(COPY)

RESOLUTION NO. 631.

CITY COUNCIL, CITY OF LODI.

WHEREAS, the City Council did, by Resolution No. 627, direct the City Attorney to prepare, file and present to the Federal Power Commission a protest against the granting of a preliminary permit to the East Bay Municipal Utility District for a Power Project on the Mokelumne River; and

WHEREAS, the City attorney has so prepared such a protest, including supporting data, and has transmitted the same to this Council; and

WHEREAS, the City Council has been advised by responsible engineers that the present and proposed acts an3 operations of the East Bay Municipal Utility District as now conducted under Project No. 567, and proposed to be conducted under Project No. 1134, are and will continue to be destructive of the continuance of the present water supply for the inhabitants of the City of Lodi and of the rural communities adjacent thereto, because of the alteration by tbe said District of the natural flow of the Mokelumne River and the resultant effect upon the percolating waters from the said river which heretofore have replenished a m ~maintained the underground water table from which the City of Lodi and the entire rural community thereabouts pumps its municipal, domestic arid irrigation water supply; and also, because of the complete sequestration away from the basin of the said river of large quantities of water, which otherwise would flow clown the natural channel of the said river and be of great 'benefit in maintaining the said underground water table; and further, because of the destructive effect, upon the proposed hydro-electric power project of' the City of Lodi on the said Mokelumne River, of the operations of the said. East bay Municipal Utility District in the manner proposed unless the said District shall be compelled to so operate its Project Works whereby a reasonable and definite quantity of water will be assured to flow over the said property of the City of Lodi; and

Exhibit No. 1

WHEREAS, the City Council. has been edvised by the attorneys representing the City- of Lodi that the appropriative vested rights of the said City in its municipal water supply are in jeopardy and because of such advice the City Council have heretofore been compelled to expend large sums of money for legal and engineering services and investigations in preparing to defend its rights through Court proceeding, which has been set for trial in the Superior Court of San Joaquin County, California, on April 1st, 1931 in case No. 22415 and whereby the said City of Lodi will be further compelled to expend additional sums of money in the prosecution of the said suit; and further, that the riparian vested rights of the said City of Lodi in its Power Project property, on the Mokelumne River as hereinafter recited, are also in jeopardy and because of such advice the City Council have heretofore been compelled to expend large sums of money for legal and engineering services and investigations in defending its rights through Court proceedings and is now expending additional monies in such defense; and

WHEREAS, the attorneys representing the City of Lodi in the aforesaid legal proceeding in case No. 22415 did offer to do equity in the premises and to withdraw the said injunction suit, providing, the defendants thereto would agree to finance the construction end operating costs of the hydraulic works proposed by ihe City of Lodi, together with the delivery thereto of a reasonable quantity of water for the maintenance of the said works and thereby permit the said defendants to operate in the manner proposed and which equity offer was rejected without reasonable explanation; and

WHEREAS, Lhe City of Lodi did acquire from the Colorado Power Company a power site on the Mokelumne River and thereupon proposes to construct and operate a municipally owned hydro-electric riparian power plant in conjunction with the present existing municipal Electric distribution system of the City of Lodi, and thereafter, the said Council instituted legal proceedings in the Superior Court of Calaveras County, California, in case No. 1642 seeking to enjoin the East Bay Municipal Utility District, from its operations upon said river in the manner proposed; and

WHEREAS, the Last Bay Municipal Utility District subsequently brought an action in the said Calaveras County Superior Court, in case No. 1661, wherein the said District sought to condemn the right to operate its diversion works in the manner proposed by the said District and to divert to the San Francisco Bay Region approximately one quarter of the average annual flow of the said Mokelumne River; and

WHEREAS, the Superior Court of Calaveras County, California, did enter a judgment permitting the said East Bay Municipal Utility District to so operate its diversion works in the manner proposed and to divert sway from the basin of the Mokelumne River the quantity of water as aforesaid; and

WHEREAS, the City of Lodi has taken an appeal from the judgment in the said case No. 1661 to the District Court of Appeal of the State of California, and the said appeal is now pending and undecided; and

WHEREAS, the Colorado Power Company did, prior to its grant to the City of Lodi, bring an action in the Superior Court of Calaveras County, California, in case No. 1591, seeking to enjoin the Pacific Gas and Electric Company from constructing and operating its works in the manner proposed under Federal Power Commission Project No. 137, and thereafter, the judgment entered in the said suit makes it mandatory for the said Pacific Gas and Electric Company to release at the tail-race of the Electra Power House and return to the Mokelumne River not less than 475 cubic feet of water per second so long as water is available so to do, and further, that the said judgment obtained by the Colorado Power Company does, because of the fee grant to the City of Lodi by the said Colorado Power Company, operate to the benefit of the said City; and

WHEREAS, the attorneys representing the City of Lodi in the aforesaid legal proceedings in cases No. 1642 and No. 1661 did offer to do equity in the premises and to withdraw the said injunction case No. 1642, providing, that the East Bay Municipal Utility District would agree to a reasonable schedule of water releases at its diversion works, and to be of an average daily amount materially less than that to be re-

turned to the Mokelumne River above the said diversion works of the East Bay Municipal Utility District, by the Pacific Gas and Electric Company and which equity offer was flatly rejected by the said District without explanation; and

WHEREAS, there are, now pending, in the Superior Court of San Joaquin County, California, numerous consolidated riparian injunction suits, involving in excess of one hundred and fifty plaintiffs and fifty thousand acres of land riparian to the Mokelumne River in which the East Bay Municipal Utility District is named as a defendant; and

WHEREAS, "The Federal Water Power Act", in Section 10, at subsection (c), provides, "That the Licensee shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health and property", and further, Article 18 of licensed Froject No. 567, provides, "The operations of the Licensee, so far as they affect the use, storage and discharge from ctorage of the waters of the Mokelumne River shall at all times be controlled by such reasonable rules and regulations not materially interfering with the use of the water by the Licensee for its municipal and domestic needs as the Commission may prescribe in the interest of ----- 'beneficial public uses"; and

WHEREAS, the City Council is advised, and therefore believes, that the present and proposed acts and operations of the East Bay Municipal Utility District are arid will continue to he destructive of the life, health and property of the inhabitants of the San Joaquin Valley Area contiguous to the Mokelumne River, including the area of the City of Lodi, arid further, that the Commission could prescribe reasonable regulations in the interests of beneficial and prior public uses and rights, as aforesaid, not materially interfering with the present or future needs of the East Bay Municipal Utility District and the area now embraced within the said District; and

