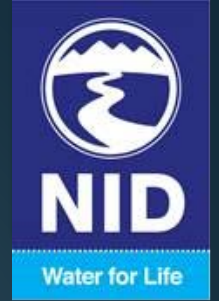




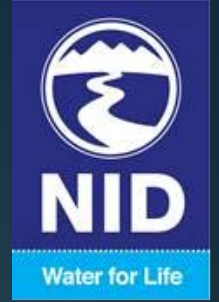
NID PLAN FOR WATER WORKSHOP #4
WATER RIGHTS (STAGE #2)

OVERVIEW



- ▶ Part 1: Surface Water Rights 101
- ▶ Part 2: Pending NID Water Right Proceedings
- ▶ Part 3: NID's Water Rights

What is Surface Water that is Regulated In California?



- ▶ Water flowing in a natural channel
- ▶ Underflow of surface streams
- ▶ Subterranean Streams
 - ▶ Water flowing underground in “known and definite channels”
 - ▶ “Percolating groundwater” is not regulated as surface water
- ▶ Springs that flow off your property

Types of Surface Water Rights



- ▶ Pueblo Rights (1848)
- ▶ Riparian Rights (1850)
- ▶ Federal Reserved Rights (priority varies)
- ▶ Pre-1914 Appropriative Rights (Before December 19, 1914)
- ▶ Post-1914 Appropriative Rights

Riparian Rights



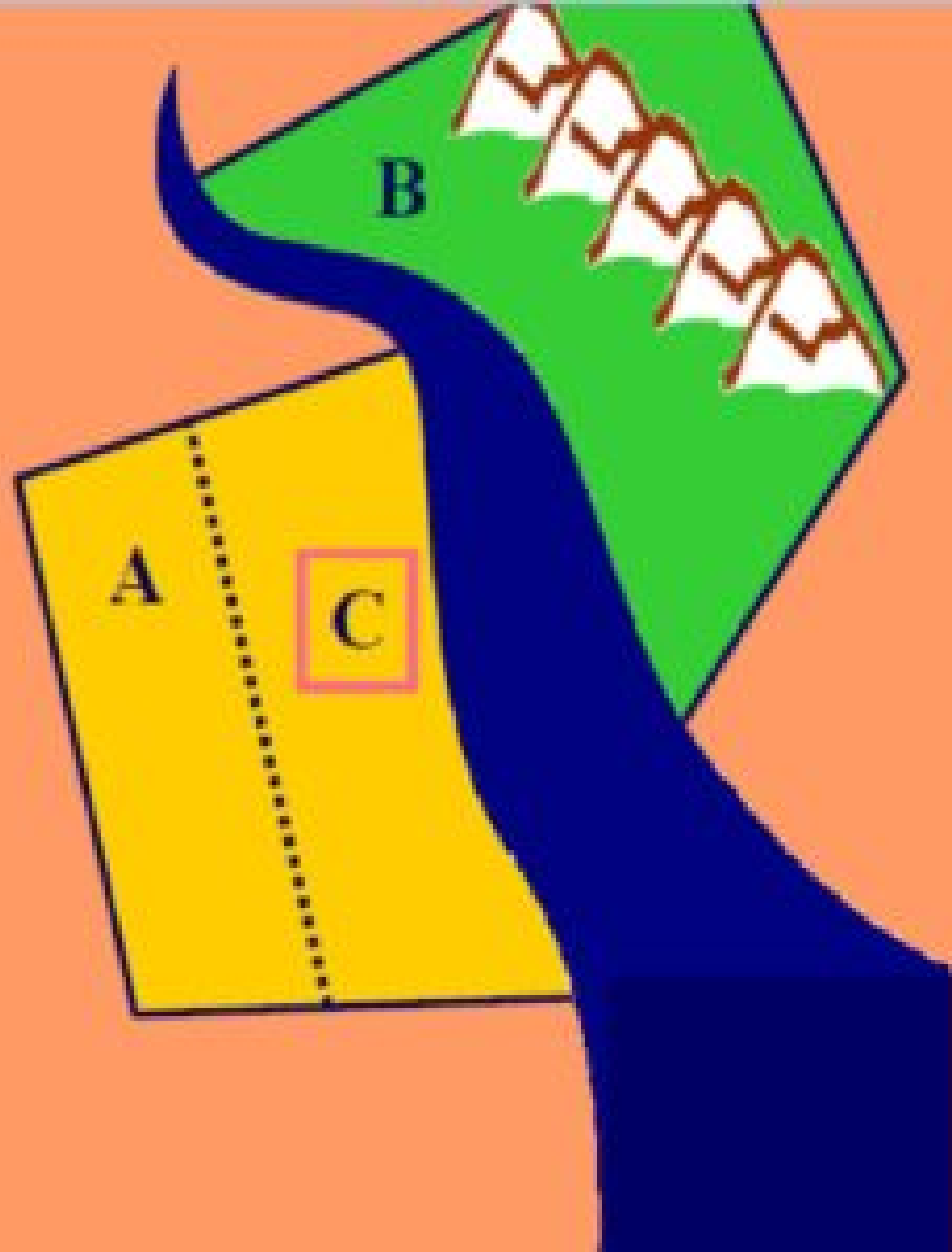
- ▶ Basic Principle: All owners of property adjacent to a stream have the right to reasonable use of water from the stream (or natural lake)
- ▶ Derives from English Common Law and is the prevailing system in the Eastern United States
- ▶ Riparian water right can be used on any reasonable, beneficial use on the riparian property

Riparian Rights (Continued)



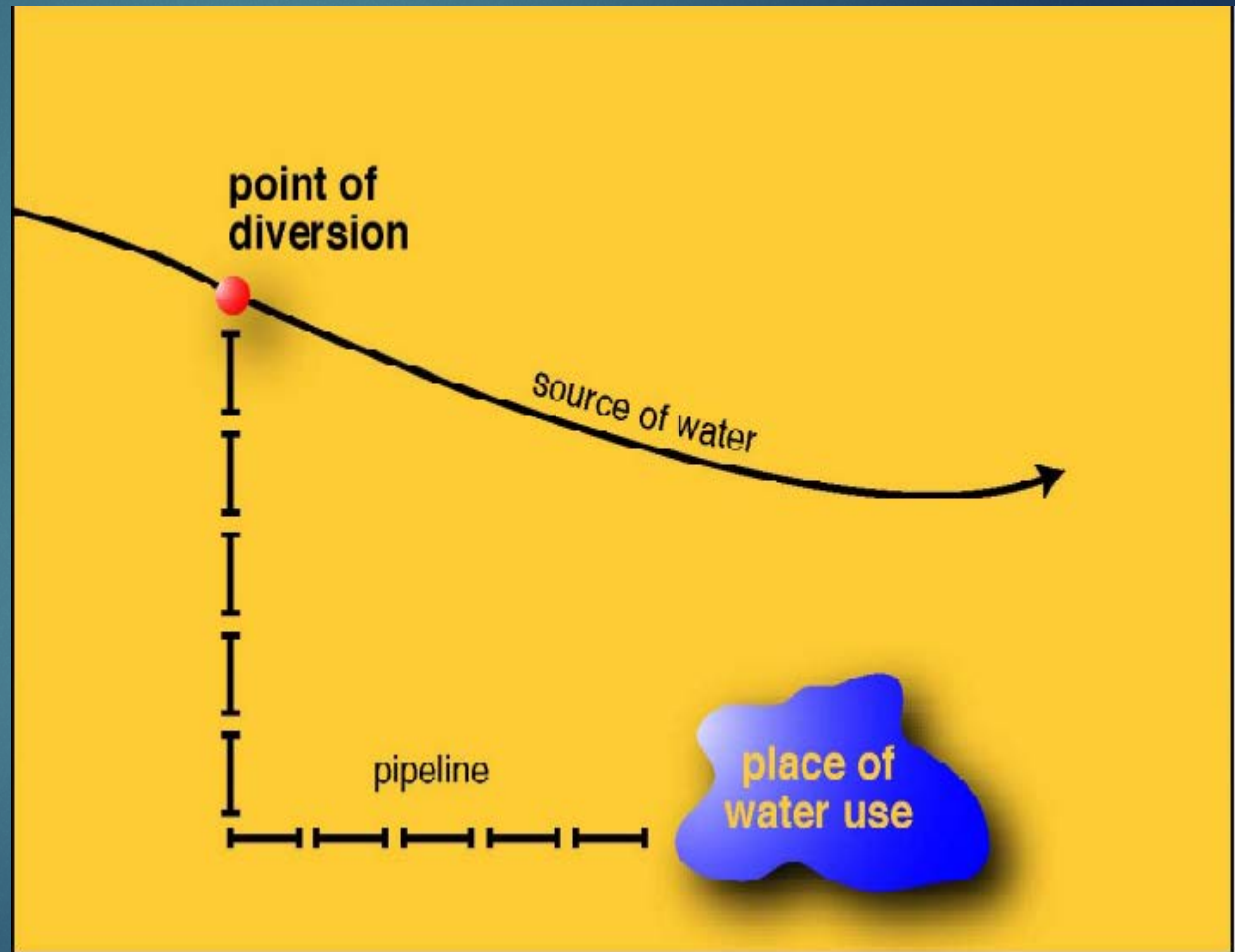
- ▶ Limits:
 - ▶ Use on riparian land within watershed
 - ▶ Cannot transfer or appropriate
 - ▶ Right to natural streamflow only
 - ▶ Cannot divert imported or previously stored water
 - ▶ Cannot store water
 - ▶ Defined as retaining it for more than 30 days

