

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

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In the Matter of the Revocation of License 378 of the Comanche Gold Dredging Company Heretofore Issued on Application 2789 Permit 1434 Confirming the Right to appropriate from the Mokelumne River in Calaveras County for Mining Purposes and in the Matter of Application 5982 of the Comanche Gold Dredging Company to appropriate from the Mokelumne River in Calaveras County for Mining Purposes.

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DECISION A. 2789, 5982 D 238

Decided *Sept. 17, 1929*

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APPEARANCES AT HEARING HELD May 6, 1929.

For Licensee and Applicant
Comanche Gold Dredging Co.

A. A. Gilhousen Jr.

For Protestants

N. H. Locke Co.)
L. J. & E. W. Locke and Tip Anderson)
Various riparian land owners)

H. H. Henderson

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling, Chief of the Division of Water Rights, Department of Public Works, State of California.

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O P I N I O N

Application 2789 Permit 1434 License 378

On March 9, 1925, License 378 was issued by the Division of Water Rights confirming the right of Warren V. Clark to appropriate 2 cubic feet per second from the Mokelumne River for mining purposes "during twelve hours

of each day when 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 about July 15th". The place of use was 240 acres within Sections 11, 12, 13, and 14 T. 4 N. R 9 E. M.D.B. & M.

On January 20, 1928, this office was advised that the license had been assigned to A.A. Gilhousen, Agent, and on July 10th that it had been assigned by A. A. Gilhousen, Agent to the Comanche Gold Dredging Company.

The first report on the use of water was filed in this office on January 6, 1928. According to the report it appeared that no use of water had been made since issuance of license except to keep the dredger afloat and to keep its hull in good condition.

Under date of June 20, 1928, this office was advised that the dredging operation had been temporarily discontinued on account of poor management, insufficient capital, and accidents, but in view of the fact that the pumping equipment and pipe line were in first class condition and the company was then engaged in raising funds, the licensee requested a "continuation" of the license.

The licensee was informed by this office that no provision was made under the Water Commission Act for such "continuation" and that if a three year period of non use was unavoidable the licensee should endeavor to protect its interests by the filing of a new application. Consequently under date of July 16, 1928, the Comanche Gold Dredging Company filed Application 5982 with the intention of withdrawing License 378 as soon as the new application was approved.

Application 5982

Under Application 5982 the Comanche Gold Dredging Company proposes to divert 2 cubic feet per second from the Mokelumne River from about December 1, to about July 15, of each season for mining purposes on 240 acres of land situat-

ed within Sections 11, 12, 13 and 14, T 4 N, R 9 E, M.D.B.& M. Prior to the hearing the application was protested by N. H. Locke Company and L. J. and E. M. Locke and Tip Anderson and at the hearing by 204 various riparian land owners on the Mokelumne River.

Protests

The record protestants claim prior rights based upon riparian ownership and appropriation and allege in effect that the water supply in the Mokelumne River is insufficient to supply the present demands. The 204 riparian owners allege interference with their riparian rights.

Hearing Set in Accordance with Section 1a of the Water Commission Act.

Application 5982 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 in accordance with Section 1a of the Water Commission Act on May 6, 1929 at 10:00 o'clock A. M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and record protestants were duly notified. Application 2789, Permit 1434, License 378 was included by stipulation for hearing under Section 20 of the Water Commission Act, it appearing to this office that the rights thereunder had lapsed through non-use.

Rights Under License 378 Have Lapsed Through Non-Use

Testimony presented at the hearing and exhibits filed subsequently thereto indicate that since November 1925 no water had been pumped from the Mokelumne River under License 378, nor has the dredger been operated. The water which has kept the dredger afloat since that time is that which has been collected in the pit from rainfall and natural seepage and not water obtained under License 378. While there have been some expenditures by licensee during the past three years for interest, taxes, maintenance of the dredger, office

expenses, and re-financing, it appears that because of mismanagement, accidents, and financial difficulties licensee has failed entirely to operate the dredger or put any water to beneficial use under this license.

By the statements of the licensee's representative at the hearing it appears that three years of non use have elapsed and that the rights have become forfeited under Section 20a of the Water Commission Act. License 378 should therefore be revoked and cancelled upon the records of this office.

Prior Rights of Protestants

Although protestants objected to the proposed diversion under Application 5982 on the grounds that at the present time there is an inadequate water supply in the Mokelumne River to meet their agricultural demands, no evidence was introduced at the hearing in support of this contention.

It was claimed by the protestants that there are in excess of 158,000 acres of land riparian to the Mokelumne River and its tributaries below the Lancha Plana dam of the East Bay Municipal Utility District which is a much larger acreage than that given by the Utility District at the hearing held September 11, 1925 et seq. in connection with its Application 4228. The Utility District claimed that there were approximately 17,000 acres of riparian land of which 3,800 acres had actually been irrigated from the river.

The representative of the protestants attempted to explain the discrepancy by stating the Utility District had apparently considered as riparian only the lands bordering upon the main channel of the river while he considered as riparian all the lands bordering upon its branches and overflow channels as well. However neither applicant nor protestants presented any substantial evidence as to the existence or lack of unappropriated water and the Division must resort to the evidence which is at hand presented in earlier cases.

