 10, T 11 N, R 1 E.

Application 12996:

2.11 cubic feet per second from April 1 to October 15.
Point of diversion: Within the NW$\frac{1}{4}$ NW$\frac{1}{4}$ of Section 2, T 11 N, R 1 E.
Place of use: 84.4 acres in Section 10, T 11 N, R 1 E.

Application 12997:

2.98 cubic feet per second from April 1 to October 15.
Point of diversion: Within the NW$\frac{1}{4}$ NW$\frac{1}{4}$ of Section 2, T 11 N, R 1 E.
Place of use: 119.1 acres within Section 3, T 11 N, R 1 E.
Application 13000:
5 cubic feet per second from March 1 to October 1.
Point of diversion: Within the NE$_2$ NW$_2$ of Section 31, T 15 N, R 1 W.
Place of use: 206.3 acres in Section 31, T 15 N, R 1 W and Section 6, T 14 N, R 1 W.

Application 13001:
3 cubic feet per second from March 1 to October 1.
Point of diversion: Within the NE$_2$ NE$_2$ of Section 24, T 15 N, R 2 W.
Place of use: 113.9 acres in Sections 24 and 25, T 15 N, R 2 W and Section 19, T 15 N, R 1 W.

Application 13002:
1 cubic foot per second from March 1 to October 1.
Point of diversion: Within the NW$_2$ NE$_2$ of Section 24, T 15 N, R 2 W.
Place of use: 278.55 acres in Sections 24 and 25, T 15 N, R 2 W and Section 30, T 15 N, R 1 W.

Application 13003:
5 cubic feet per second from April 15 to October 15.
Point of diversion: Within the SW$_2$ NE$_2$ of Section 4, T 13 N, R 1 W.
Place of use: 207.3 acres within Sections 4 and 9, T 13 N, R 1 W.

Application 13006:
6.77 cubic feet per second from April 1 to October 15.
Point of diversion: Within the SE$_2$ NE$_2$ of Section 16, T 11 N, R 2 E.
Place of use: 270.71 acres in Sections 8, 16 and 17, T 11 N, R 2 E.
Application 13452:

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

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

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

Protests

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

J. M. Board, Administrator of the Estate of Henry Jameson, deceased, protests Application 11662, contending that a permit was issued authorizing the Estate to divert from the same source and that when water is low the diversion which the applicant proposes will interfere with the exercise by the Estate of that prior right. The protestant asserts that the appropriation claimed was initiated in 1918 or 1919, that approximately nine cubic feet per second are used for rice irrigation, and that the
Estate diverts at a point within the SE\textsuperscript{2} of Section 23 of the Glenn Ranch Survey.

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

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

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

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

2. Districts have acquired an exclusive easement from Reclamation District 2047 for the installation of pumping plants, removable weir structures, siphons or flumes upon, through or over the drainage channels, canals and laterals
of Reclamation District 2047 for the purpose of diverting its irrigation waters flowing therein for the use and benefit of purchasers of irrigation water from Districts.

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

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

5. Districts intend to construct such diversion works as may be necessary to divert all waters flowing in drainage channels, canals and laterals of Reclamation District 2047 within the boundaries of Districts and to utilize all waters diverted for the irrigation of crops both within and without the boundaries of Districts. After these plans are carried out, the protest asserts, only small amounts of drainage waters will return to the drainage channels of Reclamation District 2047 and such returned waters will be uncertain and insufficient in amount to be of value to applicants for irrigation purposes.
I. G. Zumwalt protests the following applications:
11819, 11836, 11888, 11889, 11900, 11901, 11902,
11903, 11931, 11954, 11955, 11956, 11957, 11958,
12363.

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

Davidella Hershey individually and as administratrix of the
estate of Cornelia A. Hershey, deceased, Grace H. Hershey
and Florence F. Hershey protests the following applications:
11863, 11865, 11875, 11881, 11886, 11888, 11889,
11899, 11901, 11902, 11903, 11905, 11925, 11926,
11928, 11931, 11954, 11955, 11956, 11957, 11958,
11959, 12087, 12115.

