

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 13557 by Potter Valley Irrigation District
to Appropriate Water from an Unnamed Stream, Tributary to East Fork of
Russian River, in Mendocino County for Irrigation and Stockwatering Purposes.

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Decision A. 13557 D. 750

Decided July 28, 1952

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Appearances at Hearing Held at Ukiah, January 23, 1952:

For the Applicant

Potter Valley Irrigation District

Charles Kasch

For the Protestants

Mendocino State Hospital

John J. Carvey

City of Ukiah

Wayne P. Burke

Summer Home Park Water Company

Harry C. Wilson

Hacienda Water Company

No appearance

William E. Brandt

No appearance

Citizens Utilities Company of
California

No appearance

For Interested Parties

Sonoma County Flood Control)
and Water Conservation District)
County of Sonoma)

Joseph Maddux
Richard C. Miller

North Coast Regional Water Pollution
Control Board

William Shackleton

California State Chamber of Commerce

V. M. Moir

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

Also present - Kenneth L. Woodward, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works.

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OPINION

General Description of the Proposed Development

The application initiates an appropriation of 100 cubic feet per second, from April 1 to November 15, from an unnamed stream tributary to the East Fork of Russian River, for irrigation and stockwatering purposes. According to the applicant's answer to protests the water filed upon originates in the Bel River watershed, is diverted through a tunnel to a Pacific Gas and Electric Company powerhouse, from the tailrace of which it passes into a canal discharging into the East Fork of Russian River. The unnamed stream filed upon appears in fact to be the canal just mentioned. According to the application diversion is to be effected by pumping from "sump formed by diversion dam." The application map however shows 2 pumping sites, one of which is at the diversion dam and the other some 300 feet further downstream. The course-and-distance description in the application relates to the upper of the 2 pumping sites, only. From the point or points of diversion the water is to enter one and/or the other of 2 canals, designated on the application map as West Canal and East Canal, those canals encircling the place of use. The 4200 acres to be irrigated include 200 acres of alfalfa, 400 acres of orchard, 300 acres of general crops and 3300 acres of pasture. According to the application the land to be irrigated has another water right or source of water supply, i. e. a contract with the Pacific Gas and Electric Company to supply up to 60 cubic feet per second.

Protests

The Mendocino State Hospital protests that the proposed appropriation will result in the loss of that institution's crops of alfalfa and field corn. It claims a right to divert from the same source, based upon Application 13287. It describes its point of diversion as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 28, T15N R12W, MDB&M. It states that it has used water since about 1927 and that it uses 1.3 cubic foot per second for the irrigation of 76 acres.

The City of Ukiah protests that the proposed appropriation will jeopardize the City of Ukiah's existing domestic water supply. It claims a right by use dating from 1906, states that it pumps from the gravel beds of Russian River, that such pumping is the only means of obtaining domestic water, and that its peak demand occurs from May to November and then approximates 2.5 million gallons daily. It states "This protest may be disregarded and dismissed if water presently impounded by Lake Pillsbury and the Van Arsdale dam for the purpose of generating hydro-electric power can be reappropriated to insure a minimum continuous flow through the existing hydroelectric diversion system."

Summer Home Park Water Company, by Harry C. Wilson, managing owner, protests the application, apprehending that shortage of supply and contamination will result if the application is approved. It describes itself as a public utility supplying water for domestic and public use to approximately 135 consumers. It claims to pump directly from Russian River, its works including a filtering system and chlorinating facilities, as well as reservoirs and tanks. It claims a riparian right as well as a right based upon long usage. It states that it diverts at a point or points within the S $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35, T8N R10W MDB&M.

The Hacienda Water Company, by George W. Hasek, states itself to be a public utility supplying water for domestic use to 130 customers. It protests the application, stating that its supply is obtained from wells adjacent to Russian River, that that supply is in jeopardy because of the diminution of flow of that stream, and that contamination of the supply is also a matter of concern. It claims a riparian right as well as a right based on long continued use. It implies that its point of diversion is located within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T8N R10W, MDB&M.