WHEREAS, the arbitrary acts of the East Bay Municipal Utility District have been perpetrated upon the inhabitants of the Mokelumne River Area and the City of Lodi without their consent and against their will, and thereby nave necessitated the expenditure of large sums of

money in the protection of their prior vested rights, and further, such acts have caused and will continue to cause, if prosecuted as heretofore, intense animosity toward the said District by the people whose property has been unnecessarily jeopardized and who, through priority of possession, are entitled to protection from Federal and State agencies without being subjected to litigation anti the resultant financial burden which they at, this time can ill-afford to stand;

NOW, THEREFORE, in consideration of the premises as aforesaid and of the desire of this Council to preserve, if possible, friendly relations between the peoples of the City of Lodi tnd the contiguous community and of' the East Bay Municipal Utility District, together with the economic survival and continued productivity of the area affected by the waters of the Mokelumne River, aithout further and continued. litigation and the expense attaching Lhereto, this protest is being submitted to the Federal Power Commission in the belief that such an impartial Federal. Agency will cause to be remedied the injustices as aforesaid., through imposed limitations upon the operations of the Licensee under Projects No. 567 and No. 1134 in accordance with the Commission's reservations recited in the ACT itself and the issued License, as aforesaid..

The engineering advisors of this Council have made an exhaustive study of the surface and percolating water flows of the Mokelumne River which indicate that the flow of the said river is sufficient to provide for the requirements of the lands affected by such flow, together with the maximum diversion proposed by the East Bay Municipal Utility District, conditional, that in periods of water shortages, due to sub-normal rain and snow fall that the said District sub-ordinate its maximum diversion, under its present appropriation, to the co-ordination and draft from its Mokelumne River and local East Bay District storage.

In compliance with the procedure recited in the published notice pertaining to the issuance of a preliminary permit under Project No. 1134, this Council aoes herewith request that a hearing be had thereon, and predicates such a request upon certain analysis and conclusions deduced from the data herewith attached and made a part of this protest and here-

inafter referred to by reference to Exhibit numoers.

The primary facts upon which the Council submits its request for a hearing in the case of Project No. 1134, are of necessity correlative with those affecting Project No. 567, therefore the said analysis and conclusions are submitted for the consideration of the Federal Power Commission, irrespective of *a* detailed classification as to Project Numbers, as follows, to-wit:

(1) Section 4, suo-section (e) of the Federal Water Power Act recites, "---- That upon the filing of any application for a preliminary permit ---- the Commission, before granting such application, shall at, once give notice of such application in writing to any State or Municipality likely to be interested in or affected by such application, ---- ". No such notice *was* ever giver! to the Municipality of Lodi to do with eiiher Project No. 567 or Ko. 1134. The status of the City of Lodi. as a protestant, was voluntarily sought from the Commission in the first paragraph of the questionaire attached to letter dated Noveriuer 9, 1928, (Exhibit #9), and which query was superficially and unsatisfactorily answered in the first paragraph of the reply letter dated December 3rd 1928, (Exhibit #10). It is not our understanding of the said section that a Municipality must necessarily be in application conflict before being notified *as* uforesaid. The section further provides that a notice shall oe published of such application in a newspaper published in the county or counties in which any part of the proposed Project is located or, "the lands affected thereby are situated". In so far as this Council is advised no such notice was published in the County of San Joaquin within which is located the City of Lodi and a portion of the District Project Works, described in (Exhibit #4).

(2) The status of the City of Lodi as a Municipality, its location, population, assessed valuation, economic dependence, civic and educational facilities, etc., together with tht source and use of its water supply and the effect of the operations of the East Bay Municipal Utility District, if operated in the manner proposed, are recited in the

complaint of the City of Lodi, (Exhibit #21); whereas, a proposal, by the City of Lodi, to do equity in the premises and thereby permit of the dismissal of the said suit, is recited in a resolution of the City Council (Exhibit #22) and more fully set forth in (Exhibit #50).

(3) The title status of the Mokelumne River riparian fee property of the City of Lodi, conveyed by grant deed from the Colorado Power Company, and upon which property the said City proposes to construct and operate a hydro-electric power project to be used in conjunction with its present municipal electric distribution system, is recited in (Exhibits #23-24-25-26-27 and 28); wherein, the terms of the grant, together with the necessity for and dedication to the public use, and authorization to prosecute or defend litigation for the protection of riparian rights thereto are enumerated; whereas, the physical and legal status of the said riparian property, its location, description, economic adaptabliity for hydro-electric power generation, lawful right to the use of the natural flow of the Mokelumne River thereupon and the resultant damage to the said property because of the threatened acts of upstream appropriators, if permitted to construct their storage and diversion works and to operate in the manner proposed, are recited in the Judgment of the Colorado Power Company, (Exhibit #29), and wherein, defendant, Pacific Gas and Electric Company, "shall so operate its reservoirs, canals and power houses that, for each calendar day, the average rate of discharge of water from natural flow and storage into the channel of the main Mokelumne River, at or above the tail-race of the Electra Power House, from the North Fork of the Mokelumne River, by way of the natural channel of said North Fork and defendant's aforesaid canals, shall be not less than 475 cubic feet of water per second, whenever conditions of rain and snow fall and storage shall permit, and, at all other times, shall approximate such standard of operation as nearly as such conditions will permit;" together with the complaint of the City of Lodi, (Exhibit #30), and also with (Exhibit #31), the complaint, in condemnation of the East Bay Municipal Utility District, wherein it sought to acquire the right to operate its project works in the manner and to the extent therein

proposed. The proceedings in the two aforesaid suits, (Exhibits #30 and #31), were concurrently tried in the Superior Court of Calaveras County, California. Judgment was subsequently entered in the condemnation suit of the said District, and from which judgment the City of Lodi has taken an appeal. In its award the Court found from the evidence, "that with the East Bay Municipal Utility District in operation as proposed, regulating the flow of the stream amd releasing storage water from the Pardee Dam, there would at all times be sufficient water at the proposed site of Lodi's power plant to operate a plant during the entire year, and said plant would generate more electrical energy than could be generated with a plant as proposed by Lodi using the natural or unregulated flow of the river. The engineers were in accord that it would be an advantage to the proposed Lodi plant to have the stream regulated as set forth in the method of operation described in the complaint, but the witnesses for defendants testified that unless the regulated flow of the stream was guaranteed in some manner, so that there would be assurance of the flow in the stream, that the feasibility of their project would be destroyed. Unless the operation should be in some manner unreasonable the proposed regulation of the flow of the stream and releasing the water for power and other purposes as contemplated by it will be an advantage to the defendants. It is provided in the license granted to plaintiff by the Federal Power Commission that the operation by plaintiff as to the storage and discharge from storage of the waters of the Mokelumne River shall at all times be controlled by reasonable rules and regulations prescribed by the Commission and in the interest of the waters of said river for power and other beneficial purposes. I do not apprehend that East Bay Municipal Utility District will operate its dams in any other manner than as set forth in its complaint as it would naturally desire to keep its own plant in operation". It was shown from the evidence that with the East Bay Municipal Utility District operating in the manner and to the extent proposed, in accordance with its applications and permits of the California Division of Water Rights, (Exhibits

#5-6 and 7), the said District would have the individual right, each year, to store for power use only, approximately 342,000 acre feet of water or the equivalent of a continuous flow through its power plant, for each calendar day, of approximately 475 cubic feet per second from storage only, regardless of any direct power water diversion from the natural flow of the said river, or the equivalent, for each calendar day, of the minimum release at Electra, above the diversion works of the East Bay Municipal Utility District, recited in the Judgment as aforesaid.