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

Elmer Johnson and E. G. Cochran, tenants of Davidella Hershey
and holders, respectively, of Applications 11854 and 11855, protest the
granting of Application 11899. They assert that all of the water flowing
in the west levee borrow pit of Reclamation District 108 (from which diver-
sion is proposed under Application 11899) is required in order to satisfy
present requirements including those represented by their own pending, prior applications.

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

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

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

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

Answers

Among the points advanced by one or another of the applicants in answering the protests are the following:
1. Denial in some instances, of insufficiency of supply; denial that protestants put to beneficial use the amounts they claim to so use.

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

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

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

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

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

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

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

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

10. Contention that districts have no right in and to waters flowing in drainage channels and that they have no right to divert
therefrom, within or without their boundaries, except waters discharged
into the drainage ditches from irrigation ditches.

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

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

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

14. Contention that protesters are estopped from protesting,
having stood by and allowed valuable improvements to be installed, with-
out objection.

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

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

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

Hearing Held in Accordance with the Water Code

The applications at issue were completed in accordance with
the Water Code and the Rules and Regulations of the Division of Water
Resources. All of the applications except Application 12339, a closely related application, having been protested, they all were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Monday, May 15, 1950 at 10:00 o'clock A.M., in Room 414, State Capitol Building, Sacramento, California. Of the hearing the applicants and the protestants were duly notified.

Discussion

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

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

-25-
while one or another of Applications 9363, 9364, 9366, 9367 and 9368 are
prior to and therefore may at some future time affect operations under
the 56 applications now under consideration, the mere existence of the
former applications is not a bar to the approval of the latter applica-
tions. Junior applications on occasion may be approved with a view to
utilizing interim surpluses beneficially.

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

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

<table>
<thead>
<tr>
<th>Month</th>
<th>1944</th>
<th>1945</th>
<th>1946</th>
<th>1947</th>
<th>1948</th>
<th>1949</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>368</td>
<td>229</td>
<td>319</td>
<td>140</td>
<td>523</td>
<td>295</td>
<td>312</td>
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<tr>
<td>May</td>
<td>838</td>
<td>697</td>
<td>758</td>
<td>474</td>
<td>427</td>
<td>894</td>
<td>689</td>
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<tr>
<td>June</td>
<td>630</td>
<td>717</td>
<td>619</td>
<td>594</td>
<td>953</td>
<td>540</td>
<td>675</td>
</tr>
<tr>
<td>July</td>
<td>478</td>
<td>562</td>
<td>568</td>
<td>452</td>
<td>492</td>
<td>582</td>
<td>522</td>
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<tr>
<td>August</td>
<td>629</td>
<td>725</td>
<td>715</td>
<td>668</td>
<td>684</td>
<td>857</td>
<td>713</td>
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<tr>
<td>September</td>
<td>840</td>
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<td>834</td>
<td>825</td>
<td>911</td>
<td>912</td>
<td>855</td>
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<tr>
<td>October</td>
<td>234</td>
<td>330</td>
<td>260</td>
<td>289</td>
<td>306</td>
<td>280</td>
<td>283</td>
</tr>
<tr>
<td>Average</td>
<td>581</td>
<td>582</td>
<td>582</td>
<td>492</td>
<td>614</td>
<td>623</td>
<td>578</td>
</tr>
</tbody>
</table>
A corrected graph for the year 1945 has been entered on the Glenn-Colusa
Hearing Exhibit No. 2.

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

"I think that in the majority of times there is ample
water. A majority of the time there would have been ample."
water for everybody wanting water..... There has to be some rotation so there is very little likelihood of all of this land going into irrigation the same year - at least into rice irrigation." (page 1670 of Transcript).

