

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

Decision

oOo

In the Matter of Application Number 2774 of the Preston School of Industry to appropriate from Sutter Creek for Domestic and Irrigation Purposes - Application Number 2775 of the Preston School of Industry to appropriate from Sutter Creek for Power Purposes - Application Number 4141 of Mossdale Farms Inc., to appropriate from the Mokelumne River for Irrigation and Stock Watering Purposes - Application Number 4142 of N. H. Locke Co., Inc., to appropriate from the Mokelumne River for Irrigation and Stock Watering Purposes - Application Number 4388 of Wm. J. Sheldon to appropriate from the Cosumnes River for Irrigation and Domestic Purposes - Application Number 4398 of Theodore Ostermann to appropriate from the Mokelumne River for Irrigation Purposes - Application Number 4400 of Terminis Farms Company to appropriate from the South Fork of the Mokelumne River and Sycamore Slough for Irrigation Purposes, Application Number 4405 of M. H. Steely to appropriate from the Mokelumne River for Irrigation Purposes and Application Number 4474 of Theodore Ostermann to appropriate from the Mokelumne River for Irrigation Purposes.

oOo

DECISION NO. 2774-2775-4141-4142-4388-4398-4400-4405-4474 - D 106

Decided May 12, 1926

APPEARANCES AT HEARING HELD February 17, 1926.

For Applicants:

No. 2774 and 2775 - Preston School of Industry	- C. H. Close, Sup't.
No. 4141 - Mossdale Farms Inc.	J. E. Thorpe
No. 4142 - N. H. Locke Co. Inc.	K. H. Locke
No. 4388 - Wm. J. Sheldon	J. W. Gross
No. 4398 and 4474 - Theodore Ostermann	Theodore Ostermann
No. 4400 - Terminis Farms Company	Messrs. Ohm & Raab
No. 4405 - M. H. Steely	M. H. Steely

For Protestants:

No appearance.

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights.

FILED MAY 17 1926

O P I N I O N

The main features of these applications are shown by the following

App.No.:	Filed :	Applicant :	Source :	Amount :	Use :	Period of Diversion :	Point of Diversion :
2774	5- 4-22:	Preston School of Industry	Sutter Creek tributary of Dry Creek	6.3 c.f.s:3750 a.f.	Dom. & Irrig.	4-1 to 11-1 10-1 to 7-1	SE ₄ SE ₄ Sec. 1: T 6 N, R10 E
2775	3- 4-22:	Preston School of Industry	Sutter Creek tributary of Dry Creek	10 c.f.s:3750 a.f.	power	1-1 to 12-31 10-1 to 7- 1	SE ₄ SE ₄ Sec. 1: T 6 N, R 10 E
4141	8- 4-24:	Mossdale Farms, Inc	Mokelumne R. tributary of San Joaquin River	3.75 c.f.s	Irrig. Stock water-ing	3-1 to 10-31	Sec.30, T 4 N, R 8 E, Sec.26, T 4 N, R 7 E
4142	8- 4-24:	N.H. Locke Co. Inc.	Mokelumne R. tributary to San Joaquin River	4.19c.f.s	Irrig. Stock water-ing	2-1 to 10- 1	NE ₄ SE ₄ Sec.26: T 4 N, R 7 E
4388	12-18-24:	Wm. J. Sheldon	Cosumnes R. tributary of Mokelumne R.	2.50 c.f.s	Irrig. & Dom.	5-1 to 10-15	NE ₄ SE ₄ Sec.3, T 7 N, R 7 E
4398	12-23-24:	Theodore Ostermann	Mokelumne R. tributary of San Joaquin R	1.06 c.f.s	Irrig.	6-1 to 10- 1	NE ₄ NE ₄ Sec. 9: T 4 N, R 9 E
4400	12-23-24:	Terminus Farms Co.	S. Yk. Mokel. R. and Sycamore Slough, trib. of San Joa- gain River	4.96 c.f.s	Irrig.	1-1 to 12-31	Secs. 1 & 2, T 5 N, R 4 E
4405	12-29-24:	E. H. Stealy	Mokelumne R. tributary of San Joaquin R	0.44 c.f.s	Irrig.	4-1 to 11-1	SW ₄ SE ₄ Sec.10: T 4 N, R 8 E
4474	2-20-25:	Theodore Ostermann	Mokelumne R. tributary of San Joaquin R	1.06 c.f.s	Irrig.	10-1 to 5-31	NE ₄ NE ₄ Sec.9 T 4 N, R 9 E

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 Room 707 Forum Building, Sacramento at 10:00 a.m. on February 17, 1926. Of this hearing applicants and protestants were duly notified.