It was further shown from the evidence, as recited in certain exhibits of the said District and herewith designated, (Exhibits #34-35-36-37-and 38), together with testimony of witnesses of the East Bay Municipal Utility District, that the annual mean run-off of the Mokelumne River for the period from 1905 to 1928, was 802,000 acre feet; that the annual mean flow, for each calendar day, proposed to be used in the City of Lodi Power Plant, if operated only with the natural or unregulated flow would be 551 cubic feet per second; that with the municipal draft to the East Bay District of 50 M.G.D. or less, the annual mean flow, for each calendar day, of power water releases by the District, at the tail-race of the Pardee Power Plant and thus available for use in the power plant of the City of Lodi, would be not less than 715 cubic feet per second; that with the municipal draft of 125 M.G.D. or less the annual mean flow, for each calendar day, would be not less than 633 cubic feet per second; and that with the municipal draft of 200 M.G.D. or less the annual mean flow, for each calendar day, would be not less than 550 cubic feet per second; and that of the foregoing respective releases, the mean flow, for each calendar day of those made during the months of lowest natural stream flow, between June thirtieth and January first, with the municipal draft of 50 M.G.D. or less, would be not less than 575 cubic feet per second; that with the municipal draft 125 M.G.D. or less, the mean flow, for each calendar day, during the said period, would be not less than 455 cubic feet per second; and that with the said

municipal draft 200 M.G.D. or less, the mean flow, for each calendar day, during the said period, would be not less than 345 cubic feet per second; provided, that on January first of each calendar year the District would have accumulated in storage in the Pardee Reservoir, one hundred thousand acre feet of water from all stream flow entering the said Pardee Reservoir, and that all of such stream flow into the said reservoir, between July first and December thirty first next preceding the said January first of each year, except that so diverted in accumulating the said one hundred thousand acre feet of storage, would be passed through the said Pardee power house during the said July first to December thirty-first period.

(4) Pending the Judgment decree in the injunction case of the City of Lodi, (Exhibit #30), which stands submitted to the Court, the East Bay Municipal Utility District is not as yet and may not be compelled to operate its works as in the manner aforesaid, and which said operation contemplates the sequestration of the waters of the Mokelumne River and their diversion to the East Bay District only as the progressive needs of the present area of the said District may necessitate; whereas, this Council is informed and therefore believes, that through the Senate Bills numbered 34 to 40, inclusive, now pending before the California State Legislature, the said District is now proposing to enlarge the area of the present East Bay Municipal Utility District, and further is now proposing measures whereby additional consumers of water, without the confines of the said District, may be incorporated within the operations of the said District. Of the aforesaid Senate Bills, those numbered 39 and 40 are declared to be, "urgency measures necessary for the immediate preservation of the public peace, health and safety within the meaning of Section 1, of Article four of the Constitution of the State of California, and shall go into immediate effect. The following is a statement of the facts constituting such urgency and necessity: various county water districts and their inhabitants are now faced with impending water shortages, and the peace, health, safety and welfare of the citizens of this State residing therein are dependent upon the immediate acquisition of an adequate and pure water supply for their public and domestic requirements, which can only be secured from certain

existing municipal utility districts. Said municipal utility districts are at present without authority to enter into appropriate arrangements for supplying said citizens and districts with water, but said amendments will enable municipal utility districts to provide for their public and domestic requirements and avert impending water shortages".

The East Bay Municipal Utility District, through its execution of a water delivery contract with the City and County of San Francisco, (Exhibit #49), wherein the said District agrees to sell and deliver to the said City not to exceed 20 M.G.D. of what is purported, by certain officials of the said District, to be local water or water derived from other sources than the Mokelumne River, (Exhibit #46), has thereby indicated its disposition to evade its pledge to the inhabitants of the Lodi Community that water from the Mokelumne River would be diverted only to satisfy the urgent and progressive needs of the said District. The apprehension of the City of Lodi to do with the execution and operation of the aforesaid contract is indicated in (Exhibits #40 to 48 inclusive).

This Council submits that the peace, health, safety and welfare of the citizens of the City of Lodi and the rural community adjacent thereto are entitled to a prior consideration, in so far as the taking of the waters of the Mokelumne River are concerned to such other and suffering communities, and that the selling and delivery of water to the City and County of San Francisco by the said District as aforesaid is contrary in principle to the implied intent as recited in Application #4223 of the said District to the California Division of Water Rights and its resulting Permit #2459, article 6 (Exhibit #5), and to the declaration recited in the District's Complaint in case #1661, (Exhibit #31), at page 6, lines 2 to 4 inclusive.

The letter (Exhibit #13), of Mr. Geo. Otis Smith, dated October 16th 1928, paragraph 3 at line 14 and paragraph 4 at lines 2 and 5, together, with the subsequent and pertinent facts recited in the Geological Survey Water-Supply Paper #619, that "The problems connected with the determination of the source and quantity of the ground-water supply of the Mokelumne Area are so complex that some of them are not yet entirely

solved. The very nature of the facts concerning under-ground water supplies is such that patient and careful research over a long period is necessary 'before they can be interpreted with exactness. A decision on so paramount a question as the effect of the Mokelumne River upon the ground-water supply of the Mokelumne Area would be premature at this time. The decline of the water table in the Mokelumne Area is *an* established fact. Recognition of the great value of 'both surface and. ground-water for irrigation in the Mokelumne Area led the United States Geological Survey, in financial cooperation with the East Bay Municipal Utility District, to undertake a survey of' the waters of the valley. It was evident that a thorough study of the water problems and the status of the irrigation development should be made in this area in view of the fact, that the East Bay Municipal Utility District plans to divert water out of the Mokelumne drainage basin to the East Bay Cities. It is therefore desirable to ascertain the quantity of water that can be exported without interfering with the right of the lawful appropriators and riparian users of the natural flowof the Mokelumne River and also to determine to what extent the great underground water reservoir of *the* area, which supplies 2000 irrigation wells, is dependent upon the Mokelumne River for recharge", indicate the seriousness of the present and future ground-aster situation in the Mokelumne Area as interpreted by an unbiased. agency.