* * *

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

* * *

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

In addition to records of discharge at Colusa-Williams Highway the Sacramento-San Joaquin Water Supervision reports contain records of flow of Colusa Trough near College City, Knights Landing Ridge Cut, and
Colusa Basin Drainage at Knights Landing. Monthly means, abstracted from those records, have been as follows:

<table>
<thead>
<tr>
<th></th>
<th>1944</th>
<th>1945</th>
<th>1946</th>
<th>1947</th>
<th>1948</th>
<th>1949</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>391</td>
<td>177</td>
<td>825</td>
<td>345</td>
<td>435</td>
<td></td>
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<tr>
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<td>776</td>
<td>416</td>
<td>769</td>
<td>950</td>
<td>728</td>
<td></td>
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<tr>
<td>June</td>
<td>621</td>
<td>605</td>
<td>1235</td>
<td>541</td>
<td>750</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td>551</td>
<td>418</td>
<td>503</td>
<td>561</td>
<td>508</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td>1944 and 1945</td>
<td>716</td>
<td>644</td>
<td>748</td>
<td>892</td>
<td>750</td>
<td></td>
</tr>
<tr>
<td>September</td>
<td>912</td>
<td>888</td>
<td>1080</td>
<td>1101</td>
<td>995</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td>345</td>
<td>298</td>
<td>359</td>
<td>355</td>
<td>339</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td>616</td>
<td>492</td>
<td>788</td>
<td>678</td>
<td>644</td>
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Monthly Mean Flow in Cubic Feet per Second of Colusa Trough (Back Borrow Pit) near College City

<table>
<thead>
<tr>
<th></th>
<th>1944</th>
<th>1945</th>
<th>1946</th>
<th>1947</th>
<th>1948</th>
<th>1949</th>
<th>Average</th>
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</thead>
<tbody>
<tr>
<td>April</td>
<td>132</td>
<td>137</td>
<td>205</td>
<td>89</td>
<td>48</td>
<td>314</td>
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<tr>
<td>May</td>
<td>510</td>
<td>405</td>
<td>557</td>
<td>214</td>
<td>41</td>
<td>789</td>
<td>419</td>
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<tr>
<td>June</td>
<td>469</td>
<td>652</td>
<td>371</td>
<td>444</td>
<td>309</td>
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<td>433</td>
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<td>July</td>
<td>211</td>
<td>433</td>
<td>287</td>
<td>154</td>
<td>365</td>
<td>379</td>
<td>305</td>
</tr>
<tr>
<td>August</td>
<td>1944 and 1945</td>
<td>408</td>
<td>667</td>
<td>1474</td>
<td>388</td>
<td>611</td>
<td>762</td>
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<tr>
<td>September</td>
<td>794</td>
<td>981</td>
<td>901</td>
<td>750</td>
<td>933</td>
<td>1128</td>
<td>915</td>
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<tr>
<td>October</td>
<td>320</td>
<td>541</td>
<td>400</td>
<td>377</td>
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<td>425</td>
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<tr>
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<td>545</td>
<td>456</td>
<td>345</td>
<td>384</td>
<td>608</td>
<td>457</td>
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Monthly Mean Flow in Cubic Feet per Second of Knights Landing Ridge Cut

