

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

oOo

In the Matter of Application 6151, Permit 3292, of Fred H. Heiken,
Treasurer, Sutter County, California, and Trustee of the
Bond Fund of Reclamation District 1500, successor
in interest of Alexander C. Middleton and
Lillie M. Dessez to appropriate from
the Borrow Pit of West Levee of
Sutter By-Pass in Sutter
County.

DECISION A. 6151 D 308

Decided

February 11, 1932

oOo

APPEARANCES AT HEARING HELD AT SACRAMENTO, JANUARY 29, 1932.

For Permittee

Fred H. Heiken, County Treasurer of
Sutter County and Trustee of Bond
Fund of Reclamation District 1500

Jay Crowley

For Alexander C. Middleton and
Lillie M. Dessez

No appearance

oOo

EXAMINER: Everett N. Bryan, Hydraulic Engineer for Harold Conkling,
Deputy in Charge of Water Rights, Division of Water Resources,
Department of Public Works, State of California.

oOo

O P I N I O N

On July 24, 1929, Permit 3292 was issued in approval of Ap-
plication 6151 allowing an appropriation of 7.5 cubic feet per second
from the Borrow Pit of West Levee of Sutter By-Pass in Sutter County,
California, for the irrigation of 299.94 acres of rice. The project

was reported complete on November 15, 1930, by Russell L. Young a tenant of Alexander C. Middleton and Lillie M. Dessez, by whom Application 6151 had been filed and to whom permit had been issued. The project was thereafter, to-wit; on June 2, 1931, inspected in accordance with the provisions of Section 19 of the Water Commission Act. The inspecting engineer reported that while construction had been completed and beneficial use of water made, the permittees of record, i. e., Alexander C. Middleton and Lillie M. Dessez, were no longer in possession of the place of use specified, the property having been sold for taxes to Fred H. Heiken, Treasurer of Sutter County and Trustee of Bond Fund of Reclamation District 1500.

Upon receipt of this information the Division under date of August 26, 1931, communicated with Mr. Middleton, who had been acting as agent for the permittees of record, advising him that in the absence of a showing by him why a different course should be pursued the Division at the expiration of 30 days would assume that Mr. Heiken had succeeded to the rights under the permit as an appurtenance of the land. On September 18th Mr. Middleton accompanied by one Russell Young, who as stated above had been farming the property as a tenant of Mr. Middleton, visited the office and stated verbally his objections to the course which had been proposed. He stated that he had other lands on which he wished to use the water and that he proposed to petition for change in place of use to the new lands. He stated that he would make a formal request within the next two or three months for such change and was advised that pending receipt of a communication from him, action would be suspended in the matter of noting any change in ownership of the filing. The following day he confirmed by letter his protest against the transfer of the water rights to Mr. Heiken and under date of September 24 was advised that action on the matter would be suspended for a period of 90

days awaiting receipt of his petition to change the place of use.

There followed some correspondence and conferences between this office and Mr. Jay Crowley, representing Mr. Fred H. Heiken, in the course of which it was further urged upon the Division that Mr. Heiken had succeeded to the rights under Application 6151, Permit 3292, along with the land to which these were appurtenant and which were described as the place of use in the application. Nothing further was heard from Mr. Middleton within the 90 day period allowed by our letter of September 24, 1931, for filing a petition for change in place of use and accordingly on December 30, 1931, the Division served notice upon Mr. Middleton that he should appear on January 29, 1932, and show cause, if any there was, why the permit should not be revoked because of failure to comply with the terms and conditions of the permit, it appearing to the Division that the permittees of record were no longer in possession of the property and in a position to use the water which had been allowed to them. A copy of the notice of this hearing was sent also to Mr. Heiken and to Mr. Crowley.

There having been no notice from Mr. Middleton of his intention to appear at the hearing the Division communicated with him under date of January 26th requesting information as to whether or not he would be represented at the hearing which was to be held the following day and to this letter he replied by telegram on January 28th to the effect that he would be unable to make an appearance, the cause of his inability to appear was not stated and there has since that time been no showing by him of cause.

Mr. Crowley, representing Mr. Heiken, appeared at the time and place set for the hearing and confirmed by sworn testimony the statements which he had theretofore made in the connection, to-wit; that the permittees

of record had lost possession of the place of use described in the permit and title thereto had passed to Fred H. Heiken, treasurer of Sutter County and Trustee of Bond Fund of Reclamation District 1500; that the permittees of record held title to no other property in said District and that the water rights held under Application 6151, Permit 3292, passed as an appurtenance with the land described as the place of use in said application and permit when ownership passed from the said Alexander C. Middleton and Lillie M. Desez to Fred H. Heiken, Treasurer of Sutter County and Trustee of Bond Fund of Reclamation District 1500.

Under the circumstances it appears in order that the Division should note upon its records that Fred H. Heiken, Treasurer of Sutter County and Trustee of Bond Fund of Reclamation District 1500, is the title holder of rights under this application and permit and that hereafter license should issue to him as is proper under the provisions of Section 19 of the Water Commission Act.

O R D E R

Permit 3292 having been issued in approval of Application 6151, construction and use thereunder having been reported complete and an inspection of the project having been made, indicating that beneficial use was in fact complete, but that the permittees of record were no longer in possession of the property, or in a position to make use of the water on other property, a public hearing having been set in accordance with the provisions of Section 20 of the Water Commission Act requiring permittees to show cause why the permit should not be revoked, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Fred H. Heiken, Treasurer of Sutter County and Trustee of Bond Fund of Reclamation District 1500, be noted in the records

of the Division of Water Resources as the successor in interest of Alexander C. Middleton and Lillie M. Dessez, and

IT IS HEREBY FURTHER ORDERED that license be issued to said Fred H. Heiken in accordance with the provisions of Section 19 of the Water Commission Act, confirming his right to such an amount of water as was found by inspection to have been beneficially used.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 11th day of February, 1932.

EDWARD HYATT, State Engineer

BY Harold Conkling
Deputy.

KNB:GG