In a letter addressed to the Federal Power Commission, dated November 9th 1928, (Exhibit #9), paragraph number nine of the questionaire, attached thereto, requested certain information to do with the percolating waters of the Mokelumne River. The reply Setter, dated December 3rd 1928, (Exhibit #10), paragraphs numbers nine and ten indicate that in the opinion of the District Engineer the needs of the East Bay Municipal Utility District take precedence over all other rights attaching to the waters of the Mokelumne River and further that such .knowledge as was had by the said Engineer, to do with the percolating waters of the said river, was obviously superficial.

There was, at the same time, a letter addressed to the Calif-

ornia Division of Water Rights, (Exhibit #11), requesting certain information, particularly to do with the underground water supply of the City of Lodi. The reply letter, dated December 10th 1928, (Exhibit #12), clearly indicates the uncertainty in the mind of the Chief of the Division as to what effect the proposed operations of the East Bay Municipal Utility District will have upon the percolating and underground waters of the Mokelumne River Area. The Municipal Permit No. 2459, (Exhibit #5), issued by the Division of Water Rights to the East Bay Municipal Utility District, further provides, in article No. 10 thereof, for the determination of the extent of use of prior vested rights to the percolating waters of the Mokelumne River. Similar information was sought in a letter addressed to the East Bay Municipal Utility District, dated November 9th 1928, (Exhibit #14), and its reply letter dated November 15th 1928, (Exhibit #15), paragraph four, indicates an obvious unwillingness upon the part of the Chief Engineer of the said District to make a definite commitment.

(5) In recognition of the existing uncertainty of the effect, upon the underground waters of the Mokelumne Area, of the proposed operations of the East Bay Municipal Utility District, as aforesaid, and being advised by the Engineers of the City of Lodi that such proposed operations of the said District will have a positive and destructive effect upon the said underground waters of the said Area, and in consideration of the suggestion made in Geological Survey Water-Supply Paper #619, whereby the application of surface gravity water to certain areas contiguous to the Mokelumne River, east of the Woodbridge diversion dam, would assist in maintaining the underground water supply in the Mokelumne Basin, this Council directed the City Attorney, (Exhibit #16), to communicate with the Division of Water Rights (Exhibits #17-18-19 and 20), and determine the status of certain existent agricultural applications through which such an area could be irrigated as aforesaid, together with the possible adaptability of such applications, in part, to the solution of the water problem of the City of Lodi. The aforesaid communications from the Division of Water Rights generall substantiates

the belief of this Council that an amicable adjudication of the present litigation could be had with the firm cooperation of the proper State and Federal Agencies and thereby avoid a useless economic waste and the eventual conversion of what is now one of the most thickly settled and productive rural districts in the United States to an area useful only for the production of such products as may be grown without irrigation. The history of the Owens River Valley may in this community be repeated, and even in a more sinister manner.

(6) The Act of Congress, approved December 19th 1913, wherein the so-called Hetch Hetchy Grant was made to the City and County of San Francisco, the Grantee, amply and firmly and definitely provided for the protection of the prior rights of the Modesto and Turlock irrigation districts in no uncertain or evasive terms. Excerpts of the Act, (Exhibit #51), recite that the said districts jointly, and not exceeding a total combined eventual area of 300,000 acres, shall at all times, prior to <u>any</u> diversions to the City of San Francisco, or elsewhere by the said city, receive as a minimum, the initial 2350 cubic feet per second of the natural daily flow of the Tuolumne River, whenever the same can be beneficially used by the said districts and further that the Grantee, City and County of San Francisco, shall never interfere with such rights. In addition to the aforesaid natural flow priority, the Grantee is compelled by the terms of the grant to release from storage, upon demand of the said Districts and when necessary for the beneficial use therein a quantity of water when added to the natural flow then available to the Districts, at their point of diversion, shall equal the said quantity of 2350 cubic feet per second at the said diversion point and for which stored water the Grantee shall be paid the actual costs thereof.

In consideration of the fact that the average annual run-off of the Tuolumne River is approximately 1,825,000 acre feet or an average daily flow per annum of 2500 cubic feet per second, the Grantee is thus compelled to release, for use by prior rights, during the irrigation or beneficial use period, 2350 cubic feet per second or ninety four per cent of such average daily flow, whereas, the average annual run-off of the

Mokelumne River is approximately 802,000 acre feet, (Exhibit #34), or an average daily flow per annum of 1100 cubic feet per second and were the East Bay Municipal Utility District compelled to release, for the use by prior rights, that which Congress has compelled the City and County of San Francisco so to do, the comparable release by the said District would by 1034 cubic feet per second, whereas the License was granted to the said District for Project #567 without binding provisions of any Release.

Congress has made it mandatory that the City and County of San Francisco must sell water from Tuolumne River storage at actual cost for the use when needed by prior rights therein, while the Federal Power Commission has omitted such a protective measure in its License to the East Bay Municipal Utility District and thereby retarding the growth and prosperity of the Mokelumne River area because of the economic limitation of irrigation by pumping subsurface water.

Congress has made it further mandatory that the City and County of San Francisco shall sell and supply upon request of and to the said irrigation Districts or land owners or Municipalities therein, any excess of electrical energy, not required for pumping the water supply for the said City and County, at such price as will actually reimburse the costs thereof and so to do before any electrical energy may be sold for commercial purposes, whereas, the East Bay Municipal Utility District, contrary to its applications and permits, (Exhibits #6 and #7) of the California Division of Water Rights, together with its Project License #567, (Exhibit #4), from the Federal Power Commission, wherein and whereby the said District declared its intention and was given permission to use the electrical energy proposed to be generated, and declared to be a public necessity for pumping in connection with the delivery of its municipal water supply, has contracted and sold such energy to a commercial Public Utility Company by agreement, (Exhibit #8), dated November 13th 1929. Here again, the Federal Power Commission omitted, in the issuance of the License to the said District, the giving of a comparable protection, to the communities affected by the project works of the said District, as was given by Congress to the areas affected by the proposed operations

of the City and County of San Francisco.

In consideration of the future increase in use of electrical energy and the resultant higher cost of pumping, because of an accelerated lowering of the ground-water table underlying the affected area, due to the proposed operations of the East Bay Municipal Utility District, the aforesaid ommission by the Federal Power Commission is regretable and will eventually result in a great, unnecessary and unfair economic waste to the fifty thousand acres now irrigated from wells.