Staten Island Land Company filed a protest to each of the applications. Applications 2774 and 2775 were also protested by Mary Ives Crocker and J. W. Preston, Jr. and application number 4368 was protested by P. C. Drescher.

The Staten Island Land Company claims that the proposed diversion of the applicants would so modify and reduce the natural flow of the Mokelumne River during the dry seasons of the year and years of drouth as to cause the water at protestant's point of diversion to become polluted with salt water from the ocean to such an extent as to prevent the use of the water for irrigation and domestic use and further that the benefit which Staten Island now derives from the seepage from the river would be lessened.

Mary Ives Crocker and J. W. Preston, Jr. claims that the proposed diversions under Applications 2774 and 2775 of the Preston School of Industry would interfere with their proposed diversion under Application Number 1938 under which they contemplate using water for irrigation purposes.

P. C. Drescher bases his claim on riparian rights and alleges in effect that all available water of the Cosumnes River has been used by riparian owners ever since the early settlement of lands along the Cosumnes River; that the supply has been inadequate for the demand, that during the summer months he has been compelled to pump water from wells to obtain the required amount of water for irrigation purposes and that the proposed diversion of water by the applicant would only result in further depletion of

the already insufficient supply now used by himself and other riparian owners for domestic and irrigation purposes on lands riparian to the river.

During the months of September and October, 1925, a hearing was held in Sacramento on the applications of J. W. Preston, Jr., Stephen E. Kieffer and the East Bay Municipal Utility District which proposed diversion from the Mokelumne River and its tributaries. This hearing extended over a period of sixteen days and so much evidence was presented that the protestants against these various applications now under consideration evidently considered that the Division of Water Rights was fully informed in the matter and therefore did not appear at the hearing. In fact the Staten Island Land Company so advised the Division by letter.

The position of the Division of Water Rights was fully set forth in its decision No. 1462, 1477, 1478, 1479, 1480, 1481, 1482, 1938, 1964, 2099, 2408, 2409, 2410, 2534, 2535, 2997, 3348, 3469, 4228, 4229, 4737, 4768 D-100 rendered April 17, 1926, to which reference is made. We shall not repeat here the considerations which prompted us to overrule the protest of Staten Island Land Company in the case of Application Number 4228 of the East Bay Municipal Utility District as set forth in that opinion. Suffice it to say that the same considerations appear to prevail in the case of these applications now under consideration and that we feel that the objections of the Staten Island Land Company do not justify the denial of these applications.

On July 14, 1890, the Preston School of Industry through the State Board of Prison directors purchased for the use of the School, the Empire Ditch, the Amador Ditch and the Henderson reservoir together with the "first and sole and exclusive right to 750 inches of the waters of Sutter Creek, measured under a four inch pressure" (15 cubic feet per second). The quantity of water delivered to the reservoir which had a capacity of about 200 acre feet has been subject to variation owing to frequent changes of management.

The diversion canal to Henderson Reservoir now has a capacity of 15 to 20 cubic feet per second and Henderson Reservoir has a capacity of approximately 500 acre feet.

Applications 2774 and 2775 were filed by the school so it states in an abundance of precaution lest the earlier priority acquired might have become partially forfeited through non-use, it being the applicant's intention to use no greater amount of water than it is entitled to under the right acquired in 1890.

The applications were protested by J. W. Preston, Jr., as set forth above but since the filing of the protests the proposed point of diversion under Application Number 1938 of Mr. Preston has been moved upstream to a point about 11 miles above the proposed point of diversion under Applications 2774 and 2775 and diversion under these applications can therefore in no way interfere with the proposed diversion of Mr. Preston.

