

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

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In the Matter of Application 5807 of Woodbridge Irrigation District
to Appropriate the Augmented or Regulated Flow of Mokelumne
River, Tributary to San Joaquin River in San Joaquin County
for Irrigation and Domestic Purposes.

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DECISION A. 5807 D-317

Decided

May 7, 1932

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APPEARANCES AT HEARING HELD AT SACRAMENTO, AUGUST 17, 1931.

For Applicant

Woodbridge Irrigation District

A. L. Cowell and Frank Davis

For Protestants

East Bay Municipal Utility District
Staten Island Land Company
J. W. Preston, Jr.
Reclamation District 548

L. W. Irving and C. E. Grunsky, Jr.
W. B. Fuller
Edgar T. Zook
No appearance

EXAMINER: Everett N. Bryan, Hydraulic Engineer, Division of Water Resources,
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION 5807

Application 5807 was filed by the Woodbridge Irrigation District
on January 20, 1928. It proposes an appropriation of 300 cubic feet per
second of the augmented or regulated flow of the Mokelumne River as brought
about by the release of water stored or to be stored in reservoirs built or
to be built on the Mokelumne River and/or its tributaries. The water is to

be diverted at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T 4 N, R 6 E, M.D.B. & M. and is to be used for irrigation and incidental domestic purposes on 13,899.31 acres within the Woodbridge Irrigation District and also on 10,086.50 acres not included within the Woodbridge Irrigation District.

The application was protested by the following:

1. East Bay Municipal Utility District
2. Staten Island Land Company
3. J. W. Preston, Jr.
4. Reclamation District 548

PROTESTS

The East Bay Municipal Utility District objects to any filing attempting to secure rights in the storage releases from upper reservoirs on Mokelumne River prior to the rights of said protestant, which filings are made upon the theory that such storage releases differ in some respects from the other waters of the stream and alleges in effect that all the water which may be stored in upper reservoirs and released therefrom is necessary for the use of said protestant through its Applications 4228, 4768, 5002 and 5128.

The Staten Island Land Company claims riparian rights and appropriate rights initiated prior to the effective date of the Water Commission Act and alleges in effect (1) that the approval of the application would so reduce the flow of the Mokelumne River as to cause it to become polluted with salt water, (2) that it would diminish the releases from storage upon which protestant depends to diffuse and force out the saline waters, (3) that its supply for irrigation purposes would be diminished, (4) that the seepage of water from both forks of Mokelumne River surrounding Staten Island would be greatly diminished and reduced, thereby diminishing the value of the land for agricultural uses, and (5) that the approval of the application would not best serve the public interest.

J. W. Preston, Jr. claims the right to the use of water from the source from which applicant proposes to divert based upon his Applications 1964, 2099, 2535 and 2997 under which he seeks to use the waters of Mokelumne River for the irrigation of lands in the Mokelumne Basin above the lands described in Application 5807 and he alleges in effect that if Application 5807 were approved the complete and economical development for the full potentialities of the river for power and irrigation development proposed under his application and certain power applications which have been assigned to the Pacific Gas and Electric Company would be irreparably damaged thereby.

The Board of Trustees of Reclamation District 548 objects to any further diversion from the Mokelumne River on the grounds that such diversion will have a tendency to increase the salinity content of the delta channels surrounding the District.

HEARING SET IN ACCORDANCE WITH SECTION 1a
OF THE WATER COMMISSION ACT

Application 5807 of Woodbridge Irrigation District was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on August 17, 1931, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestants were duly notified.

HISTORY

The Woodbridge Irrigation District project is one of the oldest in California having been started as a private enterprise in the late Eighties by Byron D. Beckwith who in 1886 posted and recorded a notice of appropriation of 150,000 miners inches of water from Mokelumne River near Woodbridge for use between the Town of New Hope (now Thornton) and the City

of Stockton. Work on the project proceeded with reasonable diligence and articles of incorporation of the Woodbridge Canal and Irrigation Company were filed on April 27, 1889. The main canal, substantially as at present with a capacity of some 300 cubic feet per second, was constructed and water has been diverted consistently ever since about 1890 and distributed for irrigation purposes in the territory indicated in the original notice of appropriation.

