

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

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In the Matter of Applications No. 3213, No. 3811, No. 3821, No. 3830 and No. 3996 by John Clements, et al, Verne W. Hoffman, J. Schmidt, et al, F. T. Kirschenman, et al, and F. C. Allen, respectively, to appropriate water from the Mokelumne River in San Joaquin County for Agricultural Purposes, and IN THE MATTER of Application No. 3687 by Frank Becker to appropriate water from Licking Fork, Tributary to the Mokelumne River in Calaveras County for Power Purposes

DECISION NO. 3213-3687-3811-3821-3830 and 3996. D 39
Decided

APPEARANCES AT HEARING HELD SEPTEMBER 18, 1924-

For Applicant	(No. 3213):	No appearance
" "	(No. 3687):	No appearance
" "	(No. 3811):	Verne W. Hoffman, in propria persona
" "	(No. 3821):	Herman Vollbrecht, " " "
" "	(No. 3830):	F. T. Kirschenman, " " "
" "	(No. 3996):	F. C. Allen, " " "
For Protestant:		Gilbert L. Jones, of Levinsky and Jones, Attorneys at Law,
Examiner:		Edward Hyatt, Jr., Acting Chief of Division of Water Rights

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O P I N I O N

Application No. 3213 was filed on January 5, 1923, by John Clements, et al. It proposes an appropriation of 5.6 cubic feet per second by direct diversion for agricultural purposes.

Application No. 3687 was filed on October 24, 1923, by Frank Becker. It proposes an appropriation of 6.0 cubic feet per second by direct diversion for power purposes.

Application No. 3811 was filed on January 26, 1924, by Verne W. Hoffman. It proposes an appropriation of 0.66 cubic foot per second by direct diversion for agricultural purposes.

Application No. 3821 was filed on February 2, 1924, by J. J. Schmidt, et al. It proposes an appropriation of 1.0 cubic foot per second by direct diversion for agricultural purposes.

Application No. 3830 was filed on February 7, 1924, by F. T. Kirschenman, et al. It proposes an appropriation of 2.12 cubic feet per second by direct diversion for agricultural purposes.

Application No. 3996 was filed on May 20, 1924, by F. C. Allen. It proposes an appropriation of 0.87 cubic foot per second by direct diversion for agricultural purposes.

All the above applications were protested by the Stockton and Mokelumne Canal Company.

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 September 18, 1924. Of this hearing applicants and protestant were duly notified.

No appearances were made on behalf of the applicants No. 3213 and No. 3687. Applicant No. 3213 has offered no explanation of his failure to appear. Applicant No. 3687, through his attorney, notified the Division prior to the date set for the hearing that he would be unable to appear on account of a previous engagement. He submitted certain affidavits in an

attempt to show that the water sought to be appropriated by him would be returned to the stream above protestant with a loss which would be altogether negligible, and requested a continuance of the hearing to a future date when he would be able to appear in case these affidavits were not conclusive evidence on the point.

The hearing was restricted to matters pertaining to the cases in which appearances were made and there was testimony introduced by both applicants and protestant. It appears that protestant Stockton and Mokelumne Canal Company is a public utility distributing water for irrigation and domestic purposes, and protestant claims; (1) that since 1886 it has continuously and uninterruptedly and under claim of right diverted water from Mokelumne River for such distribution; (2) that it now has constructed and in use for such purpose approximately 120 miles of main canals and laterals; (3) that it now has approximately 350 consumers purchasing water for the irrigation of approximately 11,000 acres; (4) that it is entitled to divert 500 cubic feet per second from Mokelumne River for the purposes as aforesaid; and (5) that in years of normal flow there is no unappropriated water available for appropriation under these protested applications after about the first of July.

There appears to be no definite information as to the exact amount to which protestant is entitled but there was no denial on the part of applicants that protestant was vested with certain rights to appropriate from Mokelumne River which were prior in time and therefore prior in right to any rights of appropriation which could be acquired under the applications under consideration. The situation was summed up by applicant No. 3811 (Verne

W. Hoffman) in reply to a question by the examiner when he stated, "the thing we ask for is simply a permit to pump unappropriated water."

The stream flow records of the United States Geological Survey show that the average annual discharge of Mokelumne River is approximately 898,000 acre feet and that in the lowest year of record (1923 - 1924) the discharge was approximately 182,000 acre feet. The interested parties in this matter agree and there appears no room for doubt that even in years of sub-normal flow there is unappropriated water which wastes from Mokelumne River into the sea. A study of these records further reveals that in years of normal flow the surplus or waste of water ceases about July 15th. The responsibility is upon these applicants to so restrict their diversions under the permits sought by these applications that there will be no trespass upon prior vested rights.

O R D E R

Applications No. 3213 and No. 3687 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed thereto, a public hearing having been set, and there being no appearance on the part of applicants;

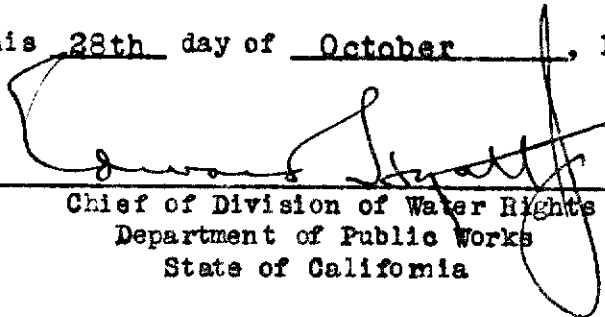
IT IS HEREBY ORDERED that the matter of protests against these applications be set for further hearing; and

Applications No. 3811, No. 3821, No. 3830, and No. 3996 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed thereto, 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 applications be approved and that permits be granted to said applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 28th day of October, 1924.



Chief of Division of Water Rights
Department of Public Works
State of California