William E. Brandt protests, claiming that the proposed diversion would dry up the source of supply from which he obtains water for irrigation and for household use except drinking. He claims a riparian right and a right based upon use. He states that he sprinkles 6 acres of garden and 20 acres of pasture during the summer months, his diversion heading at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T7N R10W, MDB&M.

The Citizens Utilities Company of California protests, representing itself to be a public utility serving 2400 customers as well as furnishing a supply required for fire suppression. It expresses apprehension as to the stability of its water supply which it states is obtained from wells adjacent to Russian River. It states that the river is already so low that its supply is in jeopardy and that contamination is a severe problem. It claims riparian rights and rights based upon beneficial use for several years. It states that it is under Public Utility Commission jurisdiction. It describes its wells as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T7N R10W and the S $\frac{1}{2}$ NE $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29, T8N R10W, MDB&M.

Answer

The applicant filed one collective answer to the several protests, stating in effect that it is not the purpose of the application to appropriate

any water originating in the Russian River watershed, that the unnamed stream designated is in reality a canal from the tailrace of the Pacific Gas and Electric Company power house to the East Fork of Russian River, that that canal never has been a natural water course, that the water sought originates in the Eel River watershed, is diverted by the company named to its power house by a tunnel and hence is foreign water and not subject to riparian rights, that none of the protestants have acquired any rights to the foreign water mentioned but that their rights apply only to water originating within the Russian River Watershed, that the water applied for does not exceed the present and future needs of the district, that the district now and for several years past has been actually using in excess of 80 cubic feet per second, that such water has been obtained by contract with the power company and by pumping from a sump in the power company canal below the power house, that all water so obtained is wild, abandoned and subject to appropriation, that probably 30% of the water that the applicant uses for irrigation finds its way into Russian River, that the applicant's purpose and intent is to have an assured water supply of 100 cubic feet per second to meet its present and future requirements, that apparently the quantity of water which the applicant may in future receive under contract with the power company is still undetermined but that no right is sought to water in excess of 100 cubic feet per second which amount shall include deliveries under the contract with the power company, and that if the application is granted, full use thereunder will not result in any appreciable diminution of the present flow in the Russian River.

Hearing Held in Accordance with the Water Code

Application 13557 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for formal hearing under the provisions of Section 733(a) of the California Administrative Code, Title 23, Waters, on Wednesday, January 23, 1952 at 10:00 o'clock A.M. in the Council Chambers, City Hall, Ukiah, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

The substance of the hearing evidence and testimony is as follows:

Charles Kasch, counsel for the applicant, introduced (page 6 of transcript) a map (Applicant's Exhibit No. 1) showing the location of Potter Valley Irrigation District in relation to Lake Pillsbury, Van Arsdale Reservoir, Eel River, Russian River, the Pacific Gas and Electric Company power house and the district's two canals. Mr. Kasch made oral reference (page 7 of transcript) to a resolution assertedly adopted by the applicant District's Board of Directors (Resolution No. E 35) and read portions thereof, as follows, into the record:

"WHEREAS Potter Valley Irrigation District has filed an application number 13557 to appropriate 100 c.f.s. of the water discharged from the power house of the Pacific Gas and Electric Company in Potter Valley, and

"WHEREAS some confusion and misunderstanding has arisen by reason of this application which the Directors of the Irrigation District desire to clarify:

"NOW, THEREFORE, BE IT RESOLVED by the Directors of Potter Valley Irrigation District, all members of the Board being present and voting in favor hereof, as follows:

"1. That Potter Valley Irrigation by said application seeks to have assured to it a total of 100 cfs. of water and no more.

"2. That if after investigation by the State Division of Water Resources it is determined that this district has a firm contract with the Pacific Gas and Electric Company for a maximum of 50 c.f.s. of impounded water in Lake Pillsbury it is not sought to appropriate more than 50 c.f.s. in addition thereto.