Because of financial difficulties the Woodbridge Canal and Irrigation Company lost the property through foreclosure proceedings and in 1899 it was acquired by the Stockton & Mokelumne Canal Company which had been organized to develop it. That corporation made some extensions of the distribution system and built the present dam at Woodbridge.

The Woodbridge Irrigation District was formed in 1924 with an area of some 11,000 acres and negotiations for the purchase of the canal system and water rights of the Stockton & Mokelumne Canal Company were commenced. The purchase of the canal system and water rights was consummated by the district on April 18, 1928, and the area of the District increased to some 14,000 acres.

The Stockton and Mokelumne Canal Company was a public utility and had at various times served at least 30,000 acres from the canal system which the District acquired. However, before the sale of its properties to the District, the Canal Company was relieved of public utility status by order of the Railroad Commission, which required the district to agree to include within its boundaries any land which had been served from the canals, provided proper petitions were presented by May 1, 1928. This requirement was complied with but a large area theretofore irrigated at various times from the canals elected to remain outside of the district.

SOURCES OF SUPPLY

While Application 5807 was filed for the purpose of appropriating the augmented or regulated flow of Mokelumne River which is or may in the future be available, it specifically refers to the release of water from the following reservoirs:

- (a) The existing reservoirs of the Pacific Gas & Electric Company from which water has heretofore been released for the generation of electrical energy at Electra.

According to the "Report to the Federal Power Commission on the Water Power of California" by Frank E. Bonner, District Engineer of the U. S. Forest Service, which report was submitted in 1928, the water supply to the Electra Power Plant of the Pacific Gas & Electric Company is regulated to a small extent by the storage of 17,500 acre feet in four small reservoirs on the headwaters of the North Fork and 6,000 acre feet in the Bear River Reservoir. The reservoirs referred to and their respective capacities are as follows:

<u>Reservoirs</u>	<u>Capacity</u>
Twin Lakes	1,424 acre feet
Upper Blue Lakes	6,746 " "
Lower Blue Lakes	3,741 " "
Meadow Lake	5,613 " "
Bear River	<u>6,000</u> " "
Total	23,524 acre feet

Under permits issued in approval of Applications 2751 and 5161 the Pacific Gas & Electric Company has the privilege of storing 9,412 acre feet in the Deer Valley Reservoir (capacity 9,412 acre feet) on the North Fork of the Mokelumne River for use through the Electra and Tiger Creek Power Plants where the water is to be returned to the stream.

(b) Reservoir now under construction by the Pacific Gas & Electric Company at Salt Springs.

Under permits issued in approval of Applications 2100, 2534 and 5240 the Pacific Gas & Electric Company has the privilege of storing 145,000 acre feet per annum in the Salt Springs Reservoir (capacity 130,000 acre feet) on North Fork of Mokelumne River for use for power purposes through the Tiger Creek and Electra Power Plants where the water is to be returned to the stream.

(c) The Pardee Reservoir of the East Bay Municipal Utility District.

Under permits issued in approval of Applications 4768 and 5128 the East Bay Municipal Utility District has the privilege of storing 217,000 acre feet per annum in the Lancha Plana Reservoir (capacity 221,000 acre feet) on the Mokelumne River for power purposes at a power house constructed just below the Pardee dam where the water will be returned to the stream.

Under Application 5002 the East Bay Municipal Utility District proposes to store 25,000 acre feet in the proposed "Middle Bar Reservoir" at the upper end of the Lancha Plana Reservoir on the Mokelumne River. The storage is to be made primarily for the purpose of creating a head with which to generate power and when once stored the water will be released only in exceptionally dry years. Action upon this application has been withheld pending clearance by the Federal Power Commission.

(d) The Reservoirs to be constructed by John W. Preston, Jr. under Applications 1477 and 1479.

Applications 1477 and 1479 were cancelled at the request of the applicant on December 5, 1929, and therefore the storage proposed thereunder will not be available to the Woodbridge Irrigation District.

The average annual discharge of the Mokelumne River is approximately 800,000 acre feet and by the use of the reservoirs described above

which have an aggregate capacity of some 405,000 acre feet, it may be expected that at least this latter amount will normally become available annually.