The Act of Congress specifically provides that the City and County of San Francisco shall not divert <u>any</u> of the waters of the Tuolumne River except such as shall be <u>necessary</u> to provide for <u>its</u> municipal needs <u>together</u> with the waters it <u>now has</u>. In contrast to the protection that Congress thus gave to the proprietors of prior rights in and to the waters of the Tuolumne River Basin, the Federal Power Commission has through the ommission of a comparable restraining provision, thereby permitted the East Bay Municipal Utility District to substitute its former municipal water supply with the waters of the Mokelumne River and thus dispose of its said former supply for monetary gain as recited in (Exhibit #49), together with certain correspondence pertaining thereto, (Exhibits #39 to #48 inclusive). That the said District is now in contemplation of the disposition of additional waters, has been, in this Resolution, heretofore recited.

In consideration of the aforesaid facts, this Council submits, that if, in the year 1913 and in consideration of the then existing and anticipated agricultural and municipal developments of the State of California, the Congress of the United States was justified in imposing upon the City and County of San Francisco the restrictions and obligations as in the facts recited for the protection of the Tuolumne River Area, then the Federal Power Commission, created in 1920 by and subservient to the Congress, did in 1926, irrespective of the subsequent developments, as aforesaid, and more particularly in the Mokelumne Area, obviously and palpably err in granting the present License of Project #567, to the East Bay Municipal Utility District, whereby, and for all practical purposes, the manipulation of the waters of the Mokelumne River

is dependent upon the will and convenience of the said East Bay Municipal Utility District.

(7) Article 16 of the said License of Project #567, (Exhibit #4), and articles 9 and 6 of Permits #2459 and #2529, respectively, issued by the California Division of Water Rights, (Exhibits #5 and #6), make it mandatory that the East Bay Municipal Utility District construct the so-called Jackson Creek Spillway, whereby surplus waters in excess of the amounts used by the said District for its municipal needs, may be diverted northward from the Pardee Reservoir, and thereby completely out of and away from the Mokelumne River Basin below the said Pardee Reservoir. Paragraphs (3) and (6) of letter, (Exhibit #10), dated December 3rd 1928, from the Federal Power Commission, recite the assumption of the passage of water, through the Reservoir of the said District, for use by the established prior vested rights below, before and prior to any diversions through the said Jackson Creek Spillway shall be made and thereby amply protecting such down stream prior vested rights; however, Article 10 of the District's License, (Exhibit #4), was included in the said License, "to safeguard the possibility of ultimately developing the Arroyo Seco Reservoir," the water of which would be contributed through the Jackson Creek Spillway and the resultant complete destruction of the aforesaid prior vested rights, Paragraph (2) of said (Exhibit #10), provides that, "Any party so damaged has recourse to the State Courts, without reference to the Federal Power Commission".

Insofar as having any definite and firm assurance that, because of the proposed diversions of the said District to the East Bay Cities, together with the proposed ultimate diversions through the said Jackson Creek Spillway, the entire flow of the Mokelumne River, below the diversion works of the said District and above the lands having the said prior vested rights, will not eventually be so diverted, it is obvious that such assurances can, to date, only be had through protracted litigation. Irrespective and apart from the ultimate diversions through the Jackson Creek Spillway as aforesaid, the ultimate municipal diversion of the East Bay Municipal Utility District, as dependent upon the rate of

growth in the present area of the said District, together with the number and capacity demands of the areas now proposed to, and which may, be served as aforesaid, under its present appropriation of 217,000 acre feet per annum will at times exceed the total annual run-off of the Mokelumne River, as would have been the case for the year 1923-1924, as indicated in (Exhibit #34). It was shown from the evidence, during the trial of cases No. 1642 and No. 1661, in the Superior Court of the County of Calaveras, California, as hereinbefore recited, (Exhibits #30 and #31), that the said District had allocated a maximum quantity of 70,000 acre feet per annum to provide for and satisfy the aggregate vested and prior rights of the Mokelumne Basin below the Pardee Reservoir or an average daily flow per annum of less than 100 cubic feet per second, whereas the total average daily flow per annum of the Mokelumne River is 1100 cubic feet per second. Thus the East Bay Municipal Utility District contemplates releasing, although not ordered so to do by Court decree or mandate of the Federal Power Commission or the California Division of Water Rights, for the aggregate use of all Mokelumne River prior vested rights approximately ten per cent of the average daily flow per annum of the said river, while the City and County of San Francisco is, by Congress ordered to pass approximately thirty per cent of the average daily flow per annum of the Tuolumne River for the protection and use of similar rights in the Tuolumne Basin Area. This Council again submits that such a litigation burden should not be imposed upon the community so affected and further that such an oppressed community is entitled to the assurance of water releases at the Pardee Reservoir, of sufficient quantity to maintain the surface and sub-surface supplies as they are now maintained by nature, and further, to the protection of the existing Federal and State Agencies viz., the Federal Power Commission and the California Division of Water Rights.

While Section 27 of the Federal Water Power Act provides that the Federal Power Commission does not have nor shall be assumed to have jurisdiction over the disposition of any waters of a State, other than in the interest of navigation, Article 17 of the District's License,

(Exhibit #4), provides certain limitations, upon the said District and other appropriators, for the control and use of appropriated waters of the Mokelumne River and further, paragraph (4) of the letter dated December 3rd 1928, (Exhibit #10), recites such limitations and restrictions upon the said District and their design, "to aid full and comprehensive development of the entire water resources of the stream although at some possible sacrifice of the power production at Pardee Dam", therefore, because of the foregoing acts it is concluded that the Federal Power Commission can and does exercise its authority to control, through issuance of licenses, the operations of Project Works in the interest of the development and protection of present and future rights in and to the waters of streams of the United States. No where in the said License have the prior vested rights in the Mokelumne River Basin been so protected by limitations and/or restrictions upon the proposed operations of the East Bay Municipal Utility District.

Articles 8 and 10 of Permit #2459, (Exhibit #5), and Article 10 of Permit #2529, (Exhibit #6), indicate, a determination by the California Division of Water Rights to retain jurisdiction and the right to regulate the operations of the said District, to the end that, "there is a possibility that there will not be sufficient water in the Mokelumne River ---- to satisfy requirements", together with a definite absence of understanding and knowledge of what the effect of the District's operations will be upon the percolating and underground waters of the said river and the area now dependent thereupon for its municipal, domestic and irrigation supply. The facts contained in that certain Decision No. 1462, "Opinion and Order", of the California Division of Water Rights, dated April 17th 1926, referred to in (Exhibit #20) at paragraph (3-4)a, are clearly indicative of the opinions and determinations of the said Division in connection with the granting of Application #4228 of the East Bay Municipal Utility District, whereby, the said District subsequently became a Permittee under Permit #2459, (Exhibit #5), In the findings of the said Decision it was found and concluded that, "There

is at present an area of some 40,000 acres in the vicinity of Lodi dependent either wholly or in part upon underground water drawn from wells. The underground supply is largely dependent upon percolation from the Mokelumne River and other water courses and from seepage from the Mokelumne Canal. Testimony was presented to show that during the last ten years the ground water level has fallen on an average of 13 to 18 feet. The rights of the users of water by this method are as truly prior and vested as are the rights of those who divert from a stream on the surface and such right owners are entitled to the same degree of protection against subsequent appropriators. It is incumbent upon Permittees who have received a permit to divert unappropriated water to secure such a supply in a manner which will not be to the detriment of the owners of prior rights to water from the same source.