"3. That it is the conclusion of this Board that 100 c.f.s. will meet the present and future needs of this district since the maximum peak requirement for irrigation district water to date has been 80 c.f.s. for brief periods of time and, with additional land which can be brought under irrigation in Potter Valley this Board is of the opinion that future demands can be met in the foreseeable future with a total of 100 c.f.s.

"4. That a certified copy of this resolution be filed with the State Division of Water Resources in connection with Application No. 13557 by Potter Valley Irrigation District as an amendment and supplement to said application."

Lloyd Hughes, president of the applicant district's board of directors, testified (page 10 of transcript) in effect that the district receives its water supply from the tailrace of the Pacific Gas and Electric Company Power House, which in turn receives water through a canal which is about 2 miles long and heads in Van Arsdale Reservoir, the latter being supplied via the channel of Eel River from Lake Pillsbury. He testified further that the peak flow that the district receives is approximately 80 second-feet, that approximately 170 acres within the district which are not being irrigated could be irrigated, that the Board of Directors has received applications for water for lands outside of the district but has denied them because of uncertainty as to adequacy of water supply, that approximately 500 acres outside the district could be brought into the district and irrigated, that between 35% and 40% of

the water supplied for irrigation finds its way back into the river, that the power company sometimes shuts down for short periods in summer time but that despite those shutdowns the summer flow of Russian River below the district is continuous and substantial, that the district desires only a total water supply of 100 cubic feet per second, that amount including the 50 cubic feet received under contract with the power company, that none of the water in question originates within the Russian River watershed, that the 100 cubic feet per second applied for provides for an increase of 20 cubic feet per second over peak requirements in times past and that with those 20 extra cubic feet per second all the irrigable lands under the district's canals can be irrigated. Mr. Hughes testified finally (page 21 of transcript) that the applicant district has several times asked the power company for additional water, that the power company has refused in each instance to deliver more than 50 cubic feet per second into the district's canals, that the district thereupon installed pumps and now seeks, under the application at issue, to establish a right to cover both the amount obtained under contract and the amount obtained by pumping, the latter including some 20 second feet to take care of future needs.

L. S. Clarke, Secretary, Potter Valley Irrigation District testified (page 24 of transcript) that the maximum amount of water thusfar used by the district is 85.76 cubic feet per second, that that amount is at times necessary, that necessity varies, that peak demands exist for about 10 days at a time, that because its water supply is limited the district is not entertaining applications of parties who desire to be included in the district, that runoff from lands irrigated averages about 40% of the amount that the district diverts, that the power company in summer time operates its plant only during certain hours of each

day, that the flow of Russian River below the district is continuous, that the channel which carries water from the power house to Russian River is a "man made canal", that before that canal was built there was no natural channel nor flow of natural drainage, other than flood flow in winter time.

John J. Garvey, Business Manager, Mendocino State Hospital, stated (page 39 of transcript)

"We entered into the case - - - to protect the water right that we now have on our property along the Russian River. We have permits - - - for four and three tenths cubic feet - - - and what we would like to be assured of is that if Potter Valley Irrigation District does make this diversion, the flow will continue to supply our needs at the hospital. - - -"

Joseph Maddux stated (page 42 of transcript)

" - - - I am the District Attorney of Sonoma County and as such not only represent the county but likewise the Sonoma County Flood Control and Water Conservation District - - -"

* * * *

"Referring back to the resolution of the Board of Directors of the Potter Valley Irrigation District, I might say that prior to the adoption of that resolution and - - - after the filing of this application by the district, conferences were held - - - after which the resolution which was read into the record was adopted by the Board of Directors and both groups that I represent are completely in accord with them. I wanted to make that clear. Other than that I have no statement to make - - -"

Richard Miller, Member, Board of Supervisors of Sonoma County and Member, Board of Directors of Sonoma Flood Control and Water Conservation District, stated (page 44 of transcript) in substance that the Russian River flows through his supervisorial district, that there are numerous summer and recreational resorts along Russian River and that those resorts are acutely dependent upon the summer flow of Russian River. In the latter connection he states (on page 45 of transcript):