WATERS SUBJECT TO APPROPRIATION UNDER APPLICATION 5807

Section 17 of the Water Commission Act provides that water which has been appropriated and used and allowed to flow back into a stream after such use is subject to appropriation and in the matter of Application 3648 of the Waterford Irrigation District, Decision 192, this office has heretofore ruled:

***that water of one season or period of time is not water of another season or period of time; that water made to flow in another season or period of time is not natural flow of the season or period of time wherein it is made to flow; that rights by appropriation are measured and limited by time or season of use as well as by amount of water and waters of one season or period of time which are in excess of vested rights of use during that season or period of time and cannot be used by direct flow appropriation during the time of their natural occurrence are not within the right of such direct flow appropriation."

It is therefore the view of this office that waters which have been stored for power purposes, used and returned to the stream, are subject to appropriation by the next appropriator who initiates a right after the released storage is in reasonable prospect.

While applicant has specifically mentioned in Application 5807 the releases from certain reservoirs which have been either constructed or are in contemplation of construction under rights already initiated there is an attempt in this application to establish a claim to waters which may become available through storage releases under appropriations not yet initiated. It is the opinion of this office, however, and it has been so held (Decision 279) that while we can approve an application for water when there

is reasonable prospect, at the time of the filing of such application, that such water will become available, we cannot approve an application for water which was not in prospect when the application was received.

Our position in this matter was directed to the applicant's attention at the hearing and an opportunity was afforded applicant to file a brief in support of this phase of its application but nothing has been submitted. We shall therefore be compelled to recognize Application 5807 as seeking to appropriate only such water as was in prospect at the time the application was filed.

DISCUSSION OF PROTESTS

J. W. Preston, Jr., as was indicated above, claims certain rights in and to the storage releases sought under Application 5807 by virtue of his own prior Applications 1964, 2099, 2535 and 2997, and the record clearly indicates that these applications were filed by him to initiate rights to use for irrigation purposes the water which it was sought to appropriate for power purposes under Applications 2100 and 2534, and that by means of Application 2997 he proposed to store and re-regulate for agricultural purposes at a point far down on the stream the waters which had previously been so used for power purposes. He originally made both groups of filings but in 1926 sold out the power phases of the coordinated development to Pacific Gas & Electric Company reserving to himself whatever rights there might be to use the released storage of the power development for irrigation purposes. Action on this group of four applications retained by him has been continued from time to time because of his inability to show reasonable assurance of an ability to consummate the use proposed and to proceed with the development, and action is still pending for the same reason. It is

problematical whether or not he can ever show reasonable assurance of ability to consummate the use proposed, and we now have another and later applicant who not only is ready and desirous of using these released stored waters but has completed the necessary works and has actually been diverting and using beneficially for more than a year a portion of the storage releases which J. W. Preston, Jr., claims under his prior filings. It is altogether probable that there may be storage releases in excess of those which could be rightfully claimed and beneficially used by Preston, particularly in view of the fact that Application 4767 of East Bay District is posterior to his filings and if not, provided he proceeds with and consummates his appropriations, his points of diversion are upstream and his diversions cannot physically or legally be interfered with by the approval of Application 5807 of Woodbridge Irrigation District.

East Bay Municipal Utility District objected to approval of Application 5807 because it specifically mentions the storage releases from upper storage reservoirs, being apprehensive it appears that the ruling might be made that such storage releases were of a peculiar status and not available to the District under its Applications 4228, 4768, 5002 and 5128 because of the failure of the District to specifically mention them. Such is not the view and ruling of the Division. It is our view that any and all waters of the stream which are in reasonable prospect at the time of filing, whether natural or foreign either as to time or place of origin, may be claimed by an applicant subject only to prior and vested rights and that there is no necessity for specific mention of the particular waters which are in mind. The waters which Woodbridge Irrigation District would appropriate under Application 5807 are neither physically nor legally subject to appropriation

by that District until they have passed beyond and below the diversion works of the East Bay Municipal Utility District and it is therefore our view that said District states no cause of action in its protest.

The Staten Island Land Company and Reclamation District 548 which are below the applicant's proposed point of diversion, are relying upon appropriate rights initiated prior to the effective date of the Water Commission Act and riparian rights. It is our view, as stated above that these protestants cannot successfully sustain a claim of right to waters released from storage under rights initiated subsequent to the effective date of the Water Commission Act.

