

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

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IN THE MATTER OF APPLICATIONS NUMBERS 2100, 2548 and 2996  
BY J. W. PRESTON, JR., AND APPLICATION NUMBER 2751 BY  
PACIFIC GAS AND ELECTRIC COMPANY, ALL TO APPROPRIATE WATER  
FROM MOKELUMNE RIVER AND TRIBUTARIES IN AMADOR AND ALPINE  
COUNTIES FOR POWER PURPOSES

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DECISION NO. 2100-2548-2996-2751. D 54  
Decided May 19, 1925

APPEARANCES AT HEARING HELD APRIL 14, 1925

For Applicant, J. W. Preston, Jr.,	F. J. Solinsky, Attorney, Hobart Bldg., San Francisco, Cal. E. T. Zuke of Counsel, Alaska Commercial Building, San Francisco, Cal. Herman Flager of Dunne, Brobeck, Flager and Harris, Attorneys, Crocker Bldg., San Francisco, Cal.
For Applicant Pacific Gas & Electric Company,	Susman & Straub, Attys., 245 Market St., San Francisco, Cal. P. M. Downing, Vice President, 245 Market St., San Francisco, Cal. George A. Hunt, Engineer, 245 Market St., San Francisco, "
For Protestant Stockton and Mokelumne Canal Co.,	Levinsky and Jones, Attys., Liberty Bldg., Stockton, Cal.
For Protestant Sierra Nevada Water and Power Company,	W. V. Clark, Receiver, Mills Bldg., San Francisco, Cal.
For East Bay Municipal Utility District,	A. P. Davis, 1924 Broadway, Oakland, Cal. W. J. Locke, Atty., 2245 Broadway, Oakland, Cal.
For Stephen E. Kieffer and C. W. Landis,	A. J. Cleary, Engineer, Mills Bldg., San Francisco, Cal.
EXAMINER:	Edward Hyatt, Jr., Chief of Division of Water Rights

O P I N I O N

These applications contemplate a power development on the North Fork of Mokelumne River. The main features of the several applications are as follows:

Application Number 2100, filed November 30, 1920, proposes the appropriation of 350 second feet and 60,000 acre feet from North Fork of Mokelumne River for use through applicant's proposed power house. The water is to be collected in Salt Springs Reservoir. The application is protested by Stockton and Mokelumne Canal Company.

Application Number 2548 was filed September 15, 1921. It proposes the appropriation of 350 second feet from Cole and Beaver Creek and Bear River, at points where these streams will be crossed by the conduit leading from Salt Springs Reservoir to the power house proposed to be constructed in connection with Application Number 2100. This application is supplemental to Application Number 2100 and was protested also by Stockton and Mokelumne Canal Company.

Application Number 2996 is for 225' second feet, to be appropriated from North Fork of Mokelumne River at a point below the power house described above, and is to be used through the constructed power house of the Pacific Gas and Electric Company at Electra. This application was filed August 21, 1922, and was also protested by Stockton and Mokelumne Canal Company.

Application Number 2751 was filed February 9, 1922, by Pacific Gas and Electric Company. It proposes the storage of 9,412 acre feet per annum on Deer Creek, tributary to the North Fork of

Mokelumne River. The water is to be used through the constructed power house of applicant at Electra. This application was not protested prior to the hearing.

While the first three applications are by Preston and the last numbered application is by the Pacific Gas and Electric Company, it appears there is an agreement between the two parties, which in effect makes the construction and development proposed in the four applications practically a unit.

These several applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing at 707 Forum Building, Sacramento, at 10:00 o'clock A. M. on April 14, 1925. Of this hearing applicants, protestants and other parties at interest were duly notified. Stephen E. Keiffer and the East Bay Municipal Utility District were represented, not as protestants but as parties seeking information relative to the project.

Upon a showing to the effect that this project contemplated the use of the water for power purposes only, and that the water would be returned to the stream below the Electra Power House, the representatives of Stephen E. Keiffer, Stockton and Mokelumne Canal Company, and the East Bay Municipal Utility District stated that they had no further objections to the applications.

W. V. Clark appeared also at the hearing as receiver for the Sierra Nevada Water and Power Company and protested these applications on the ground that the appropriations proposed by the

applicant would interfere with the incomplete project of the said Sierra Nevada Water and Power Company to appropriate from the same source.

The rights claimed by the Sierra Nevada Water and Power Company are based upon appropriative rights initiated by Mr. Clark's father as early as 1857, and also upon notices of appropriation posted in 1903 and 1904 at or near the junction of North Fork of Mokelumne River with Blue Creek for a total of 22,000 miner's inches, the water to be used for domestic, agricultural, mining and power purposes. The original intent of the appropriation is not clear, but it appears that this protestant is now endeavoring to negotiate with the East Bay Municipal Utility District looking toward the sale of his properties to that district.