" - - - we realize that the flow of the Russian River is the sole salvation of our existence, you might say, and we are not so much interested in the application of the Potter Valley on which you have a resolution on file stating our position. We are very disturbed in regard to permits that have been issued by your Board to people allowing people to pump out of the flow of the Russian River and we have made a check and found that the permits far exceed the flow of the river and the permits are still being issued and we just wonder where we stand - - -"

Harry C. Wilson testified (page 49 of transcript)

" - - - we are terribly concerned about the decreasing of water in the Russian River. We bought Summer Home Park in 1946, but it has decreased continuously every year at a large rate and if that continues the resort owners are going to face absolute disaster."

* * * * *

"There are thousands of children who come to the Russian River for vacations every year.

"In Summer Home Park there are several hundred that come up as soon as school closes and they are there until school starts again."

* * * * *

"Last summer the river got so low, probably it is lowest in the early part of the summer. Sometimes it is in June, and maybe after they go back to school it will pick up. That is due to the irrigation undoubtedly. Well, I know - - - by observation that the river is going down every year until last year it got to a point almost of stagnation, which will promote pollution eventually and not be safe to bathe in.

"Of course, it concerns us also because we pump domestic water directly from the river not from wells."

* * * * *

"But, there is only one answer and that is that there is continuous increase in appropriation of water from the river. Nothing else could cause that. We had very heavy rainfalls last year and yet it was terrible how low the river got."

* * * * *

"I have no objection to Potter Valley - maybe they are not hurting us, but somebody is, and it is going to be absolute disaster to one of the finest - - - family resort area in the whole state."

Mr. Wilson testified further (pages 55 and 56 of transcript) that Summer Home Park does not need a dam to create a pond for swimming because there is a natural barrier which creates a small lake, that 2 other resorts, farther downstream, utilize dams and that the summer population of Russian River resorts is about 80,000.

Wayne P. Burke, City Attorney of Ukiah testified (pages 58 to 61 of transcript) in effect that the City of Ukiah secures water from wells along Russian River, that the elevation of the water in the wells varies with the elevation of the water in Russian River, that the City of Ukiah draws as much at times as 2,500,000 gallons per day from its wells, that the City's first well came into operation in about 1908, and that 2 additional wells have been dug.

The right under which the applicant is currently operating appears to be based upon a certain contract under which the Pacific Gas and Electric Company engages to supply the applicant at a specified rate. The right of the Pacific Gas and Electric Company to supply the applicant in turn appears to be based upon Application 5661 Permit 2954 License 1199 and Application 6594 Permit 3635 both of which filings stand in that company's name. Of these filings the former represents a confirmed right to divert 4500 acre-feet per annum (collected between November 1 and April 30) from South Eel River for the irrigation of 4905.9 acres within the boundaries of Potter Valley Irrigation District and the latter authorizes the diversion from South Eel River of 50 cubic feet per second from May 1 to October 15 (equivalent to 16,800 acre-feet per annum) for irrigation within Potter Valley Irrigation District, plus 14,500 acre-feet per annum from the same source and for the same

purpose.

Under these filings the Pacific Gas and Electric Company is entitled to divert amounts up to a total of 4500 plus 16,800 plus 14,500 or a total of 35,800 acre-feet per annum. However the Potter Valley Irrigation District is the only user of water under the Pacific Gas and Electric Company's irrigation applications and its use is covered by a contract between the two agencies.

The contract provides for delivery to the District of a total of 19,000 acre-feet per annum of which up to 16,660 acre-feet is to be delivered during the summer period, defined in the contract as from May 1 to October 15, inclusive, and the remainder of said 19,000 acre-feet is to be delivered during the winter period, October 16 to April 30, inclusive, also defined in the contract. The contract further provides that the maximum rate of delivery shall not exceed 50 cubic feet per second.

