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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the matter of Application 17618) Source: Deadwood Creek
by Harold J. and Mary J. Wilson) County: Trinity

Decision No. D 898

Decided: May 14, 1958



898

In attendance at Investigation conducted by the
staff of State Water Rights Board on January 21, 1958:

Harold J. Wilson	Applicant	
S. M. Sheppard	Applicants' attorney	
Harry Hanson)	
Fisheries Management Supervisor)	
Ray Proffitt)	Representing
Game Warden)	Protestant
Chester Woodhull)	Department of
Fisheries Biologist III)	Fish and Game
Robert Murry)	
Fisheries Manager, Trinity District))	
J. J. Heacock	Representing State Water	
Senior Hydraulic Engineer	Rights Board	

DECISION

Substance of the Application

Application 17618 seeks a permit to appropriate 2
cubic feet per second (cfs) of unappropriated water from
Deadwood Creek, year-round, for irrigation and domestic

purposes. Deadwood Creek is tributary to Trinity River. The point of diversion is within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 15, T33N, R8W, MDB&M. Diversion is to be effected by an earth and concrete dam 3 feet high by 10 feet long and the water is conveyed to the place of use through 4,000 feet of 11-inch pipe, thence four miles of earth ditch. The estimated capacity of the diversion works is 3.0 cfs. The water is to be used for domestic purposes and irrigation of 145 acres of general crops and pasture within Section 20, T33N, R8W, MDB&M. The irrigation season is to extend from April 15 to October 15.

Protest

The California Department of Fish and Game protests Application 17618 upon the basis of Section 525 (now Section 5937) of the Fish and Game Code*, alleging that the proposed appropriation will result in, "Destruction of trout, property of the State of California because the amount of water to be diverted is greater than the known minimum flow of the stream at times", and that, "Trout are present and spawn naturally in Deadwood Creek tributary to Trinity River." The protest provides that it may be dismissed if "permittee agrees to the inclusion of the following clause...: 'Permittee shall release a minimum of 1 c.f.s, or the natural flow of the stream, whichever is less, at all times.'"

*Section 5937 of the Fish and Game Code provides:

"The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam...."

Answer to Protest

The applicants replied that their use of water will not interfere with trout spawning in Deadwood Creek, that a waterfall 150 yards below their dam makes it impossible for fish to proceed upstream from that point, and that fish are not planted in the creek. They claim that they or their predecessors in interest have continuously used this water since about 1861 and believe that they have a right superior to that of the Department of Fish and Game.

Field Investigation

The applicants and the protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules. In accordance therewith a field investigation was conducted on January 21, 1958, by J. J. Heacock, an engineer of the Board. The applicants and the protestant were present or represented during the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 17618 and all data and information on file therewith with particular reference to the report on the field investigation by the engineer of the Board referred to in the preceding paragraph and on file in the records of said application entitled "Report of Field Investigation of Application 17618", dated January 29, 1958; United States Geological Survey, Weaverville and French Gulch quadrangles; Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated

1951; and Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923.

Description of the Watershed

Deadwood Creek rises in the westerly slopes of the Trinity Mountains, within Sections 12 and 13, T33N, R8W, MDB&M, and flows about five miles in a westerly direction to the Trinity River. The applicants' point of diversion is about two miles upstream from the junction at an elevation of about 2,250 feet. The watershed above that point is substantially a circular basin, characterized by steep slopes which rise to an elevation of over 4,800 feet and is about 6.7 square miles in area. The watershed has a moderate to heavy covering of brush and timber.

The stream channel available to migrating fish terminates at a waterfall some 20 feet high located approximately 500 feet downstream from the point of diversion. From the foot of the waterfall the stream has a fairly uniform gradient to its confluence with the Trinity River.

At the time of the investigation the flow of Deadwood Creek was about 20 cfs.

Information Obtained by Field Investigation

According to the report of field investigation, the applicants' ditch was built prior to June 10, 1861, and has been in continuous use, excepting 1957, since that time. Prior to about 1870 the water was used for mining purposes but subsequent to that date it has been used for irrigation. The land including the proposed place of use under the application was

homesteaded and patent was issued on May 1, 1874. Applicant Harold J. Wilson's father acquired the property and water rights prior to 1914, and at one time irrigated about 700 acres with water supplied by the ditch. According to Mr. Wilson, during the summer irrigation season the entire flow of the stream, when less than the capacity of the ditch, is diverted, and in most years there was insufficient water to irrigate satisfactorily all the property owned by his father.