- ▶ In times of shortage, right is correlative



Appropriative Rights

- ▶ Basic Principle: You get the right to use water by putting it to beneficial use, regardless of location
- ▶ Prevailing rule in most Western states (arid regions)





NID

Water for Life

Laws Governing Appropriation

- ▶ California Practice Act (1851):
“customs, usages, or regulations” of mining location governs
- ▶ “First in time, first in right”



Laws Governing Appropriation (Continued)



- ▶ California Civil Code (1872)
 - ▶ Codification of principles and practices developed in mining camps
 - ▶ Contained specific procedure for the appropriation of water
 - ▶ Post a notice in a "conspicuous place" at point of intended diversion stating claimed number of inches of water under a 4-inch pressure
 - ▶ Within 10 days, Notice recorded with Co. Recorder
 - ▶ Within 60 days, commence construction and proceed "diligently and uninterruptedly to completion unless temporarily interrupted by snow or rain"

Laws Governing Appropriation (Continued)



- ▶ Water Commission Act (December 19, 1914)
 - ▶ Administered by the State Water Resources Control Board ("State Water Board")
 - ▶ Process to acquire right:
 1. Application (request for a permit to divert and use water)
 2. Permit (authorization for the diversion and use of water)
 3. License (confirms the diversion and use of water authorized by permit)

Components of Water Rights



- ▶ Point of Diversion/Points of Rediversion
- ▶ Place of Use
- ▶ Purpose of Use
- ▶ Season of Diversion
- ▶ Conditions in the permit/license

Limitations on All Water Rights: Beneficial Use



- ▶ Uses of water necessary for the survival or well-being of man, plants and wildlife.
- ▶ Defined by law and State Water Board
- ▶ Examples include:
 - ▶ Domestic
 - ▶ Irrigation
 - ▶ Stockwatering
 - ▶ Municipal
 - ▶ Industrial/commercial
 - ▶ Hydropower
 - ▶ Fish and wildlife
 - ▶ Frost protection

Limitations on All Water Rights: Usufructuary



- ▶ A right to use water; the State owns the molecules of water
- ▶ “[O]nce rights to water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation.” (U.S. v. SWRCB (1986) 182 Cal.App.3d 82, 101.)
- ▶ Public retains a significant interest in water resources which are a public resource and the law protects that public interest in numerous ways

Limitations on All Water Rights: Public Trust Doctrine



- ▶ Originated in Roman law and traditionally asserted to protect public rights to commerce, navigation, and fisheries in navigable waters
- ▶ Required to consider the impact of water appropriations upon public trust resources
- ▶ Balancing of interests; harm to public trust resources should be avoided or mitigated if feasible
- ▶ State Water Board and courts have authority to reconsider past water allocations in light of impact of those allocations on public trust resources

Limits on All Water Rights: Waste & Unreasonable Use



- ▶ Article X, Section 2 of the California Constitution
 - ▶ Prohibits waste, unreasonable use, unreasonable method of use and unreasonable method of diversion of water
- ▶ Depends on totality of circumstances – what is reasonable at one time/place may not be at others
- ▶ Determined by adjudicatory process (litigation or water rights proceeding) or legislative process (regulation)

Part 2: Pending NID Water Right Proceedings



- ▶ Petitions for Change (October 2009)
 - ▶ License lower division; accurately identify current facilities; conform the place of use with other NID rights

- ▶ Petition for Assignment of Application 5634 (2014)
 - ▶ NID seeking existing state-filed Bear River permit

- ▶ Bay Delta Water Quality Control Plan Update, Phase 2 (2018)
 - ▶ "Framework" recommends 45%-65% unimpaired flow requirement

- ▶ Relicensing of NID's Yuba-Bear Project with FERC (TBD)
 - ▶ New license, when issued, requires increases in instream flow

Part 3: NID Water Rights



- ▶ NID has a total of 53 established water rights, 1 pending application, 2 pending transfers
 - ▶ 28 Post 1914 appropriative water rights
 - ▶ 1 Post 1914 pending application on Bear River
 - ▶ 25 Pre 1914/Riparian water rights
 - ▶ 2 water rights on SYC pending PG&E transfer to NID