There is normally without question a large amount of unappropriated water in the Mokelumne River. This does not mean that any applicant receiving a permit for any portion of this can divert the same without arranging for full protection for the prior rights and in the case of users from this underground basin, the water level in which is receding, this means in effect that the natural percolation must not be deminished. The Permittee, in this case, will be under the clear obligation of amply safeguarding prior rights, and it will be much more efficient and less expensive for Permittee to provide complete protection than to withstand ensuing litigation and damages if he does not". The findings further recite, "while there is a vast amount of unappropriated water available in the Mokelumne River after the rights of the underground users are considered, such rights do exist, are entitled to protection, and on account of the difficulty of an accurate engineering analysis are in a position to insist on generous treatment and to materially obstruct Applicant's plans in case this is not provided for. If Applicant's allowance for vested rights include nothing for the underground users, such estimate was clearly eroneous. As it appears that Applicant is, or was at the time of the hearing, not fully cognizant of the responsibility which he as a Permittee must accept toward the

underground water users, it is concluded that it will be advisable to include in such permit as may be issued a special clause pointing out such responsibility".

The Division concluded that the said Municipal Permit #2459, should be issued subject to special limitations, one of which would provide for, "the safeguarding of the existing rights of the users from the underground water basin of the Mokelumne River". The aforesaid reservations, conditions and findings of the said Division of Water Rights, as recited in (Exhibit #5), permit, approved April 17th 1926, together with the said Decision in case #1462, as aforesaid, were by inference referred to in the third paragraph of the preamble of License of Project #567, (Exhibit #4), and were known to the Federal Power Commission at the time of its subsequent execution of the said License on June 24th 1926, in accordance with "The Federal Water Power Act", section 9, sub-section (b), and section 27 thereof.

This Council assumes that the Federal Power Commission, in recognition of the aforesaid facts, incorporated Article eighteen in its License to the East Bay Municipal Utility District, (Exhibit #4), in which, "the operations of the Licensee, so far as they affect the use, storage and discharge from storage of the waters of the Mokelumne River, shall at all times be controlled by such reasonable rules and regulations not materially interfering with the use of the water of the Licensee for its municipal and domestic needs as the Commission may prescribe in the interests of ---- beneficial public uses". This Council submits that such a reservation as aforesaid, together with Section twenty six of "The Federal Water Power Act", authorizes and empowers the Federal Power Commission to impose such water release regulations, upon the East Bay Municipal Utility District, as will assure satisfactory protection to downstream prior vested rights, and in no way thereby nullify or destroy the water appropriations of the said District for either its municipal or power use as are recited and limited in such permits, (Exhibits #5 and #6).

A letter from the Executive Secretary of the Federal Power Commission, dated November 6th 1930, (Exhibit #42) in section 2, paragraph two, recites that "The License ---- to the East Bay Municipal District was necessitated, under the provisions of 'The Federal Water Power Act', by reason of the fact that the District proposed to generate electric power --- in connection with its public works designed to furnish a municipal water supply. Article 18 of the License was designed only to regulate the discharges and uses of water made by the Licensee in the operation of its power project. While the language of the Article seems broad, it is not the desire or policy of the Commission to act thereunder for the purpose of controlling the operations of the East Bay Municipal Utility District with respect to other uses to which its water supply may be put." During the trial of cases No. 1642 and No. 1661, (Exhibits #30 and #31, respectively), in the Superior Court of the County of Calaveras, California, as aforesaid, the City of Lodi offered to do Equity in the premises by stipulating that the East Bay Municipal Utility District should have the prior right to continuously divert, from the Pardee Reservoir, from natural flow and/or storage, to the East Bay Cities a municipal draft of seventy seven cubic feet per second of the Mokelumne River water or the capacity of its present pipe line and contemporaneously therewith the said District should continuously deliver at the tail-race of the Pardee Power House, 375 cubic feet per second together with an additional 375 cubic feet per second continuously between the hours of 5 o'clock P.M. and 8 o'clock P.M. of each day or a total average flow, for each calendar day, of 422 cubic feet per second. Such deliveries to be continuous so long as the surface of the Pardee Reservoir is at least two feet above the elevation of the lowest gravity intake of the said District pipe line through which such water would be delivered to the East Bay Cities. The said District to permit all releases, as made by the Pacific Gas and Electric Company in pursuance of the Judgment in case #1591, (Exhibit #29), as aforesaid, together with all other flow from the tributaries of the Mokelumne River above the Pardee Reservoir, to pass into the said Pardee Reservoir until the said Reservoir is full to capacity and thereafter such an amount to flow

as necessary to keep it so filled simultaneous with the municipal and power or discharge drafts as aforesaid, and thereafter, any and all flow into the said Pardee Reservoir, from all sources, not required to keep the said Reservoir so filled to capacity to be available for delivery to the said East Bay Municipal Utility District for municipal Use. At the time the aforesaid Equity offer was made, the referred to Judgment had not then been entered.

The waters of the Mokelumne River proposed to be annually diverted to storage in Salt Springs, Deer Valley and Lower Bear River Reservoirs by the Pacific Gas and Electric Company, under their present Permits from the California Division of Water Rights, total in quantity in excess of 204,000 acre feet, and which may be, in the opinion of the said Division of Water Rights, so stored and released by the said Company at its will and convenience, irrespective and apart from any rights which may be asserted by the said East Bay Municipal Utility District pertaining to the manner and times of such proposed releases of the said stored waters, and further, that the said District have no rights in and to the said waters because of any financial investment in the Project Works now being constructed to so divert and store the same. Irrespective and apart from such proposed annual storage by the Pacific Gas and Electric Company of 204,000 acre feet, there will be an annual average flow, in the main Mokelumne River above the Diversion Works of the said District, (Exhibit #34), of 598,000 acre feet, or 331,000 acre feet in excess of the maximum quantity of 217,000 acre feet now permitted to be diverted to the East Bay Cities in any one year.

The City of Lodi has also offered to do Equity in case No. 22415, (Exhibit #21), in the Superior Court of the County of San Joaquin, California, as aforesaid, and as recited in a Resolution of the said City Council, (Ehibit #22), which offer the East Bay Municipal Utility District has, through a letter from its President, dated November 10th 1930, (Exhibit #32), evaded through suggested postponement of pending litigation and further studies of the percolating water problem of the Mokelumne River Basin.

