

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

oOo

In the matter of Application Number 3561 of Louise Gray to appropriate from Corral Spring also known as Green Tree Spring or Willow Spring, tributary to Lone Tree Creek Watershed in San Bernardino County for Domestic and Mining Purposes

oOo

DECISION NO. 3561 - D 105

Decided May 11, 1926

APPEARANCES AT HEARING HELD September 22, 1925

For Applicant:

Louise Gray

No appearance

For Protestant:

William F. Keys

in propria persona

EXAMINER - Edward Hyatt, Jr., Chief of the Division of Water Rights

oOo

O P I N I O N

Application Number 3561 was filed on August 1, 1923. It proposes an appropriation of 0.25 cubic feet per second from the waters of Corral Spring, also known as Green Tree Spring or Willow Spring in San Bernardino County to be used throughout the entire year for domestic and quartz milling purposes. It was protested by William F. Keys.

The application was 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 was set for a public hearing at the law library of the Court House, San Bernardino at 3:00 P.M. on September 22, 1925. Of the hearing applicant and protestant were duly notified. No appearance was made on behalf of the applicant.

The protest of William F. Keyes was filed February 23, 1924.

Protestant alleges in effect that the spring has never been known by the name given to it and is not tributary to any creek or watershed but rises on a dyke on his mining claim known as the Pine Springs claim located by him on July 1, 1923, and recorded in Riverside County; that he has posted notices at the spring and at a tunnel which is only a few hundred feet from the spring; that he believes the applicant is a victim of a bunco mine promoter who has been operating in that vicinity who knew that the spring was on his property. Protestant claims that he is working his mining claim and actually taking gold therefrom; that the reason he knows that the spring upon which the applicant has filed is his is because it is the only one in that locality being about 1 1/2 or 2 miles northerly from the Desert Queen Mine and also that he heard this alleged bunco promoter state that he was going to get his spring through the Water Commission; and that he does not think that Mrs. Gray understands the situation.

In reply to the protest Mrs. Gray through her representatives denies that William F. Keyes has any mining location whatever at the site of the spring; asserts that protestant's so called Pine Springs claim is recorded in Riverside County according to his own statement and therefore it would be impossible for his claim to touch this spring as Corral Spring is in San Bernardino County and not in Riverside County and that Mr. Keys is in error when he states that Corral Spring is not known by that name to persons familiar with that locality.

The correspondence between this office and the parties at interest together with the testimony presented by Mr. Keys at the hearing reveal the following facts.

In 1921, Mr. William F. Keys and his partner Mr. D. F. Gail located the Pine Springs claim upon which a small spring was developed, the water being conveyed by means of pack burros for domestic purposes at the Desert Queen mine which is located about two miles south of the Pine Springs claim. Later on account of financial difficulties Mr. Gail was obliged to relinquish his share in the claim in favor of Mr. Keys but instead of giving Mr. Keys a deed for his interest it was agreed that Mr. Gail should lose the claim by default whereupon it would be relocated by Mr. Keys. The Pine Springs claim was relocated by Mr. Keys on July 1, 1923, and the claim was recorded in Riverside County on July 6, 1923, nearly a month prior to the filing of Application Number 3561 by Mrs. Gray. The notice recorded by protestant stated that the claim was located in San Bernardino County about 2 1/2 miles northeasterly of the Desert Queen Mine about 8 miles south of the "29 Palms" and about 7 miles east of Keys' Ranch. Mr. Keys claimed that the notice was, by an error on his part, recorded in Riverside County instead of San Bernardino County he having claims in both counties and in order to safeguard his interests recorded the claim in San Bernardino County on September 10, 1924, about a year and a month subsequent to the filing of Application Number 3561. Mr. Keys was doubtful as to the county in which the claim lay it being very close to the county line in unsurveyed property. At the hearing the protestant stated that he believed the claim was in San Bernardino County although he originally thought that it was in Riverside County.

The first work done on the Pine Springs claim was in May or June of 1921 and consisted in driving a drift to establish the flow of water. Mining operations on the claim were started in 1924, the water being used for domestic and mining purposes.