**Schedule 2.1(c)
Deer Creek Water Rights**

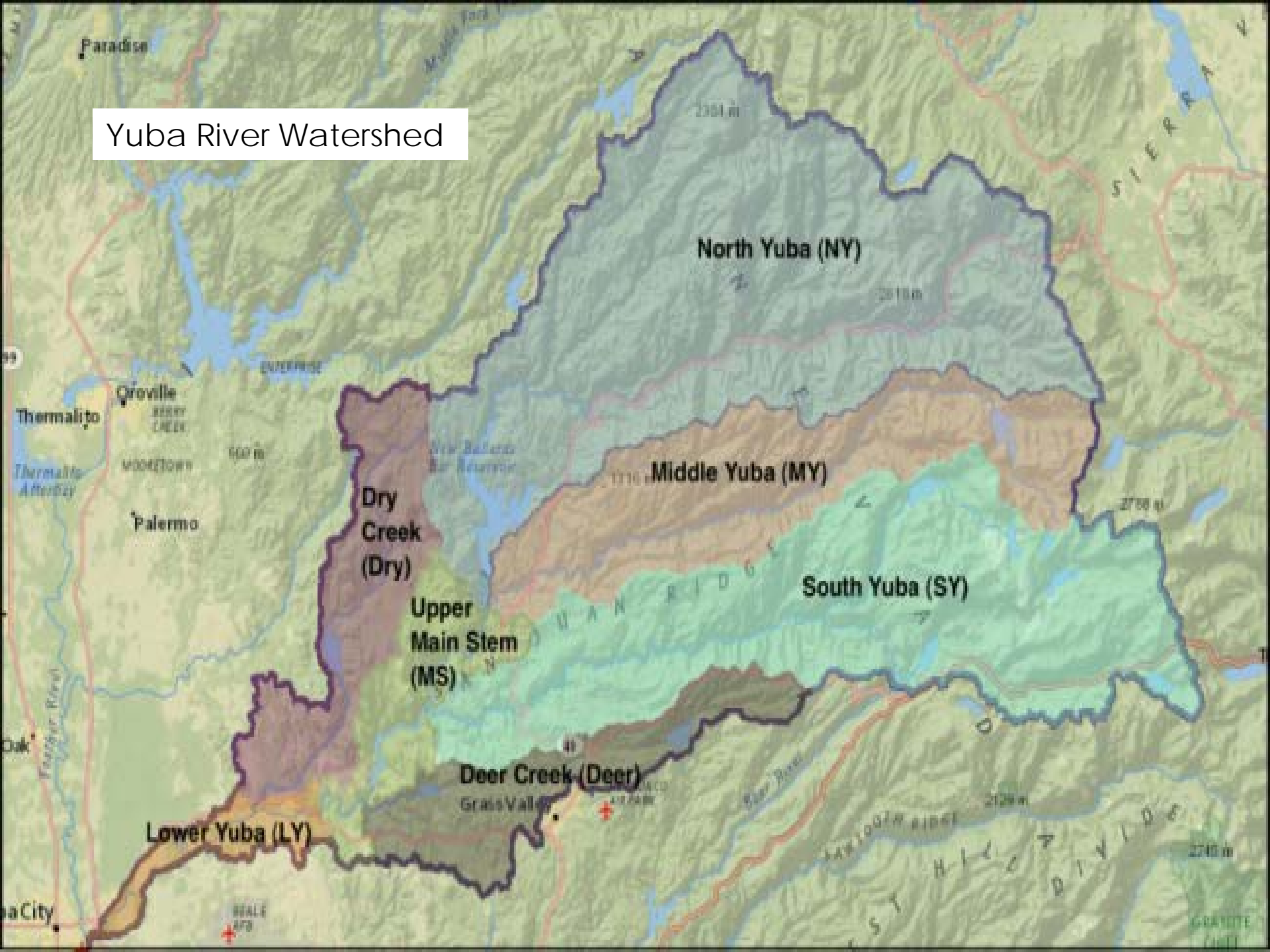
SWDU No.	Priority /first use	Gage	Dir Diversion		Description (Name of Works)	Point of Diversion	Place of Use	Type of use	Water Right Class
			amount	units					
965	1853	YB 214	10	cfs	So. Yuba Canal Sta. 40+08 to 55+83	Tributary to South Yuba River	Deer Creek Powerhouse	P,I	Pre 1914
970	1853	YB 217	10	cfs	South Yuba Canal - Sta 637+20	Tributary to Bear River	Deer Creek Powerhouse	P,I	Pre 1914

Watersheds

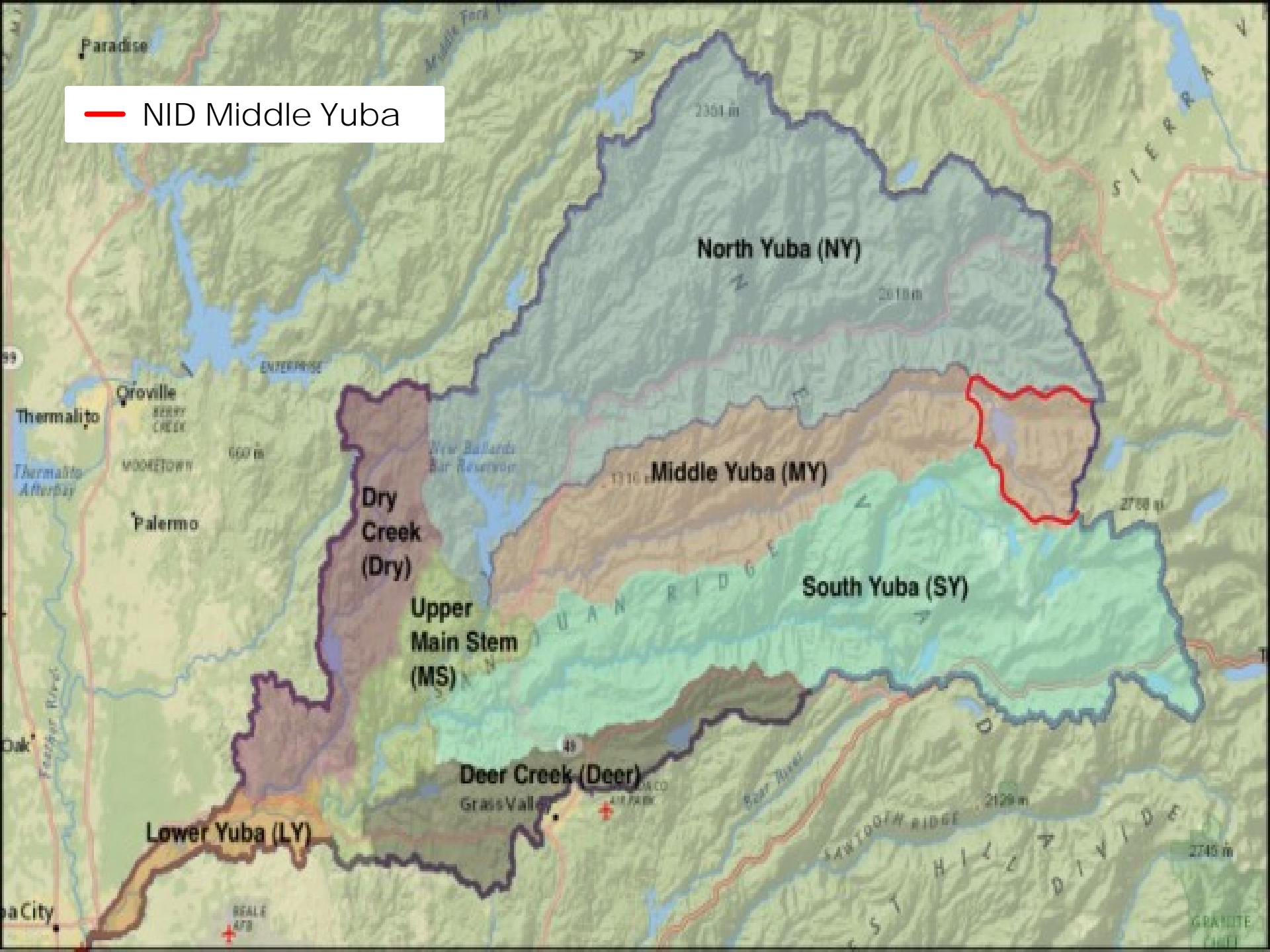


- ▶ NID water rights are located in two main watersheds
 - ▶ The Yuba River Watershed
 - ▶ The Bear River Watershed
 - ▶ Additional water rights in Auburn Ravine and Orr/Raccoon Creek

Yuba River Watershed



— NID Middle Yuba



NID Middle Yuba Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S10591	1967	DAMFINE SPRING	JACKSON MEADOWS CAMPGROUND	DOMESTIC
S10592	1967	UNNAMED TRIB. TO PASS CREEK	JACKSON MEADOWS CAMPGROUND	DOMESTIC
S13330	1854	MIDDLE YUBA	MILTON DIVERSION DAM	MINING, DOMESTIC, IRRIGATION, POWER, RECREATION, STOCK WTR., FIRE PROTEC.