Mr. Clark maintains that as early as 1857 his father made use of the waters from the so called Blue Lakes which are tributary to North Fork of Mokelumne River above these applicants and that from 1857 until 1875 maintained a possessory right and claim to these waters.

In 1875 it is claimed, the Amador Canal and Mining Company, which is the predecessor in interest of the Pacific Gas and Electric Company attempted to set up an adverse claim to these same waters, and the controversy was ultimately settled by an agreement between Mr. Clark's predecessors in interest, then known as the Sierra Blue Lakes Water and Power Company and the Amador Canal and Mining Company. Under the terms of this agreement it is understood the Amador Canal and Mining Company was allowed the use of the water and each party

was to endeavor to support the claims of the other against any other claimant. This agreement was subject to cessation upon thirty days notice by the Clark interests and as no such order has ever been given it was held by Mr. Clark that his company still had an interest in the waters of North Fork of Mokelumne River.

However, whatever the conditions of this agreement may have been, we do not see that this affects the present situation. The right of Sierra Blue Lakes Water and Power Company and its successor, the Sierra Nevada Water and Power Company, as now represented by W. V. Clark, receiver, can only have been maintained in good standing by diligence in the construction of the necessary works to consummate the use of the water.

In the matter of diligence we find that as yet there has been no beneficial use of the water made, although some water has from time to time been diverted from North Fork of Mokelumne River, carried a short distance down a partially constructed canal and there wasted back into the river.

In the matter of construction work carried on by this protestant it appears that in 1864 a diverting dam was constructed on the North Fork of Mokelumne River near the mouth of Blue Creek, and that at about the same time approximately one-sixteenth mile of canal was constructed leading down the south side of North Fork of Mokelumne River. In 1903 and 1904 two notices of appropriation were posted near this same point, calling for appropriation of 10,000 and 12,000 miner's inches respectively. Between the time that these

notices were posted and the present time, an additional one-sixteenth mile of canal has been constructed; there have been some surveys made, the rights of way for the canal have been partially cleared and certain lands within the Railroad Flat Reservoir site on South Fork of Mokelumne River have been acquired from the United States Government. Altogether less than one per cent of the total length of the main canal leading to the Railroad Flat Reservoir site has been constructed in the period of more than sixty years which has elapsed since this project was originally conceived.

The protestant claims that he has recently made an offer of his property to the East Bay Municipal Utility District and that his project is being considered as an alternative one to that contemplated in the District's own applications now pending before the Division. Representatives of the Utility District were present at the time of the hearing, however, and made no effort to sustain this protest, nor has the the District since the time of the hearing manifested any interest in the matter.

It appears, therefore, that even at this late date the protestant has no definite plans for the use of the waters which he has sought to appropriate and furthermore that the work so far done toward consummating the appropriations is altogether incommensurate with the magnitude of the project. We cannot escape the conclusion that whatever rights may once have been initiated by the protestant have been forfeited through lack of diligence and that this protest should not stand as a bar to the approval of these applications.

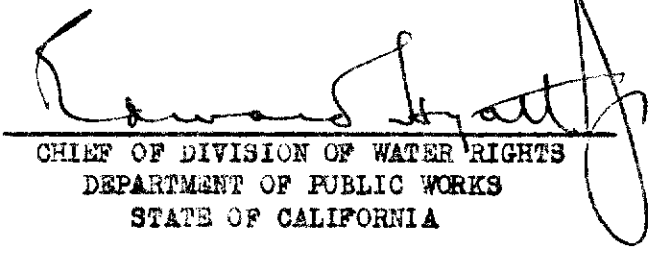
While the point was not brought out by any of the protestants it appears that in normal years the entire flow of Mokelumne River where it debouches into the valley area is utilized after about July 15th for irrigating purposes under claims of existing right. The Division has therefore been accustomed to limit the season of diversion in permits which it issues upon applications to appropriate from Mokelumne River for irrigation purposes by excluding the period from about July 15th to about December 1st, and the period for collection of storage should be similarly limited on permits issued upon these applications.

O R D E R

Applications Numbers 2100, 2548, 2996 and 2751 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications Numbers 2100, 2548, 2996 and 2751 be approved and that permits be granted to the applicants, subject to such of the usual terms and conditions as may be appropriate, and the further limitation of condition that the period for collection of storage shall be limited to the period from about December 1st to about July 15th.

DATED at Sacramento, California, this 19th day of May,  
1925.

  
CHIEF OF DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

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