In connection with the claims of these protestants that both as riparian owners and as appropriators they have a right to these waters to insure against encroachment of salinity in the Delta channels, we quote from a previous opinion of this office (Decision 100) as follows:

"***the supreme court treated the Antioch case as one of 'unprecedented conditions' requiring original treatment and under the reasoning of that opinion we feel that the supreme court has very clearly indicated that saline control is a new and unprecedented condition in the law of waters and that the established canons of law are inconclusive and must yield to the exigencies of the time and place involved. Those exigencies were deemed inconsistent with a demand for saline protection and in our opinion saline protection is as foreign and as novel to the riparian doctrine as to the appropriative doctrine. It appears that the appropriator in the Delta needs saline protection just as much as does the riparian user and that if the one is not entitled thereto neither is the other."****

STATE FILINGS

Under Application 5647 the Department of Finance, State of California seeks to appropriate as follows:

<u>Source</u>	<u>Amounts</u>	<u>Points of Diversion</u>
Dry Creek	50 c.f.s. and 5,000 A.F.	SE $\frac{1}{4}$ Sec.7, T7N, R11E
Sutter Creek	50 c.f.s. and 5,000 A.F.	SE $\frac{1}{4}$ Sec.22, T7N, R12E
North Fork Mokelumne River	400 c.f.s. and 100,000 A.F.	NW $\frac{1}{4}$ Sec.13, T7N, R14E
Mokelumne River	600 c.f.s.	Sec.34, T6N, R12E

The water is to be diverted throughout the entire year and used for irrigation and domestic purposes on 100,000 acres in T 4 to 7 N, R 9 to 13 E, inclusive, M.D.B. & M.

Under Application 5648 the Department of Finance seeks to appropriate from the Mokelumne, Calaveras and Stanislaus Rivers and tributaries. From the Mokelumne River and tributaries it seeks to appropriate as follows:

<u>Source</u>	<u>Amount</u>	<u>Points of Diversion</u>
Forest Creek	25 c.f.s.	Sec.34, T 7 N, R 14 E
Middle Fork Mokelumne River	40,000 A.F.	SW $\frac{1}{4}$ Sec.12, T 6 N, R 13 E
Middle Fork Mokelumne River	140 c.f.s.	Sec. 8, T 6 N, R 13 E
South Fork Mokelumne River	40,000 A.F.	NE $\frac{1}{4}$ Sec.23, T 6 N, R 13 E
South Fork Mokelumne River	25 c.f.s.	Sec. 2, T 5 N, R 14 E
South Fork Mokelumne River	230 c.f.s.	Sec.16, T 6 N, R 13 E
Mokelumne River	300 c.f.s.	Sec. 18, T 5 N, R 11 E

The water is to be diverted throughout the entire year for irrigation and domestic purposes on 310,000 acres of land in T 1 S, R 10 to 12 E, inclusive and T 1 to 6 N, inclusive, Ranges 9 to 15 E, inclusive, M.D.B. & M.

Applications 5647 and 5648 are prior in time to Application 5807 of Woodbridge Irrigation District. A portion of the water which the District proposes to appropriate is water released from storage from reservoirs above the points of diversion described in Applications 5647 and 5648 and the lands which the Woodbridge Irrigation District proposes to irrigate are not included within the place of use as described in the State filings. The Woodbridge Irrigation District application is however not only to appropriate at a point downstream, whence the water will come only after having passed all points of diversion specified in the State filings but it is an application to appropriate by a publicly owned project for lands adjacent to Mokelumne

River and within its watershed, lands which are naturally dependent on Mokelumne River for a water supply and entitled by equal right to service therefrom with the lands specified for benefit under Applications 5647 and 5648 of the State. It is our judgment therefore that the present development and existing opportunity for immediate service to lands within Woodbridge Irrigation District should not wait upon the uncertain development of the future under Applications 5647 and 5648 of the State.