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<tr>
<th></th>
<th>1944</th>
<th>1945</th>
<th>1946</th>
<th>1947</th>
<th>1948</th>
<th>1949</th>
<th>Average</th>
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<tbody>
<tr>
<td>April</td>
<td>150</td>
<td>118</td>
<td>583</td>
<td>168</td>
<td>36</td>
<td>255</td>
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<tr>
<td>May</td>
<td>73</td>
<td>47</td>
<td>456</td>
<td>36</td>
<td></td>
<td>153</td>
<td></td>
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<tr>
<td>June</td>
<td>64</td>
<td>33</td>
<td>792</td>
<td>39</td>
<td></td>
<td>232</td>
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<tr>
<td>July</td>
<td>1944 and 1945</td>
<td>71</td>
<td>54</td>
<td>1.3</td>
<td>47</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>August</td>
<td>72</td>
<td>64</td>
<td>4.6</td>
<td>44</td>
<td></td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>September</td>
<td>56</td>
<td>27</td>
<td>4.5</td>
<td>22</td>
<td>28</td>
<td></td>
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</tr>
<tr>
<td>October</td>
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<td>0</td>
<td></td>
<td>0</td>
<td></td>
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<tr>
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<td>70</td>
<td>49</td>
<td>263</td>
<td>51</td>
<td>108</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
It is noteworthy that monthly means near College City, on average, have
been more than the corresponding means at Williams-Colusa bridge, and
that the flow at the lowermost extremity of Colusa Basin Drainage Canal
(opposite Knights Landing), while somewhat less at times than the flow
at the upper stations has nevertheless closely approached that flow.
The flow at the lowermost extremity is arrived at by adding the corres-
ponding figures for "Colusa Basin Drainage at Knights Landing" and
"Knights Landing Ridge Cut". For the months considered, it has averaged
as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount (c.f.s.)</th>
</tr>
</thead>
<tbody>
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<td>April</td>
<td>409</td>
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<tr>
<td>May</td>
<td>572</td>
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<tr>
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<td>665</td>
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<tr>
<td>July</td>
<td>348</td>
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<tr>
<td>August</td>
<td>598</td>
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<tr>
<td>September</td>
<td>943</td>
</tr>
<tr>
<td>October</td>
<td>426</td>
</tr>
<tr>
<td>Average</td>
<td>566</td>
</tr>
</tbody>
</table>

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

According to tabulations contained in the Report of Sacramento-
San Joaquin Water Supervision for 1949, diversions from the channels in
question in cubic feet per second averaged as follows:
<table>
<thead>
<tr>
<th>Month</th>
<th>Colusa Trough (North of Colusa-Williams Highway)</th>
<th>Back Borrow Pit (South of Colusa-Williams Highway)</th>
<th>Knights Landing Ridge Cut</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>March</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>April</td>
<td>60</td>
<td>43</td>
<td>43</td>
<td>146</td>
</tr>
<tr>
<td>May</td>
<td>250</td>
<td>265</td>
<td>62</td>
<td>577</td>
</tr>
<tr>
<td>June</td>
<td>304</td>
<td>250</td>
<td>98</td>
<td>652</td>
</tr>
<tr>
<td>July</td>
<td>310</td>
<td>230</td>
<td>51</td>
<td>591</td>
</tr>
<tr>
<td>August</td>
<td>298</td>
<td>247</td>
<td>87</td>
<td>632</td>
</tr>
<tr>
<td>September</td>
<td>170</td>
<td>84</td>
<td>26</td>
<td>280</td>
</tr>
<tr>
<td>October</td>
<td>92</td>
<td>23</td>
<td>0</td>
<td>115</td>
</tr>
<tr>
<td>Average</td>
<td>186</td>
<td>143</td>
<td>46</td>
<td>375</td>
</tr>
</tbody>
</table>

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

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

The protest by J. M. Board, Administrator, against Application 11662 by Terrill F. Knight is found to/insufficient. While the protestant's diversion heads some 5 miles downstream from the applicant's, the data point to ample channel capacity to permit both parties to divert
simultaneously; the data point also to the occurrence at times, in the channel filed upon, of considerable surpluses. The protestant was not represented at the hearing.

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

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

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

The protest by Elmer Johnson and E. G. Cochran against Application 11899 is found to be insufficient for the same reason as set forth in the last preceding paragraph.
The protest by the U. S. Department of the Interior, Fish and Wildlife Service against Application 11909 was withdrawn at the hearing (Transcript, page 231).