This Council submits that the aforesaid offers to do Equity were just and fair and were individually entitled to serious consideration, whereas, the East Bay Municipal Utility District did refuse to consider the said offers or propose any offers so to do Equity.

The evasive disposition of the East Bay Municipal Utility District is clearly indicated in the aforesaid letter from the District President, whereas, the position of the City of Lodi is indicated in a letter from its Mayor, dated November 18th 1930, (Exhibit #33), wherein, is recited that, insofar as the inhabitants of the City of Lodi and those of adjacent irrigated communities are concerned, the problem is not one of monetary damage, but it is a matter of water which is the life blood of this community.

NOW THEREFORE, BE IT HEREBY RESOLVED, That, this Council does protest the granting, by the Federal Power Commission, of the application of the East Bay Municipal Utility District for a preliminary permit to construct and operate a Power Project, No. 1134, upon the Mokelumne River, as applied for in its present applications with the said Commission and with the California State Division of Water Rights, (Exhibit #7); whereas, such protest will be, and is hereby withdrawn conditional, that the said applications shall be so amended and the subsequent Permits and/or Licenses issued subject to the following conditions, to-wit:

First: That the said District shall continuously pass through their proposed so-called Middle Bar Reservoir, to be constructed as a part of the Project Works under the said application for Project No. 1134, and return to the Mokelumne River at the tail-race of the Middle Bar Power House, or by-pass thereto, all of the waters proposed to be released and returned to the Mokelumne River by the Pacific Gas and Electric Company at the tail-race of their Electra Power House as, if and when such waters, in a quantity of not less than 475 cubic feet per second, are so released by the said Company, and to the extent provided in that certain Judgment in Case No. 1591, in the Superior Court of Calaveras County, California, at paragraph VI thereof, (Exhibit #29), and

Second: That the said District shall, upon written request, sell and supply to the Municipalities and the inhabitants and land owners within the "Mokelumne Area", as defined in the Geological Survey Water-Supply Paper #619, at page #2 and indicated upon Plate #8 therein, any excess of electrical energy generated under Project No. 1134, not required for pumping the municipal water supply for the present area of the East Bay Municipal Utility District, and at such a price as will actually reimburse the costs thereof to the said District, and so do before any electrical energy may be otherwise sold for commercial purposes by the said District; and

Third: That the Board of Directors of the said District shall firmly and by resolution, accede to certain alterations and amendments of its present License of Project No. 567, as shall be imposed by the Federal Power Commission, under and by authority of Section 28 of "The Federal Water Power Act", together with Article 18 of the Project License No. 567, (Exhibit #4), and to be as follows, to-wit;

(a) That the said District shall continuously pass through their so-called Pardee Reservoir, now constructed and operated as a part of the Project Works under License No. 567, and return to the Mokelumne River at the tail-race of the Pardee Power House, or by-pass thereto, all of the waters proposed to be released and returned to the Mokelumne River by the Pacific Gas and Electric Company at the tail-race of their Electra Power House, as, if and when such waters, in a quantity of not less than 475 cubic feet per second, are so released by the said Company, and to the extent provided in that certain Judgment in case No. 1591, as aforesaid; provided, that the said District shall first have the prior right to divert, at and from its present municipal supply diversion intake in the Pardee Reservoir, from the said proposed released waters of the said Company, a continuous flow of seventy seven cubic feet per second as, if and when such waters may be released and to transport same to the East Bay Municipal Utility District for its municipal use in the present area thereof, and to be so transported by means of the present pipe line of the said District, and provided further, that all remaining flow, if any,

of the said Pacific Gas and Electric Company releases, as aforesaid, shall be released and returned to the Mokelumne River, by the said District, at the tail-race of the Pardee Power House, or by-passed thereto, and in such a released manner that the difference in quantity between the total quantity of water so discharged at the Electra Power House by the Pacific Gas and Electric Company, for each calendar day, and the quantity, during the same calendar day, transported to the East Bay Cities, shall be so regulated and released by the said District that the aforesaid Company discharge to be returned to the river at the tail-race of the Pardee Power House or by-passed thereto, shall be of a continuous and uniform flow during the same calendar day; conditional, that when the available quantity of such return discharge at the Pardee Power House, as aforesaid, shall exceed the equivalent of a continuous flow of 375 cubic feet per second, for such calendar day, which said flow shall be continuously released as in this section provided, then, the said District shall release such an available excess quantity between 5 o'clock P.M. and 8 o'clock P.M. of the same calendar day during which the said release of 375 cubic feet per second shall have been made, as aforesaid. Thereafter, and sucsequent to the release and return of the waters of the Pacific Gas and Electric Company, as herein provided, the said District shall have the right to store, from all inflow into the Pardee Reservoir, the quantities of water permitted to be so stored under its present Applications and Permits and to subsequently divert, for municipal and power uses, from such storage, and/or natural flow, all waters permitted to be so diverted under the permits as aforesaid; providing, such maximum annually permitted municipal diversions to the East Bay Cities shall include the aforesaid seventy seven cubic feet per second or portions thereof and be so made by the said District for use only in the area of the present incorporated East Bay Municipal Utility District, and only then as the progressive needs of the said District require; and

(b) That the said District shall, at all times maintain its local reservoirs, in the vicinity of the East Bay Cities, full to capacity precedent to the retention of any storage by it in the Pardee Reservoir above the lowest present intake, in the said Reservoir, of its water transport pipe line, providing, that its actual municipal needs and consumptive

drafts, as drawn direct from its said local reservoirs, shall not, for any protracted period, exceed the then maximum asbivery capacity of the existing water transport facilities, from the said Pardee Reservoir to the said local reservoirs; and

(c) That the said District shall not divert beyond the limits of the San Joaquin Valley any more of the waters of the Mokelumne watershed than, together with the waters which it now has, or may hereafter acquire from sources other than the Mokelumne River, shall be necessary for its beneficial municipal purposes within the area of the present East Bay Municipal Utility District, excepting however, that the waters now being delivered to the City and County of San Francisco under that certain agreement, dated November 17th 1930, (Exhibit #49), between the said City and the said District, shall continue to be so diverted and no more, conditional however, that upon the termination of the said present agreement no waters shall thereafter be so diverted to the City and County of San Francisco or elsewhere, as aforesaid; and