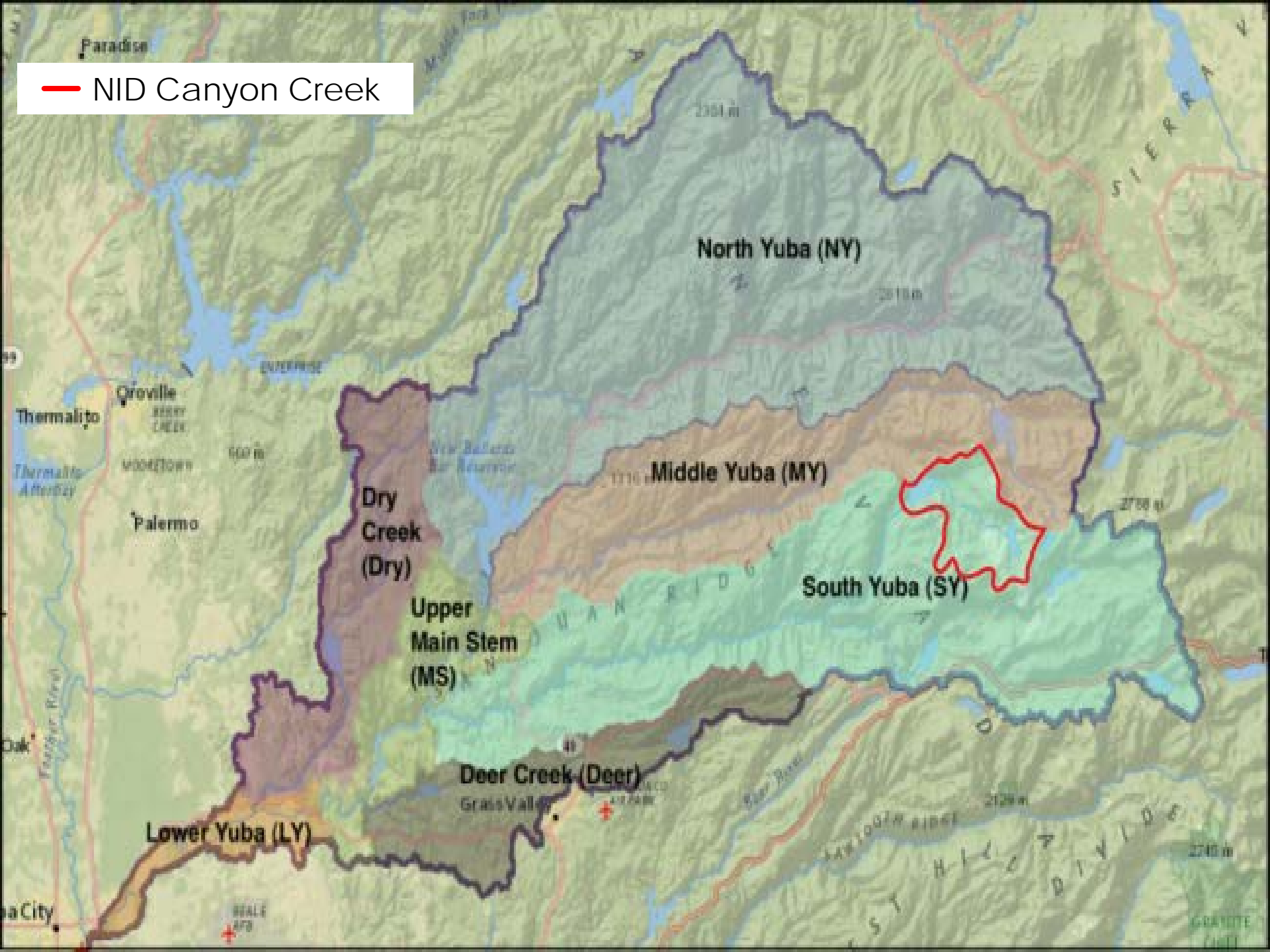
NID Middle Yuba Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
2275	2084	12796	3/25/21	MIDDLE YUBA		60000	JACKSON MEADOWS BOWMAN LAKE		1/1-12/31	POWER
2276	2085	12797	3/25/21	MIDDLE YUBA		60000	JACKSON MEADOWS BOWMAN LAKE		12/1-7/15	IRRIGATION, DOMESTIC, MUNICIPAL, MINING
4309	2935	4544	11/7/24	MIDDLE YUBA, CANYON CREEK, ETC. NOT LISTED	135		DRUM CANAL	1/1-12/31		POWER
4310	2936	1707	11/7/24	MIDDLE YUBA, CANYON CREEK, ETC. NOT LISTED	126		SOUTH YUBA CANAL	1/1-12/31		POWER
5193	13770		9/8/26	MIDDLE YUBA		50000	JACKSON MEADOWS BOWMAN LAKE SCOTTS FLAT RES. ROLLINS RESERVOIR COMBIE RESERVOIR		1/1-6/30 10/1-12/1	DOMESTIC, IRRIGATION, RECREATION, INCIDENTAL POWER
8177	5812	12801	11/27/34	WILSON CREEK	2.7	680	MILTON/BOWMAN CON. BOWMAN LAKE	1/1-12/31	11/1-6/30	IRRIGATION, DOMESTIC, MUNICIPAL
8179	5814	12803	11/27/34	WILSON CREEK	3.5	680	MILTON/BOWMAN CON. BOWMAN LAKE	1/1-12/31	11/1-6/30	POWER
20072	13773		4/6/61	MIDDLE YUBA		50000	JACKSON MEADOWS BOWMAN LAKE		10/1-6/30	POWER

— NID Canyon Creek



NID Canyon Creek Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S4716	1873	CANYON CREEK	SAWMILL LAKE	DOMESTIC, IRRIGATION, POWER
S4717	1859	CANYON CREEK	FRENCH LAKE	DOMESTIC, IRRIGATION, POWER
S13800	1872	CANYON CREEK	BOWMAN LAKE	IRRIGATION, MINING, MUNICIPAL, INDUSTRIAL, DOMESTIC, POWER, STOCK WTR., FIRE PROTEC., RECREATION
S13801	1872	CANYON CREEK	FAUCHERIE LAKE	DOMESTIC, IRRIGATION, POWER, MUNICIPAL, INDUSTRIAL, STOCK WTR., FIRE PROTEC., MINING, RECREATION
S14356	1872	CANYON CREEK	BOWMAN POWERHOUSE	POWER
S16092	1859	JACKSON CREEK	JACKSON LAKE	IRRIGATION, DOMESTIC, MUNICIPAL, POWER, RECREATION, STOCK WTR., MINING, INDUSTRIAL, FIRE PROTEC.