In Section III of the Opinion and Order of the Division of Water Rights, Decision No. 1462 etc. D-100 decided April 17, 1926, it was held that the present

area diverting an irrigation supply directly from the Mokelumne River was perhaps between 14,000 and 15,000 acres, and in addition there was an area of some 40,000 acres in the vicinity of Lodi dependent either wholly or in part upon underground water drawn from wells. The total irrigated area contiguous to the Mokelumne River above the delta was estimated by engineers of both the Utility District and J. W. Preston at approximately 50,000 acres. This office has no reason to believe that since the opinion was written the irrigated area has been appreciably increased.

There is Unappropriated Water Available for the Use of Applicant

In Section VII of the opinion above referred to it is held that the average flow of the Mokelumne River at the U.S. Government measuring station at Clements has been 825,260 acre feet per annum and in the minimum season of 1923-1924 the discharge was 182,000 acre feet. In the same section it is estimated that the riparian rights would not exceed 45,000 acre feet per annum, assuming that all unused riparian rights have been lost, and would not exceed 85,185 acre feet per annum if it be assumed that ^{none} more have been lost.

Subsequently to the opinion the East Bay Municipal Utility District was granted a permit to appropriate "310 cubic feet per second for direct diversion from January 1 to December 31 of each year and 217,000 acre feet per annum for storage to be collected from about October 1st to about July 15th of each season when 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 about July 15th provided however that combined diversions from natural flow and storage shall not exceed the equivalent of 310 cubic feet per second or approximately 200,000,000 gallons per day."

The applicant Comanche Gold Dredging Company seeks to appropriate two cubic feet per second from about December 1st to about July 15th only which

is within the period named in Permit 2459 issued in approval of Application 4228 of the East Bay Municipal Utility District as the season of unappropriated water in normal years.

According to Permit 2459 use is to be made by the East Bay Municipal Utility District in accordance with the following schedule:

"50 m.g.d. in 1930 and increasing yearly at about 3 m.g.d. until a maximum of 200 m.g.d. is reached."

As the Comanche Gold Dredging Company expects to complete its operations within the next five years, as brought out at the hearing, applicant will probably complete its dredging operations sometime prior to the time when the Utility District will require the entire amount of water named in Permit 2459.

While intervening applications have been filed seeking to appropriate water from the Mokelumne River between the Lancha Plana dam and Dry Creek there are only two which propose consumptive use of any magnitude; Application 5025 of the City of Stockton for municipal use and Application 5807 of the Woodbridge Irrigation District for irrigation purposes. The City of Stockton has advised this office that it has been unable to perfect its plans relative to the application and the Woodbridge Irrigation District has not yet completed its application. Assuming that these two applications were eventually completed and approved undoubtedly some years would elapse before all the water which is sought to be appropriated would be put to beneficial use.

The water proposed to be appropriated will be used for floating a dredger and washing gravel. It will be pumped into a pond of some 1/8 to 1/4 acre area at a point about one mile from Mokelumne River and some 200 feet higher in elevation, and within the watershed. We cannot accept the view of protestants' representative that there would be any considerable loss by evaporation from the gravel beds worked over by the dredger and incline to the belief that except for the evaporation of some half to three fourths acre foot annually from

the dredger pond itself substantially all the water diverted would eventually return to Mokelumne River by seepage. The method of operation of the dredger operated continuously would result in a continuous circulation of water from the river to the pond and back to the river by return flow. If pumping from the river ceased during the summer the operations of applicant might well increase the summer flow rather than reduce it by reason of return flow resulting from diversions during the winter and spring months.

CONCLUSION

Upwards of \$150,000 has already been spent on the project and from testimony presented at the hearing the applicant is prepared to proceed with the project, negotiations being actively pressed for the financing of the same. The use to which the applicant proposes to put the water is a useful and beneficial one and there being unappropriated water in the source from which it is proposed to appropriate it is the opinion of this office that Application 5982 should be approved.

ORDER

License 378 having heretofore been issued confirming the right under Application 2789 to the diversion of two (2) cubic feet per second during twelve (12) hours of each day from Mokelumne River for mining purposes; it appearing to the Division of Water Resources that such right had become forfeited under the provisions of Section 20a of the Water Commission Act by reason of three years non-use; a hearing in the matter of revocation of said license having been held of which licensee received due notice; Application 5982 having been filed by licensee to replace Application 2789 License 378; said Application 5982 having been completed and advertised as required by law and the rules and regulations of this office and protests thereto having been filed; a hearing upon said protests having been held as required by law; and the Division of Water Resources being now fully informed in the premises with respect to said License 378 and

said Application 5982,

IT IS HEREBY ORDERED that said License 378 be revoked and cancelled upon the records of the Division of Water Resources, and

IT IS HEREBY FURTHER ORDERED that said Application 5982 be approved subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 17 day of Sept 1929.

EDWARD HYATT, State Engineer,

By Harold Conkling
Deputy.

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