All water available up to the capacity of the ditch was used during the year 1956 and prior to that time. In 1957 logging operations destroyed the upper portion of the ditch and an installation of some 4,000 feet of 11-inch pipe has been made to replace portions of the damaged ditch.

Subsequent to the death of applicant Harold J. Wilson's father, the property was divided in three equal parts. The applicant inherited the upper portion of the property with first access to the ditch. Subsequently the other two parts were sold to the United States Bureau of Reclamation which apparently has no interest in retaining the water rights for those parcels. The applicants' attorney believes a portion of the old right might have been impaired by the sale of the property so the object of filing the application is to acquire a larger right than one-third of the old right.

The report of field investigation further indicates that the protestant has made no count of fish between the waterfall and the Trinity River but asserts that spawning steelhead had been observed in the stream and that fry and fingerlings are also present during the periods of low flow. According to

a representative of the protestant, leakage through the dam and natural downstream accretions have always provided a small flow through the lower reaches of Deadwood Creek sufficient to maintain fish. There did not appear to be any other use of water from Deadwood Creek between the applicants' point of diversion and the Trinity River.

Discussion

Protestant Department of Fish and Game contends that a minimum by-pass of one cubic foot per second or the natural flow of the stream, whichever is less, should be maintained in the stream channel for preservation of fish life. However, protestant's representative has conceded that in the past leakage through the applicants' dam plus downstream accretions has been sufficient for that purpose.

The record shows that the diversion of water envisioned under Application 17618 has actually been made for many years prior to the effective date of the Water Commission Act, that the original tract of land served from the system has been subdivided into three parcels with the applicants retaining one parcel and with the two remaining parcels having been sold to the United States, that the United States has evidenced no desire to utilize water from the system for use thereon, and that the application was filed primarily for the purpose of enabling the applicants to apply more water to the portion of land they retain than their proportionate share would have been had irrigation continued on the entire tract.

Bulletin No. 1, Division of Water Resources, "Water Resources in California", dated 1951, gives the estimated mean seasonal natural runoff for the Trinity River watershed (including Deadwood Creek) above the USGS gage at Lewiston as 1,740 acre-feet per square mile. Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923, gives (in Table 119 thereof) monthly percentage distribution of annual runoff for Trinity River Drainage Area for the irrigation season as follows:

April	15.1	August	1.5
May	17.2	September	1.4
June	8.2	October	1.3
July	2.8		

The watershed area of Deadwood Creek above the applicants' point of diversion scales 6.7 square miles. Assuming that the runoff of Deadwood Creek during the above period is representative of the production of the entire watershed, the following monthly mean flows in cubic feet per second would be expected to reach the applicants' dam during a year of average runoff:

April	29.4	August	2.8
May	32.4	September	2.7
June	16.0	October	2.5
July	5.3		

Upon the basis of the above figures, during years of average runoff, there is sufficient water for the subject application, and the figures also substantiate Mr. Wilson's statement that in most years there was insufficient water to irrigate satisfactorily all of his father's 700 acres.

There are no known water rights or users of water between the applicants' point of diversion and the Trinity River.

In view of the foregoing, and in light of the undisputed claim of the applicants that approval of the application will not constitute a draft on the creek in excess of that made through the same works for the past several years, and the admission of the protestant's representative that said diversion has caused no adverse effect on fish life, a restriction in the permit as proposed by the Department of Fish and Game is not warranted.

Conclusion

The record indicates and the Board finds that unappropriated water exists in Deadwood Creek from which the applicants seek to appropriate and such water may be taken and used beneficially in the manner proposed in the application without injury to the protestant or other downstream users. It is therefore concluded that Application 17618 should be approved and that a permit should be issued to the applicants, subject to the usual terms and conditions.

ORDER

Application 17618 for a permit to appropriate unappropriated water having been filed, a protest having been submitted, proceedings in lieu of hearing having been approved under the Board's rules by stipulation of the parties, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17618 be, and the same is hereby approved, and it is ordered that a permit

be issued to the applicants subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 2 cubic feet per second to be diverted from about April 15 to about October 15 of each year for irrigation and domestic purposes and throughout the remainder of the year as required for domestic purposes.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Construction work shall be completed on or before December 1, 1960.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under this permit including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 14th day of May, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member