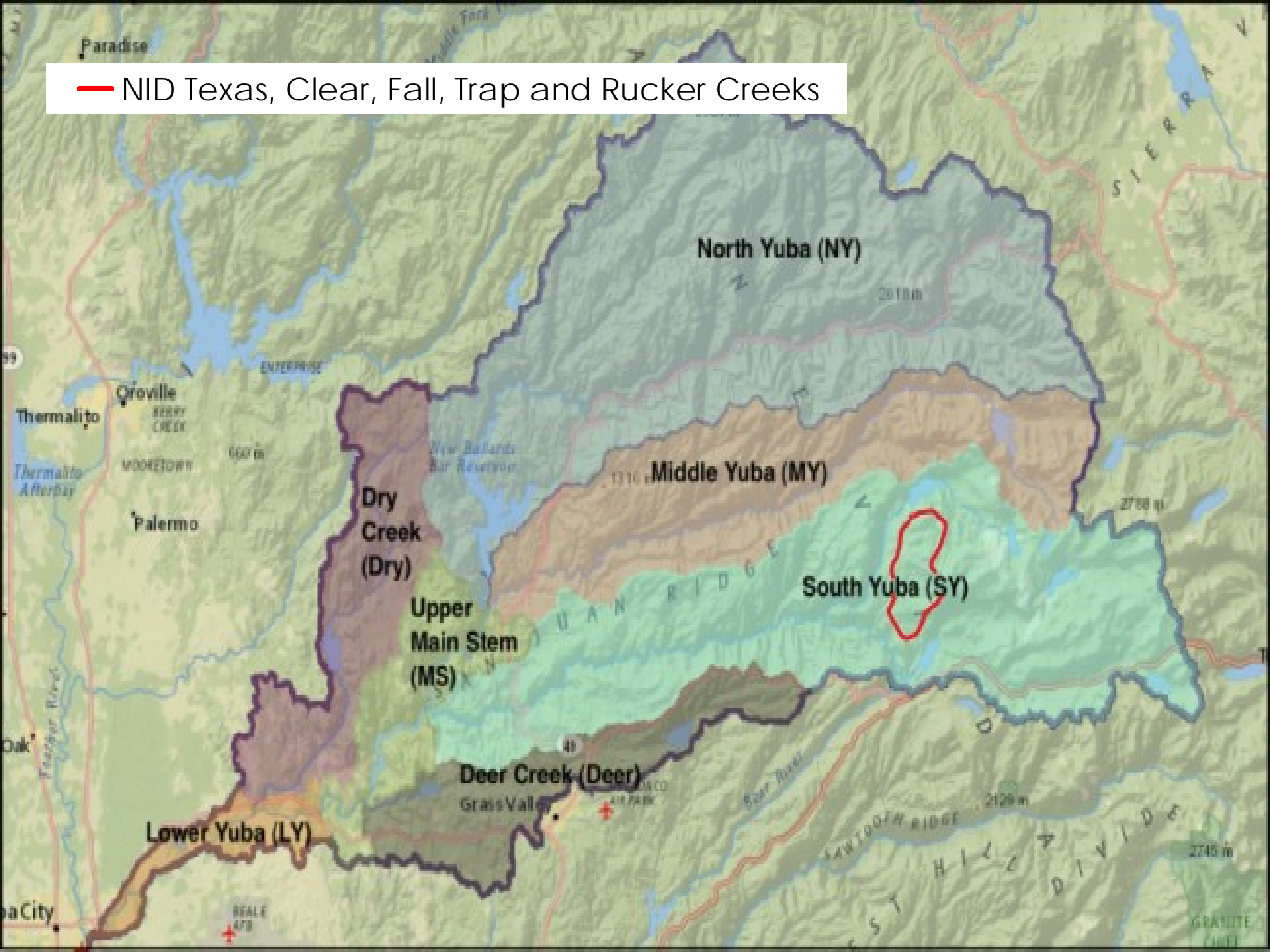
NID Canyon Creek Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
1270	2082	12795	5/7/19	JACKSON CREEK		970	JACKSON LAKE		1/1-12/31	MINING, DOMESTIC, IRRIGATION, MUNICIPAL, INCIDENTAL POWER
				CANYON CREEK		3980	FAUCHERIE LAKE		1/1-12/31	
				CANYON CREEK		1221	SAWMILL LAKE		1/1-12/31	
				CANYON CREEK		58829	BOWMAN LAKE		1/1-12/31	
				CANYON CREEK	146		B-S CONDUIT	4/15-9/30		
				TEXAS CREEK	30		B-S CONDUIT	4/15-9/30		
				FALL CREEK	15		B-S CONDUIT	4/15-9/30		
				TRAP CREEK	5		B-S CONDUIT	4/15-9/30		
2372	2087	12798	6/3/21	JACKSON CREEK		970	JACKSON LAKE		12/1-7/15	POWER
				CANYON CREEK		2993	FAUCHERIE LAKE		12/1-7/15	
				CANYON CREEK		3030	SAWMILL LAKE		12/1-7/15	
				CANYON CREEK		47530	BOWMAN LAKE		12/1-7/15	
				CANYON CREEK	152		B/S CONDUIT	1/1-12/31		
				TEXAS CREEK	30		B/S CONDUIT	1/1-12/31		
				FALL CREEK	15		B/S CONDUIT	1/1-12/31		
				TRAP CREEK	5		B/S CONDUIT	1/1-12/31		
27559	19158		10/22/82	CANYON CREEK	322	65000	BOWMAN LAKE	1/1-12/31	12/1-7/31	POWER