(d) That the said District shall sell, and deliver into the Mokelumne River below the Pardee Dam, to Districts which are now incorporated or as in the future may be incorporated, within the "Mokelumne Area" as defined in Geological Survey Water-Supply Paper #619, at page #2 and indicated upon Plats #8 therein, water from storage in the Pardee Reservoir for domestic and irrigation use and in such amounts as may be requested and needed for beneficial use therein, at such price as will return to the East Bay Municipal Utility District the actual storage costs thereof; Provided, that the District shall only be required to make such sales and deliveries of stored water as, if and when the progressive municipal needs of the said present District area shall have been first provided for, and only when its local reservoirs in the vicinity of the East Bay Cities shall be full to capacity, and further, that the said District shall be required to make such sales and deliveries, in any calendar year, only when storage in its Pardee Reservoir, at the time or times when such written request or requests for such water may be made, shall be of a sufficient quantity to permit of such released, in the order and in the

quantity, of such requested waters without reducing the quantity of stored water then remaining in the said Pardee Reservoir, subsequent to such releases and discharges as aforesaid, to less than fifty thousand acre feet, provided further, that the District shall be only required to make such requested irrigation releases in such a manner and to such an extent, whereby the said District may, if it so elects, accumulate, from all inflow sources, as aforesaid, and have in storage in the Pardee Reservoir, as of January first of each calendar year, and conditional that the said local reservoirs shall be full to capacity, one hundred thousand acre feet of stored water and shall have the right to so operate its Pardee Reservoir, during all of each calendar year so as to permit of the accumulation of such a storage reserve; and

(e) That the said District, subsequent to the termination on or before September 30th 1935, of its present agreement, dated November 13th 1929, (Exhibit #8), with the Great Western Power Company of California, now under the control of the Pacific Gas and Electric Company, wherein the said District has contracted to sell and the said Company has contracted to purchase all of the electrical energy proposed to be generated at the Pardee Power House, shall upon written request, sell and supply to the Municipalities and the inhabitants and land owners within the "Mokelumne Area" as defined in the Geological Survey Water-Supply Paper #619, at page #2 and indicated upon Plate #8 therein, any excess of electrical energy generated under Project No. 567, not required for pumping the municipal water supply for the present area of the East Bay Municipal Utility District, and at such a price as will actually reimburse the costs thereof to the said District, and so do before any electrical energy may be otherwise sold for commercial purposes by the said District; and

Fourth: That the Federal Power Commission shall direct the Pacific Gas and Electric Company, in accordance with Article No. 8 of Project License No. 137, transferred and assigned to the said Company by J.W.Preston, Jr., and which License was originally approved by the

Federal Power Commission on November 24th 1925, to henceforth keep an accurate record of its daily discharge of water at the tail-race of its Electra Power House in accordance with its proposed operations as hereinbefore recited, and further, to direct the East Bay Municipal Utility District, in accordance with Article No. 9, of Project License No. 567, together with proposed Project License No. 1134, to henceforth keep an accurate record of the daily inflows and outflows of the Pardee and Middle Bar Reservoirs, whereby the disposition, by the District, of the waters proposed to be released and returned to the Mokelumne River by the Pacific Gas and Electric Company at the tail-race of their Electra Power House, together with all other releases and diversions by the said District, may be determined and further, that the said Commission direct the said Company and the said District to transmit such records to the City of Lodi or its appointee upon a written request of the said City,

BE IT FURTHER RESOLVED, That the Federal Power Commission be and it is hereby requested to review the record of the activities, declarations of policy and intent, together with the actual procedure of the East Bay Municipal Utility District subsequent to the selection by it of the Mokelumne River as the source of a municipal water supply for the said District, and to incorporate in such review an analysis of the "Opinion and Order" of the California Division of Water Rights, in Decision No. 1462, wherein the said Division recites that, "the East Bay District has publicly announced a desire not to hinder the development of the back country and a willingness to cooperate with the Valley in some plan, such as the building of Arroyo Seco Reservoir, which would relieve the District from further expense in providing for the prior rights and be of immense benefit to the entire Valley below.", also the record of the affect of the Mokelumne River natural flow relative to its contribution in maintaining the underground water table in the Basin of the said River; and further, to review the facts, reasons and conclusions upon which the said Commission, predicated its demand that the East Bay Municipal Utility District construct, at a cost of several hundred thousand

dollars, the Arroyo Seco Spillway precedent to the granting of License to Project No. 567, whereby waters of the Mokelumne River can and eventually will be diverted completely out of and away from the natural Drainage Basin Area of the said River and thereby divest the said Area of its lawful prior vested appropriative and riparian rights; together with the Equity proposal as made by this Council to do with the adjudication and protection of the appropriative percolating rights of the City of Lodi in and to the waters of the Mokelumne River Basin, and further, to direct its Executive Secretary to advise this Council of its findings; and be it

FURTHER RESOLVED, That the Federal Power Commission be and it is hereby requested to demand of the said East Bay Municipal Utility District that it construct, in and along the Mokelumne River, downstream and below the Pardee Dam, and provide for the operating costs thereof, such structures, including dams, reservoirs and appurtenances thereto, as will artificially provide an equivalent water contribution toward the maintenance of the underground water table in the "Mokelumne Basin Area", as has been by nature so contributed by the Mokelumne River prior to the construction and operations of the said District upon the said River; and be it

FURTHER RESOLVED, That the Federal Power Commission be and it is hereby requested, under and by its authority of Section 10, sub-section (c) and Sections 25 and 26, of "The Federal Water Power Act", to prescribe such regulations and orders, in connection with the future operations and structure installations of the East Bay Municipal Utility District Project Works as will hereafter protect the life, health and property of the peoples residing within the Area now adversly affected and to be so affected by the operations of the said District; and be it

FURTHER RESOLVED, That the Federal Power Commission be and it is hereby requested to order a hearing pending the issuance of a preliminary permit authorizing the construction and operation of proposed Project No. 1134; and be it

FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to transmit a certified copy of this Resolution to the Federal Power Commission at Washington, D.C.

I, J.F.Blakely, City Clerk of the City of Lodi and ex-officio Clerk of the City Council of said City do hereby certify that the foregoing Resolution No. 631 was regularly introduced, passed and adopted at a regular meeting of the said City Council held Monday, March 16th, 1931, by the following vote:

AYES: Councilmen, Steele, Keagle, Weihe, Roach and Spooner (Mayor)

NOES: Councilmen, NONE

ABSENT: Councilmen, NONE

Attest:

(

City Clerk of the City of Lodi.

Dated: March 16th 1931.

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C I T Y O F L O D I
OFFICE OF THE CITY CLERK

STATE OF CALIFORNIA }
County of San Joaquin } ss

I do hereby certify that the attached is a full, true and correct copy of Resolution No. 631 of the City Council of the City of Lodi, passed and adopted March 16th, 1931, as the same appears of record in the office of the City Clerk of the City of Lodi.

In testimony whereof I have hereunto set my hand and the Seal of the City of Lodi, this 16th day of March 1931.

City Clerk of the City of Lodi.

(SEAL)