Although the applications were not protested by Mr. Stephen E. Kieffer, attention is directed to the fact that Mr. Kieffer has before this office Application Number 2410 which proposes to divert all of the available water of Dry Creek of which Sutter Creek is a tributary. Although Mr. Kieffer's application is prior in time to that of the School of Industry, his project is still nebulous, no arrangements having been made to put the water to beneficial use even if the application were approved. On the other hand the project of the Preston School of Industry is real and definite and one which contemplates the use of the water in the near future and even if the proposed diversion under Applications 2774 and 2775 were to interfere with Mr. Kieffer's proposed diversion, the School under its power of eminent domain could condemn such rights as may be necessary for its needs.

The project of the School of Industry is primarily a power project and a comparatively large amount of water would be returned to the stream above the proposed point of diversion of Mr. Kieffer.

The lands of the Terminus Farms Company which it is proposed to irrigate under Application Number 4400 are situate in the delta of the Sacramento and San Joaquin Rivers, just south of the junction of Spremore Slough and the South Fork of the Mokelumne River. As in the case of Staten Island the land is below sea level and is irrigated by means of siphons from the large delta reservoir which is supplied with fresh water from the Sacramento and San Joaquin Rivers and their tributaries and is not dependent upon the flow of the Mokelumne River alone for its supply. The proposed diversion would not materially affect the supply of Staten Island or any of the delta diversions and should therefore be approved.

The points of diversion proposed under Applications 4141, 4142, 4398, 4405 and 4474 are situate on the Mokelumne River above the intake of the Stockton and Mokelumne Canal Company which it appears has for years diverted the entire low summer flow of Mokelumne River as a public utility for irrigating in the vicinity of Woodbridge and Lodi.

In normal years the entire flow of the Mokelumne River where it debouches into the Valley area is utilized after about July 15th for irrigation purposes under claim of existing right. The Division of Water Rights has therefore been accustomed to limit the season of diversion in permits which it issues upon applications to appropriate from the Mokelumne River for irrigation purposes by excluding the period from about July 15th to December 1st. The season of diversion should be so limited in Applications Numbers 4141, 4142, 4398, 4405 and 4474.

Relative to Application Number 4388 by William J. Sheldon it may be said that testimony was presented at the hearing to the effect that the protestant R. C. Drescher had abandoned his direct diversion from the Cosumnes River and relied entirely upon wells for his source of supply and that the proposed diversion of the applicant who is located about 8 or 9 miles above the protestant would not have a measurable effect on the water level in the wells from which the protestant obtains his supply. The applicant's irrigation would be entirely on bottom lands and there would be a relatively large return to the stream.

Mr. Drescher was the only one on the Cosumnes River who protested this application and since no appearance was made by him at the hearing and no evidence was submitted in confirmation of his allegation he has failed to support the burden of proof appropriate to a moving party. Application Number 4388 should therefore be approved.

The points of diversion named in Applications 4398 and 4474 as well as the place of use lie within the area which it is proposed to flood by the Mehrton Reservoir under Application Number 2997 of J. W. Preston, Jr., but since the applicant owns the place of use and the lands at the proposed points of diversion his lands could not be flooded without his consent or condemnation. The irrigation scheme of J. W. Preston, Jr. is also very vague and may never be carried out as the owners of undeveloped lands on the valley floor do not appear to be ready to avail themselves of the opportunity of irrigation development offered by the agricultural filings of either J. W. Preston, Jr. or Stephen E. Kieffer.


ORDER

Applications Numbers 2774, 2775, 4141, 4142, 4388, 4398, 4400, 4405 and 4474 for permits to appropriate 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 2774, 2775, 4388 and 4400 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

That Applications Numbers 4141, 4142, 4398, 4405 and 4474 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate and subject also to a special clause limiting the period of diversion to such a time as there is unappropriated water available at the proposed point of diversion, the season of unappropriated water being in years of normal flow from about December 1st to July 15th.

Dated at Sacramento, California, this 12th day of May, 1926.


[Edward Hyatt, Jr.]
CHIEF OF DIVISION OF WATER RIGHTS

WES:MP