— NID Texas, Clear, Fall, Trap and Rucker Creeks



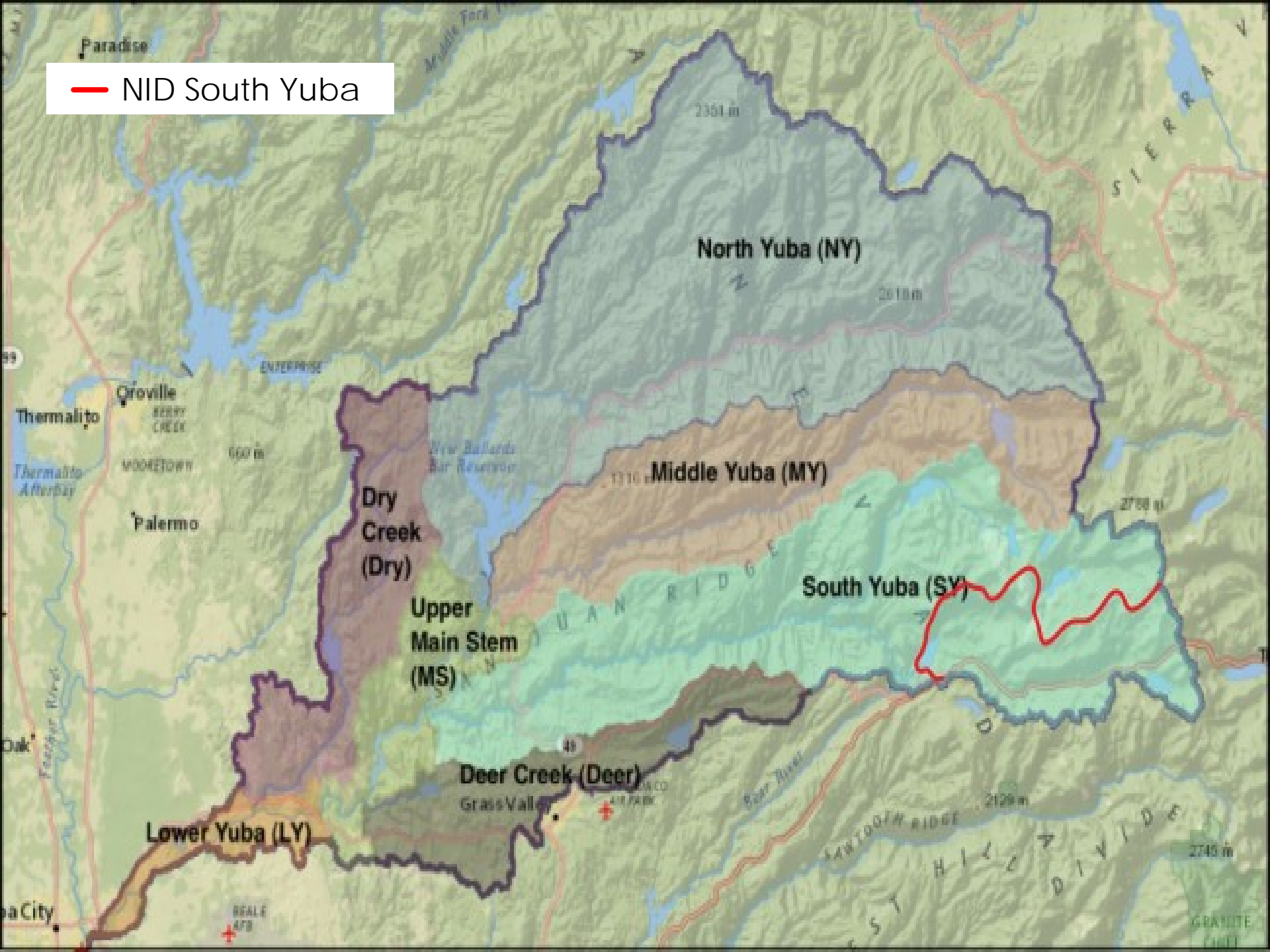
NID Texas, Clear, Fall, Trap and Rucker Creek Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
6701	5806	12799	6/16/30	CLEAR CREEK	5		B/S CONDUIT	10/1-9/30		POWER
				FALL CREEK	10		B/S CONDUIT	12/1-7/31		
				TRAP CREEL	5		B/S CONDUIT	1/1-7/31		
6702	5807	12800	6/16/30	CLEAR CREEK	5		B/S CONDUIT	4/15-9/30		IRRIGATION
				FALL CREEK	10		B/S CONDUIT	4/15-7/31		
				TRAP CREEK	5		B/S CONDUIT	4/15-7/31		
8178	5813	12802	11/27/34	TEXAS CREEK	68		B/S CONDUIT	1/1-6/30		POWER
				CLEAR CREEK	13.6		B/S CONDUIT	1/1-7/31		
				FALL CREEK	75.7		B/S CONDUIT	12/1-7/31		
				TRAP CREEK	8.6		B/S CONDUIT	4/15-6/30		
				RUCKER CREEK	25		B/S CONDUIT	1/1-12/31		
8180	5815		11/27/34	CLEAR CREEK	30	6000	B/S CONDUIT	1/1-12/31	11/1-6/30	IRRIGATION, DOMESTIC, INCIDENTAL POWER
				TEXAS CREEK	70	14000	B/S CONDUIT	1/1-12/31	11/1-6/30	
				FALL CREEK	85	17000	B/S CONDUIT	1/1-12/31	11/1-6/30	
				TRAP CREEK	15	3000	B/S CONDUIT	1/1-12/31	11/1-6/30	
				RUCKER CREEK	25	5000	B/S CONDUIT	1/1-12/31	11/1-6/30	
						SCOTTS FLAT RES. ROLLINS COMBIE				

— NID South Yuba



NID South Yuba Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S13927	1874	SOUTH YUBA	SOUTH YUBA CANAL	IRRIGATION, DOMESTIC, MUNICIPAL, POWER, RECREATION, STOCK WTR., MINING, INDUSTRIAL, FIRE PROTEC.
S13928	1874	SOUTH YUBA	DRUM CANAL	IRRIGATION, DOMESTIC, POWER, RECREATION, STOCK WTR., MINING, INDUSTRIAL, FIRE PROTEC.

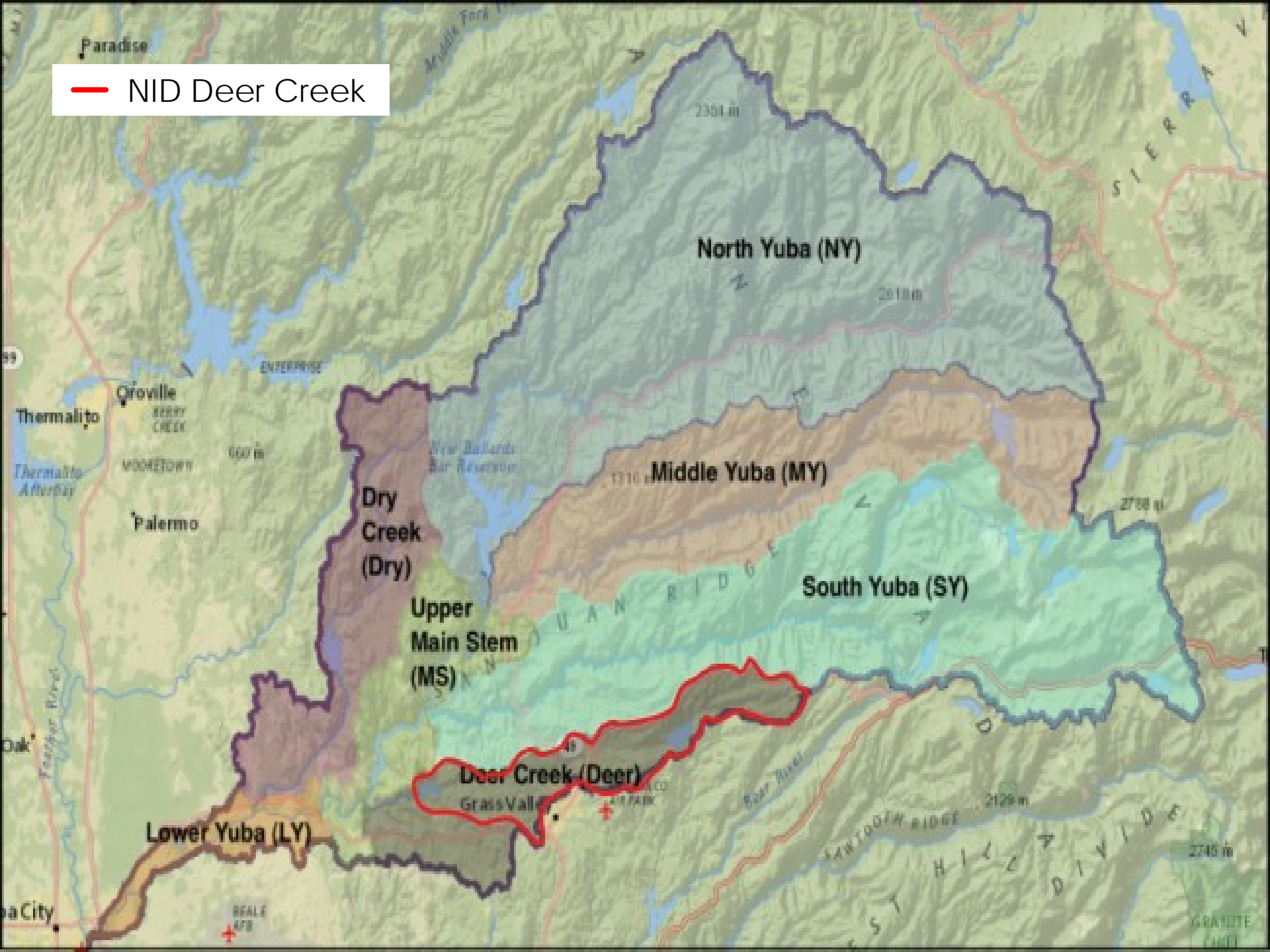
NID South Yuba Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
15525	13771	10016	9/3/53	SOUTH YUBA	200		SPAULDING LAKE	9/1-6/30		POWER
20017	13772		3/6/61	SOUTH YUBA	200	18000	ROLLINS RESERVOIR SCOTTS FLAT RES.	9/1-6/30	11/1-6/30	DOMESTIC, IRRIGATION, INCIDENTAL POWER