Two proofs of labor were submitted at the hearing, one, under the date of July 10, 1924, San Bernardino County, set forth the fact that an expenditure of \$100 had been made for work performed prior to that date, and sworn

to before a notary public of San Bernardino County and filed on July 11, 1924, in Riverside County, the other being dated July 13, 1925, stating that \$100 had been expended for labor during the year ending July 31, 1925, and recorded in Riverside County on July 14, 1925. The protestant claims a valid right to the title of the claim and the use of the water and claims that if the applicant had visited the claim there could be no misunderstanding in the matter as the claim was clearly apparent to anyone doing so, it being marked by seven visible monuments.

Mr. Keys stated that he believed Mrs. Gray was a victim of a bunco mine promoter whose victims were persons who had never visited that section of the country and was fully convinced that this promoter was aware of the fact that the spring was located on his claim.

On the other hand the representative of Mrs. Gray's interests claims that Mr. Keys' spring is by his own description located in Riverside County as it is described as being 6 miles south of "29 Palms" while the spring upon which Mrs. Gray had filed was about 6 miles southwest of "29 Palms"; that it would appear that the claim of Mr. Keys had not been properly protected inasmuch as the record appears in the office of the County Recorder of Riverside County while his claim pretends to refer to property in San Bernardino County and that there would be no legal notice given to the parties desiring to appropriate water in the absence of legal recordation in San Bernardino County prior to the filing of the application.

Both applicant and protestant appeared to be adverse to having a survey made to determine the exact location of the spring and the only evidence before the Division is that presented above.

No appearance was made on behalf of the applicant at the hearing and the testimony presented by the protestant remains uncontroverted.

Springs in that section of the country are very scarce and the statement by the applicant that there are no other springs in that locality, together

with the fact that both applicant and protestant claim that the spring is about two miles north of the Desert Queen Mine, would appear to indicate that the spring from which the applicant seeks to divert is the same spring claimed by the protestant.

The applicant failed to appear at the hearing upon his application either in person or by a representative and has not shown good cause or any cause for said failure of appearance. The Division of Water Rights is therefore authorized to take final action without a further hearing.

As a result of applicant's failure to appear the Division has been deprived of testimony which would serve to render certain some things which are not definitely ascertainable from the record. It seems reasonable and logical to assume that applicant has either become indifferent to her application and has virtually abandoned same or concluded that an appearance on her behalf at a hearing would be detrimental to her cause. This unexplained neglect on the part of applicant to appear and contribute towards an ascertainment of the facts relative to this application and the protest of Mr. Keys constitutes such a lack of diligence on the part of applicant under all the circumstances disclosed by the record and known to applicant as to justify a rejection of this application.

We will, however, briefly consider the contention advanced by applicant through correspondence, to-wit, that the claim in question, if in conflict with the application, is in San Bernardino County and that the failure to record notice in San Bernardino prior to the filing of the application subjects the claim to the priority of the application. In the first place it is by no means certain that this claim is in San Bernardino, in the second place, it appears probable from the record, and no contradiction is made by applicant, that one Hoach acted as applicants agent or representative or at least informant and locator and that said Hoach had actual knowledge of the existence of the claim and knew of same at the time the application in question was filed. If

so, it appears that applicant is chargeable with said knowledge or notice on the part of Roach upon the basis of the doctrine that knowledge or notice of the agent is imputed to the principal. Hence a lack of constructive notice by virtue of the lack of recordation in San Bernardino county would be immaterial. In the third place, the failure to record in San Bernardino County, assuming that the mineral location is situate therein, does not in itself render the location void. (Emerson v. McWhirter, 133 Cal. 510) It is furthermore apparent from the decisions<sup>of our courts</sup> that locations made in good faith are favored in law and that inaccuracies or mistakes in posting or recording have sometimes been held immaterial.