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

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

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

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

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

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

The reply brief relating to application 11954 concedes rights to recapture but only within district boundaries; argues that action on the pending applications should be based upon facts as they now exist, and not upon facts that may exist in future; asserts that by virtue of
reservations in right of way deeds Applicants Lynn and Bohne have right of access to Drain 2047 and the right to use waters flowing therein.

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

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

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

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

The reply brief relating to Application 11865 and 15 other applications largely duplicates arguments, citations and conclusions set forth in the briefs already discussed. It argues that the evidence introduced by the Districts to support their claim of an exclusive right to use and control of the Reclamation District drains centers upon the two resolutions adopted in 1943, that those resolutions do not constitute a contract, and that if a contract existed it would be of doubtful legality. It questions the accuracy of the Districts' implication that the Reclamation District is in process of dissolution. It opposes the inclusion of the proposed permit clause arguing that the facts involved in determining the matters to be therein incorporated are extraneous to the issues under the present proceedings. As to right of access it contends that the easement held by the Reclamation District provides only for construction, maintenance and operation of its drainage canal and the right to flow water therein. It continues, "The abutting landowners on the drainage canal own the fee title and the right to use their property... in any manner not inconsistent with or an interference with the use by the Reclamation District to flow water therein. .....These
applicants can supply the proof of right of access whenever the same may be required."

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

In the closing brief (by counsel for the protestant Districts) the position is taken that the sources from which the applicants seek to appropriate are not natural water courses, that water from such sources therefore is not subject to appropriation and that the applications should be denied. In support of that position the brief cites Section 1201 of the Water Code (stating "All water flowing in any natural channel.....to be subject to appropriation....."), certain references defining a natural water course, and the recent case of Haun vs. De Vaux, 218 P. (2d) 996; 97 A.C.A. 929. The reply brief also reasserts that all water and water rights belonging to the State within a district are
dedicated to the district, that the districts are entitled to continue the
development of water so dedicated and that such entitlement extends to the
recapture and rediscussion within their boundaries as they now exist or as they
hereafter may be enlarged, citing in support of the latter contention the Haun
De v./Yours case, above mentioned. The closing brief contends finally that the
case at issue presents a public interest aspect of such unusual importance as
to call strongly for the employment of permit clauses in any permits issued,
warning future purchasers of applicants' lands of the possible diminution of
water supply, due to recapture by the districts of waters which they now waste.

Conclusions

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

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

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

The objections by protestants that the water supply from which the applicants seek to appropriate may at some future time fail due to its re-capture by the protestant districts are considered irrelevant. Insofar as
surpluses currently exist, such surpluses plainly are subject to appropriation.

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

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

The data indicate that unappropriated water ordinarily exists in the sources from which appropriation is sought under Application 11242 and the applications related thereto. The data further indicate that such water may be taken and used in the manner proposed in the applications without injury to the protestants. Due to the protestant Districts' expressed intention of enlarging their boundaries and recapturing waters released from their present diversions, the amount of unappropriated water in the several channels may diminish materially. The applicants are well aware of this hazard to the future availability of supply.
The time and extent of the diminution of flow cannot be predicted. As long as unappropriated water exists it is subject to appropriation and its use in the manner proposed may be of great public benefit. The applications should be approved and permits issued, subject to the usual terms and conditions.

ORDER

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

IT IS HEREBY ORDERED that Applications 11242, 11263, 11662, 11819, 11854, 11855, 11863, 11864, 11875, 11876, 11881, 11885, 11886, 11888, 11889, 11899, 11900, 11901, 11902, 11903, 11905, 11909, 11910, 11913, 11925, 11926, 11928, 11931, 11954, 11955, 11956, 11957, 11958, 11959, 12087, 12115, 12125, 12256, 12310, 12363, 12411, 12412, 12429, 12459, 12889, 12946, 12995, 12996, 12997, 13000, 13001, 13002, 13003, 13006, 13452 be approved and that permits be issued to the respective applicants subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 27th day of November, 1950.

A. D. Edmonston, State Engineer.