Repeated efforts by the District to negotiate a new contract with the Company to provide for delivery to the two District canals at greater maximum rates of flow than the 50 cubic feet per second afforded by the present contract have failed. Also the Company has refused to deliver to the District canals any amount of water in excess of 50 cubic feet per second although the flow available at the intakes of those canals is at times in excess of 300 cubic feet per second. Under the circumstances it appears that the Company cannot consummate an appropriation under its applications in excess of the amount of water provided for in the present contract.

The District, however, contemplates use of more water than that afforded by the contract. Also it has found need for irrigation heads in

excess of 50 cubic feet per second for the most efficient operation. Furthermore there is no assurance that the contract will be renewed, even though the Company continues to operate its Potter Valley Power Plant and discharge and abandon the water at its tail race. In the absence of a contract with the Company this water could be legally used only under an appropriation made pursuant to the Water Code.

The District by its application seeks to ensure that it will be entitled to use water to the extent of 50 cubic feet per second in the event that contracts with the Company may not materialize in the future and proposes an additional appropriation of 50 cubic feet per second to provide for larger irrigation heads and for such increased use as expansion of irrigated areas within the District may require. Thus the District's application, although for 100 cubic feet per second would in effect take only 50 cubic feet per second additional from the source. From testimony at the hearing it appears that the District has at times diverted up to 30 of these additional 50 cubic feet per second.

Insofar as the protests are based upon a supposition that the diversion proposed by the applicant would interfere with the exercise of riparian rights, the protests are invalid, inasmuch as the waters filed upon for the most part originate outside of the Russian River watershed.

Insofar as Application 13557 initiates an appropriation of an amount in excess of present entitlements (under Applications 5661 and 6594) the protests will or will not operate as a bar to the approval of the application, depending upon whether the flow of Russian River is, or is not, already appropriated.

The flow of Russian River has been measured by the U. S. Geological Survey, at a number of points, the lowermost of which is designated, in the Water Supply Papers, as "Russian River at Guerneville." The station just

mentioned is located below the points of diversion of all of the protestants against Application 13557 except William E. Brandt and Citizens Utilities Company of California. Of these two protestants the former claims to irrigate 26 acres and the latter claims to serve some 2400 customers, by pumping from wells adjacent to the river. According to the USGS records, monthly mean flows of Russian River at Guerneville, in cubic feet per second, have been as follows:

Year	April	May	June	July	August	September	October	November
1940	3365	621	229	142	103	161	211	305
1	8716	1136	462	216	184	207	223	337
2	4448	1301	541	234	158	137	155	666
3	1383	789	347	150	145	130	160	256
4	703	476	300	138	122	122	164	1146
5	1343	588	300	145	135	170	431	1757
6	1091	376	192	119	108	123	140	532
7	1319	257	212	70	82	125	408	407
8	6847	1980	507	151	132	174	189	212
9	1080	421	127	72.3	115	112	128	206
1950	1330	547	156	108	105	157	*	*
Average	2875	772.0	306.6	131.4	126.3	147.1	220.9	582.4

*Figures unavailable

Before a balance can be struck between supply and demand there remains to be considered the possible effect of applications to appropriate from Russian River or its tributaries which are either in a pending status or, if approved, may not yet have come or have but recently come into full operation.

According to office records there are some 92 such applications, considering only applications filed since the beginning of 1940. All of these applications except Application 13557 (the subject of this paper) and 4 other applications (to be discussed in a later paragraph) are for small amounts, aggregating altogether about 62.5 cubic feet per second. It is to be noted that the average flow of Russian River near Guerneville in August (the month when streamflow is least) more than covers the 62.5 cubic feet per second just mentioned, plus the additional water applied for by the applicant, plus the probable entitlements of the protestants who divert below Guerneville.

The 4 applications referred to in the preceding paragraph stand in the name of the Department of Finance, State of California, and are as follows:

Applications 12917 and 12918 for 330 cubic feet per second and 216,000 acre-feet per annum, to be diverted from Dry Creek at a point within Section 5, T10N, R11W, MDB&M, for irrigation, domestic use and flood control, and also for municipal, industrial and recreational purposes, the places of use being described as 26,000 acres in Dry Creek Valley and Santa Rosa Plains, also cities and towns along the Russian River and in Sonoma and Marin Counties.