— NID Deer Creek



NID Deer Creek Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S12949	1851	DEER CREEK	KEYSTONE CANAL	IRRIGATION, STOCK WTR.
S12950	1851	DEER CREEK	TUNNEL CANAL	DOMESTIC, IRRIGATION, STOCK WTR., FIRE PROTEC., RECREATION
S12951	1851	DEER CREEK	NEWTOWN CANAL	DOMESTIC, IRRIGATION, STOCK WTR., FIRE PROTEC., RECREATION
S12952	1850	DEER CREEK	D/S CANAL	DOMESTIC, IRRIGATION, STOCK WTR., FIRE PROTEC., RECREATION, MUNICIPAL, INDUSTRIAL
S12953	1857	DEER CREEK	CASCADE CANAL	DOMESTIC, IRRIGATION, STOCK WTR., FIRE PROTEC., RECREATION, INDUSTRIAL
S14353	1851	DEER CREEK	SCOTTS FLAT	IRRIGATION, DOMESTIC, STOCK WTR., FIRE PROTEC., RECREATION, POWER

NID Deer Creek Water Rights



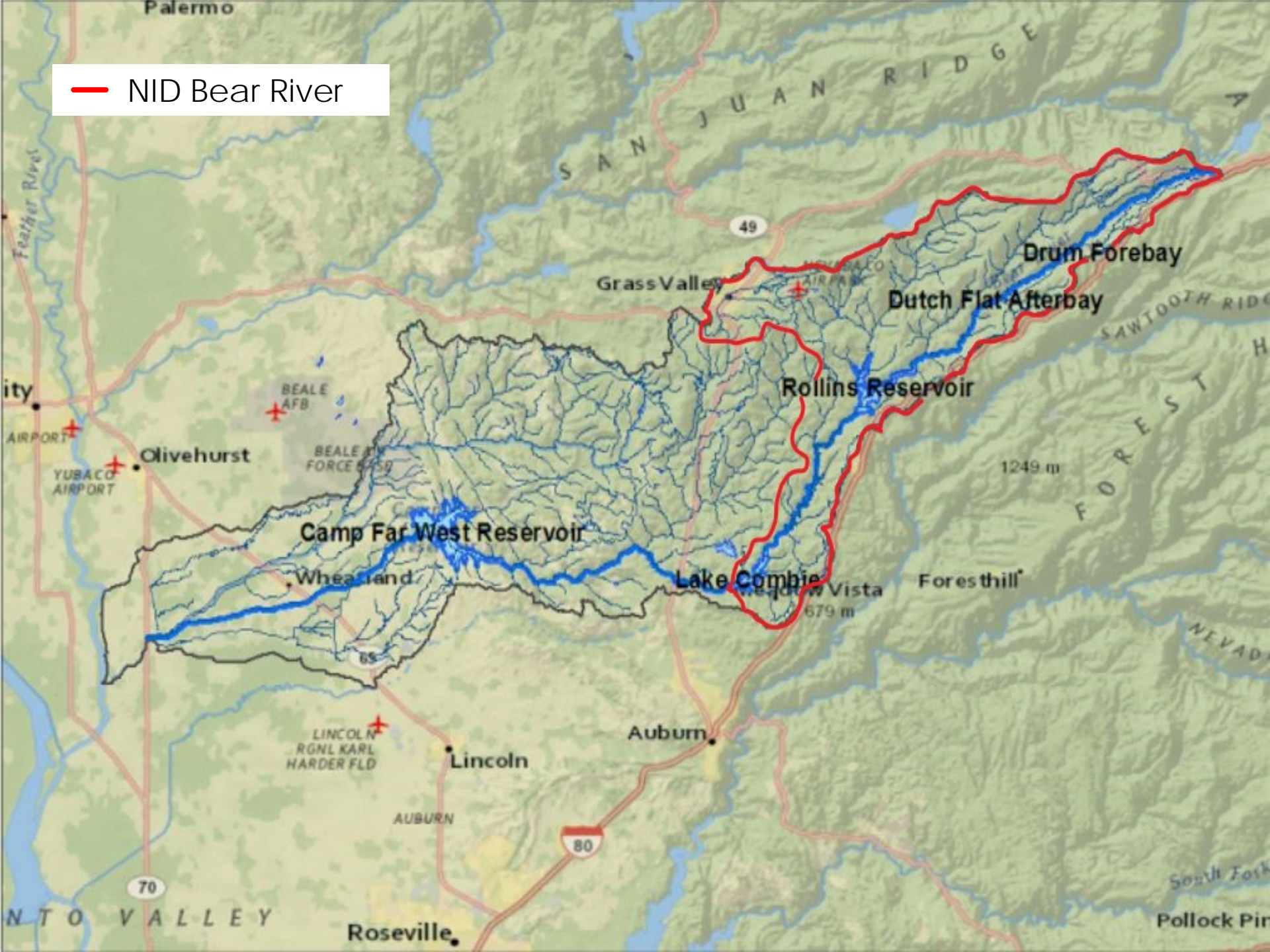
Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
1614	1481		1/8/20	DEER CREEK		60000	SCOTTS FLAT RES.		1/1-12/31	MINING, DOMESTIC, IRRIGATION
1615	5801	8808	1/8/20	SO. FK. DEER CK. DEER CREEK	100		CASCADE CANAL D-S CANAL ROUGH & READY CANAL NEWTOWN CANAL TUNNEL CANAL	4/1-10/1		IRRIGATION, DOMESTIC, INCIDENTAL POWER
27132	18608		12/3/81	DEER CREEK	85	60000	SCOTTS FLAT RES.	1/1-12/31	1/1-12/31	POWER

Bear River Watershed



— NID Bear River



NID Bear River Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S13809	1853	BEAR RIVER	COMBIE PHASE I CANAL	IRRIGATION, DOMESTIC, POWER, MINING, STOCK WTR.
S13926	1859	WOLF CREEK	TARR CANAL	IRRIGATION, MINING, STOCK WTR.
S14354	1853	BEAR RIVER	ROLLINS POWERHOUSE	POWER
S14355	1853	BEAR RIVER	BEAR RIVER CANAL	IRRIGATION, DOMESTIC, POWER, MINING, STOCK WTR., FIRE PROTEC.
S16095	1984	BEAR RIVER	COMBIE NORTH & SOUTH PH	POWER