RELATION OF DISTRICT TO LANDS OUTSIDE ITS BOUNDARIES

A contract has been entered into between the applicant and the Department of Institutions of the State of California wherein it was agreed that the District would furnish water for the irrigation of any 300 acres within a certain 400 acre tract held by the Stockton State Hospital. Although no definite contractual relationship of any character exists between the District and the owners of other lands which it is proposed to serve outside the District boundaries reasonable assurance of the District's ability to make such a use is evident. Canals have been constructed extending into the area to be served and applicant has already served a portion of these outside lands.

Section 18 of the California Irrigation District Act as amended in 1924 provides that the Board of Directors of an irrigation district —

"May, if they deem it for the best interests of the District, enter into a private contract for the lease or sale of any surplus water or the use of such water not then necessary for use within the District for any lawful purposes, for use either within or without the District."

It is also provided that no right in any water owned by the District should thereby be acquired by user and that nothing in the section should be construed as authorizing the sale of a water right. At

the end of the section a provision is added to the effect that any lease or contract entered into for a period of more than one year shall not be valid unless approved by the California Bond Certification Commission.

There is no question but that the District may dispose of surplus water to lands outside of its boundaries. While there may be uncertainty as to the power of the district to appropriate water for lands lying outside of its boundaries a determination of this point is immaterial to the present decision. In the event that such service is not possible under the law the district can at least deliver surplus water to these lands.

APPROVAL OF APPLICATION FOR FULL AMOUNT IS IN ORDER

During the course of the hearing and subsequently, the Division requested of the applicant a showing that the full amount of the application was necessary and could be used beneficially for the purposes which were contemplated. This inquiry was prompted by the doubt that applicant was in a position to appropriate for the lands outside the District boundaries, and if this doubt were resolved against such an appropriation then 300 cubic feet per second (the amount for which application was made) was probably more than would be beneficially used within the District boundary, and permit must in accordance with the previous practice of the Division issue for some lesser amount.

It has heretofore been the practice of the Division to refuse to approve an application for an amount grossly in excess of the estimated need for the beneficial uses contemplated in the application and an effort has been made, prior to the issuance of permits for irrigation use, to

estimate the need on an acreage basis and issue permits accordingly rather than for the amount applied for if this amount were in excess of the estimated need. Many uncertain factors however enter into such an estimate and mistakes have been made at various times, as was proved at time of inspection for license, when it was found beneficial use was in fact being made of an amount in excess of the estimated need as allowed in the permit. Variability in net consumptive requirement for various crops in soil conditions, in transportation losses, in precipitation, in availability of water in the source, and in economic conditions as affected by the financial situation of the appropriator, value of crops, proximity of markets, etc., make an accurate estimate of the water needs of an irrigation project prior to development practically impossible. If the estimate is made sufficiently high to be safe it is of little practical value.

It is well established that beneficial use is the basis, the measure and the limit of an appropriative right and if an irrigation project is clearly described in the application we believe generally this measure will suffice until use has been completed and the right consummated when inspection at time of license will make possible the establishment of some quantitative measure. Having accepted this view it is no longer necessary for us to give thought to the possibility that a right cannot be consummated in connection with the use upon lands outside the District. The application may therefore be approved for the amount requested and if the District has the power to appropriate for these outside lands a right will be consummated for the amount thus

beneficially used. If such a right cannot be consummated then the right will mature only for such water as is beneficially used within the District.

CONCLUSION

The use to which the Woodbridge Irrigation District proposes to put the water is a useful and beneficial one; the applicant has given reasonable assurance of its ability to consummate the proposed use and there is unappropriated water available in the source from which it is proposed to divert. It is therefore our opinion that Application 5807 should be approved.

It should be expressly understood that the issuance of the permit does not approve Application 5807 insofar as it relates or contemplates the appropriation of waters not in reasonable prospect of availability at the time of the receipt of said application by this office and a special clause should be incorporated therein to that effect.

ORDER

Application 5807 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application be approved and that a permit be issued thereon subject to such of the usual terms and conditions as may be appropriate and subject to a further special term and condition as follows, to-wit:

Issuance of this permit shall not be construed to approve Application 5807 insofar as it relates to or contemplates the appropriation of regulated flow or released storage resulting from appropriations under applications filed or other developments proposed subsequent to the filing of said Application 5807.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *7th* day of *May*, 1932.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

WES:
ENB:MP