Applications 12919 and 12920 for 550 cubic feet per second and 200,000 acre-feet per annum, to be diverted from East Fork of Russian River at Coyote Valley dam site (within Sections 28 and 34 of T16N R12W, MDB&M), for irrigation, domestic use and flood control, also for municipal,

industrial and recreational purposes, the place of use being described as 44000 acres in Ukiah Valley, Alexander Valley, Russian River area above Healdsburg to junction with Mark West Creek and Santa Rosa Plains, also cities and towns along the Russian River in Mendocino and Sonoma Counties and cities and towns in Sonoma and Marin Counties.

Since Applications 12919 and 12920 are senior to Application 13557 and contemplate diversion from the East Fork it is evident that when they come into full operation no water is likely to remain available for diversion under Application 13557. Also, since Dry Creek joins Russian River at a point upstream from certain of the protestants against Application 13557, diversions under Applications 12917 and 12918, when the projects under those applications come into operation, will diminish the flow of Russian River at Guerneville, in which event the unappropriated water indicated by the records of discharge at Guerneville is apt no longer to exist.

The considerations outlined in the two preceding paragraphs indicate that unappropriated water exists in Russian River in amounts sufficient to enable diversions to be made as proposed under Application 13557 but may not so exist after the projects contemplated under the four Department of Finance applications come into operation. However those four filings are incomplete, the records do not indicate that they are being vigorously pressed, a considerable time may elapse before diversions under them commence and in the meantime water which could be beneficially used by the applicant Irrigation District is running to waste. The considerations indicate that the protests are not a bar to the approval of Application 13557 at the present time, but that diversions under that application may^{be} curtailed, if not stopped entirely

at such future time as the projects for which water is sought under Applications 12917, 12918, 12919, and 12920 come into operation.

Summary and Conclusions

It is evident from the testimony and from other information outlined in preceding paragraphs that unappropriated water presently exists in Russian River and that the diversion of such water as proposed under Application 13557 will not injure the protestants or other downstream users until such time in the future as the projects under Applications 12917, 12918, 12919, and 12920 may come into operation.

In view of all the circumstances it is the opinion of this office that the reasons advanced by the protestants are insufficient to warrant disapproval of Application 13557, that unappropriated water temporarily exists, that such water may be taken and used beneficially in the manner proposed, for at least a considerable period of time, without injury to other users and that the application should be approved subject to the usual terms and conditions and subject also to a special provision limiting utilization, by Potter Valley Irrigation District, of water diverted under Applications 5661, 6594, and 13557, to amounts not in excess, at any one time, of 100 cubic feet per second, and to a special provision emphasizing the subordination of Application 13557 to State filings within the same stream system.

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ORDER

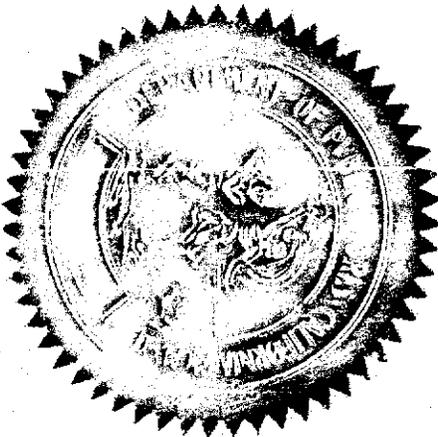
Application 13557 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13557 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special terms and conditions, to wit:

Diversions under this permit together with diversions under Applications 5661 and 6594 shall not exceed 100 cubic feet per second.

Issuance of this permit shall not operate to the prejudice of any prior rights, including rights acquired by the State Department of Finance under Applications 12917, 12918, 12919 and 12920.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 28th day of July 1952.



A. D. Edmonston
A. D. Edmonston
State Engineer