Finally it might well be held that in such a case as the present the locator should not be penalized for a failure to file in San Bernardino the circumstances being such as to excuse a mistake as to the proper county and also such as to put a would be locator upon notice to look in both counties rather than assume the location to be in one county.

It is therefore concluded that said application should be rejected as in conflict with protestant's mineral location, said protestant and locator being entitled under the mining laws to exclusive possession and enjoyment of the surface of his claim and entitled to protection against any invasion thereof by a would be appropriator.

O R D E R

Application Number 3561 for permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest 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 said application be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, the 11th day of May, 1926.

WES:SES:MC

\_\_\_\_\_  
(Edward Hyatt, Jr.)  
CHIEF OF DIVISION OF WATER RIGHTS

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

*Decision 106*

ooc

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 E. 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 Ternarius 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.

ooc

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

Decided May 12, 1926

APPEARANCES AND HEARING HELD February 17, 1926.

For Applicants:

- |  |                     |
|--|---------------------|
| No. 2774 and 2775 - Preston School of Industry | O. H. Close, Sup't. |
| No. 4141 - Mossdale Farms Inc.                 | J. E. Thorpe        |
| No. 4142 - E. H. Locke Co. Inc.                | E. H. Locke         |
| No. 4388 - Wm. J. Sheldon                      | J. W. Cross         |
| No. 4398 and 4474 - Theodore Ostermann         | Theodore Ostermann  |
| No. 4400 - Ternarius Farms Company             | Messrs. Orr & Reed  |
| No. 4405 - M. H. Steely                        | M. H. Steely        |

For Protestants:

No appearance.

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

*Decision 106*

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	3- 4-22	Preston School of Industry	Sutter Creek tributary of Dry Creek	8.3 c.f.s. 3750 a.f.	Dom. & Irrig.	4-1 to 11-1 10-1 to 7-1	SE <sub>4</sub> SE <sub>4</sub> Sec. 1: T 6 N, R10E
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 <sub>4</sub> SE <sub>4</sub> 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 3 E, Sec. 26, T 4 N, R 7 E
4142	8- 4-24	M.H. Locke Co. Inc.	Mokelumne R. tributary to San Joaquin River	4.1 c.f.s.	Irrig. Stock water- ing	2-1 to 10- 1	NE <sub>4</sub> SE <sub>4</sub> Sec. 26: T 4 N, R 7 E
4385	12-18-24	Wm. J. Sheldon	Cosumnes R. tributary of Mokelumne R.	2.50 c.f.s.	Irrig. & Dom.	5-1 to 10-15	NW <sub>4</sub> SE <sub>4</sub> 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 <sub>4</sub> SE <sub>4</sub> Sec. 9: T 4 N, R 9 E
4400	12-23-24	Terminus Farms Co.	S. Fk. Mokel. R. and Sycamore Slough, trib. of San Joaquin River	4.26 c.f.s.	Irrig.	1-1 to 12-31	Secs. 1 & 2, T 3 N, R 4 E
4405	12-29-24	M. H. Stealy	Mokelumne R. tributary of San Joaquin R.	0.41 c.f.s.	Irrig.	4-1 to 11-1	SW <sub>4</sub> SE <sub>4</sub> Sec. 10: T 4 N, R 6 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 <sub>4</sub> SE <sub>4</sub> 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 4588 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, 2597, 3348, 3469, 4228, 4229, 4737, 4758 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 4326 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, 1880, 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 B. 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 Bycamore 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.

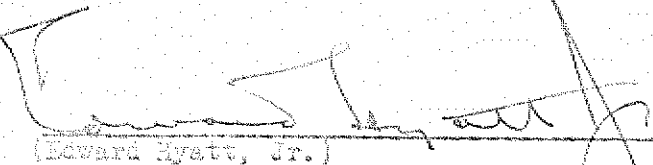
ORDER

Applications Numbers 2774, 2775, 4141, 4142, 4398, 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, 4398 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 18th day of May, 1926.

  
\_\_\_\_\_  
(Edward Hyatt, Jr.)  
CHIEF OF DIVISION OF WATER RIGHTS

WES:MP