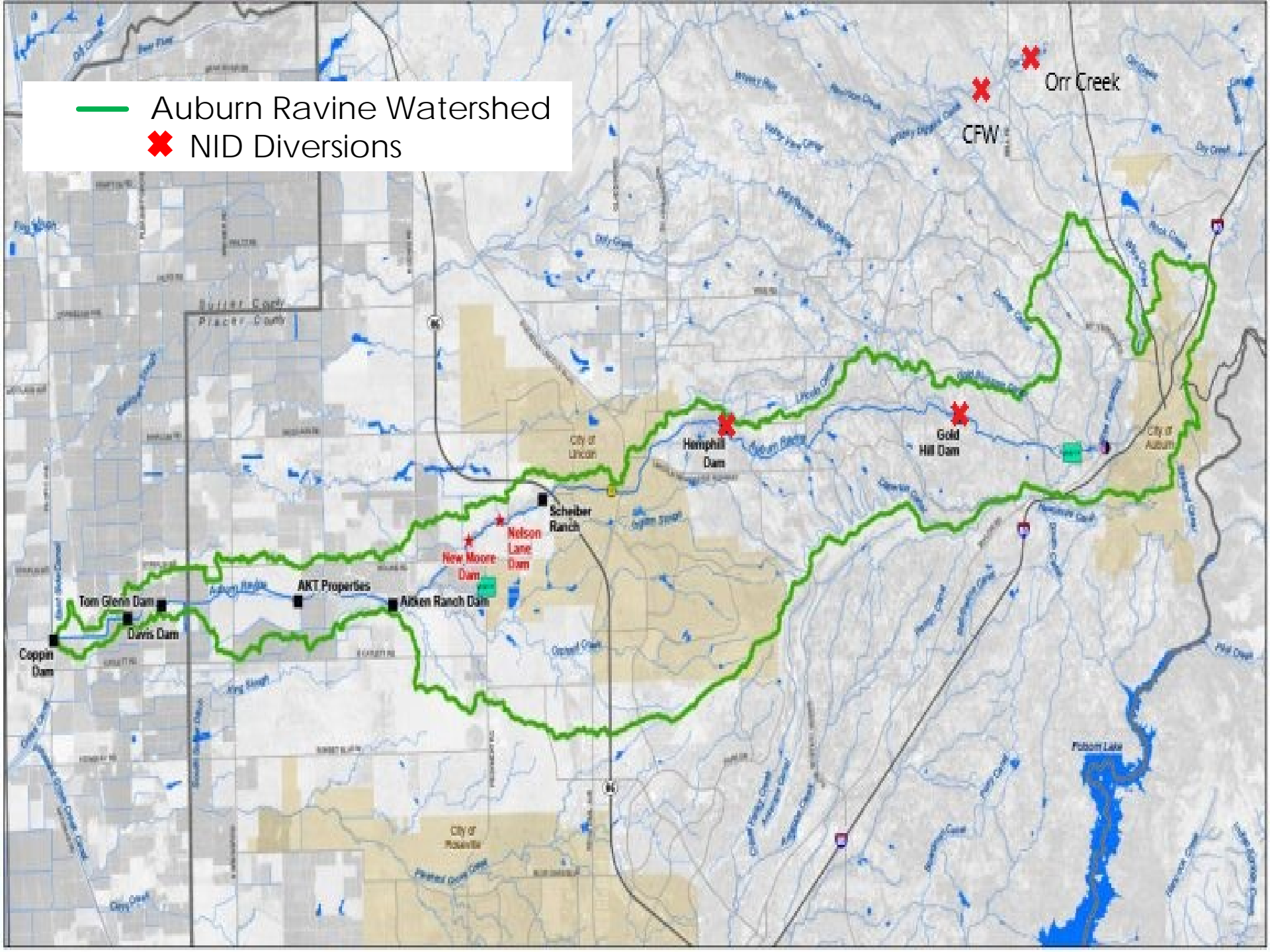
NID Bear River Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
2652A	5803	10350	11/22/21	BEAR RIVER		5555	COMBIE RESERVOIR		11/30-6/1	IRRIGATION, DOMESTIC, INCIDENTAL POWER, RECREATION
						6945	ROLLINS RESERVOIR		11/30-6/1	
2652B	11626		11/22/21	BEAR RIVER		65000	ROLLINS RESERVOIR		11/30-6/1	IRRIGATION, DOMESTIC, RECREATION
5634X			1927	BEAR RIVER	400	110000	CENTENNIAL	1/1-12/31	1/1-12/31	IRRIGATION, DOMESTIC, STOCK WTR., MUNICIPAL, INCIDENTAL POWER, INDUSTRIAL, RECREATION
6229	5804	8809	3/26/29	BEAR RIVER	120		BEAR RIVER CANAL	4/1-10/31		IRRIGATION, DOMESTIC
21151	14799	9903	2/5/63	BEAR RIVER	1056		BEAR RIVER (CHICAGO PARK PH)	1/1-12/31		POWER
21152	14800	9902	2/5/63	BEAR RIVER	550		BEAR RIVER (DUTCH FLAT PH)	1/1-12/31		POWER
24983	16953		1/9/76	BEAR RIVER	700	62080	ROLLINS RESERVOIR	1/1-12/31	11/30-6/1	POWER
26866	18757		6/3/81	BEAR RIVER	1000		COMBIE RESERVOIR	1/1-12/31		POWER

— Auburn Ravine Watershed
✖ NID Diversions



NID Auburn Ravine and Raccoon/Orr Creek Water Rights



Pre 1914/Riparian

STATEMENT	PRIORITY DATE	SOURCE	PLACE OF STORAGE/DIVERSION	PURPOSE
S10794	PRIOR TO 1880	ORR CREEK RACCOON CREEK	GOLD HILL CANAL CAMP FAR WEST CANAL	DOMESTIC, IRRIGATION, STOCK WTR.
S13790	1853	AUBURN RAVINE	HEMPHILL CANAL	IRRIGATION, MINING, STOCK WTR., FIRE PROTEC.
S13791	1853	AUBURN RAVINE	AUBURN RAVINE I CANAL	IRRIGATION, DOMESTIC, MINING, STOCK WTR., FIRE PROTEC.

NID Auburn Ravine and Raccoon/Orr Creek Water Rights



Post 1914

APPLICATION	PERMIT	PRIORITY		SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
		LICENSE	DATE		CFS	AF		DIVERSION	STORAGE	
6529	5805	4403	1/9/30	AUBURN RAVINE	8		HEMPHILL CANAL	4/1-11/1		IRRIGATION

Compliance



- ▶ Permit and License Terms – Amount, Season, Purpose, Place, etc.
- ▶ i.e.) Combined Use Terms

APPLICATION	PERMIT	LICENSE	PRIORITY DATE	SOURCE	AMOUNT		PLACE OF STORAGE/DIVERSION	SEASON		PURPOSE
					CFS	AF		DIVERSION	STORAGE	
1270	2082	12795	5/7/19	JACKSON CREEK		970	JACKSON LAKE		1/1-12/31	MINING
				CANYON CREEK		3980	FAUCHERIE LAKE		1/1-12/31	DOMESTIC
				CANYON CREEK		1221	SAWMILL LAKE		1/1-12/31	IRRIGATION
				CANYON CREEK		58829	BOWMAN LAKE		1/1-12/31	MUNICIPAL
				CANYON CREEK	146		B-S CONDUIT	4/15-9/30		
				TEXAS CREEK	30		B-S CONDUIT	4/15-9/30		INCIDENTAL
				FALL CREEK	15		B-S CONDUIT	4/15-9/30		POWER
				TRAP CREEK	5		B-S CONDUIT	4/15-9/30		

- ▶ Total amount from the source (direct diversion plus collection to storage including applications 2372, 6701, 6702, 8178 and 8180) shall not exceed 162,221 Acre Feet per year
- ▶ Total amounts for beneficial use (direct diversion plus withdrawal from storage including applications 2372, 6701, 6702, 8177, 8178, 8179 and 8180) shall not exceed 164,531 Acre Feet per year

Compliance continued

- ▶ Water Right information is publicly available
https://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/
- ▶ Enhanced Reporting since 2016
 - ▶ All water rights are required to be reported annually
- ▶ Water Measurement (Senate Bill 88)
 - ▶ Calibration and certification of accuracy at least every 5 years
 - ▶ Hourly data collection requirements
 - ▶ Telemetry of reservoirs and points of diversion
- ▶ Fees
 - ▶ \$217,000 in 2021
- ▶ Curtailments – Emergency Drought Declaration
 - ▶ Monthly projections and prior month reporting for 71 points of diversion
 - ▶ Curtailment of diversion based on priority date



Questions?