

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 10016 of United States -
Eldorado National Forest to Appropriate From
Gerle Creek in El Dorado County for
Recreational and Domestic Purposes

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Decision A. 10016 D - 482

DECIDED *November 3, 1941*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED
APPROPRIATION ON JULY 25, 1941

For Applicant

U.S. Eldorado National Forest

E. F. Smith
Frank McCaslin

Hutchinson

For Protestant

Georgetown Divide Water Co., Ltd.

George Devore

For Division of Water Resources

A.S. Wheeler, Assistant Hydraulic Engineer, for Harold Conkling, Deputy
State Engineer in Charge of Water Rights, Division of Water Resources,
Department of Public Works, State of California.

O P I N I O N

General Description of Project

Application 10016, filed on September 25, 1940 by U.S. Eldorado
National Forest proposes an appropriation of 11,500 gallons per day to be
diverted from Gerle Creek, a tributary to Rubicon River in El Dorado County,
from June 1 to November 30 of each season for recreational and domestic pur-
poses within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 11, T 13 N, R 14 E,

M.D.B. & M. where the water will be used to supply a C.C.C. camp now engaged in construction work and fire suppression duties in that area and also for a public camp ground. The point of proposed diversion is within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 11.

Protest

Georgetown Divide Water Company, Ltd., claims appropriative rights initiated prior to the effective date of the Water Commission Act to the entire flow of Gerle Creek during the period from June 1 to November 30 of each year at its diversion dam which is located within the E $\frac{1}{2}$ of Section 15, T 13 N, R 14 E, M.D.B.M. about 1 $\frac{1}{2}$ miles below the proposed diversion point of the applicant and to store water in Loon Lake Reservoir which is located approximately 6 miles above the applicant's proposed point of diversion. Water diverted by the protestant Company is used for domestic, irrigation, mining and industrial purposes in the Town of Georgetown and along the Georgetown Divide in El Dorado County. Protestant alleges in effect that if water is diverted from Gerle Creek as proposed by the applicant, it will result in interference with its prior vested rights.

Investigation

On July 25, 1941 an investigation of the proposed development under Application 10016 was conducted in the field by an engineer of the Division. Of this investigation applicant and protestant were duly notified and urged to have representatives present.

Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings were signed by representatives of both applicant and protestant and have been approved and accepted by the Division of Water Resources.

The records relied upon in the determination of the matter are as follows:

Application 10016 and supporting map filed September 26, 1940
Protest of Georgetown Divide Water Co. Ltd., filed October 31, 1940
Answer to protest of Georgetown Divide Water Co. Ltd., filed November 8, 1940
Memorandum by M.S. Edson dated November 20, 1940
Letter from protestant dated December 5, 1940
Memorandum by M. S. Edson dated January 7, 1941
Stipulation by applicant filed February 1, 1941
Stipulation by protestant filed February 1, 1941
Memorandum by M. S. Edson dated March 29, 1941
Investigation Report by A. S. Wheeler dated August 18, 1941
Letter from George G. Devore dated August 18, 1941
Letter from protestant dated October 23, 1941

General Discussion

It appears from the record that the principal source of protestant company's water supply during the summer months is water which has been placed in storage in Loon Lake and subsequently released from storage and allowed to flow down Gerle Creek to its lower diversion dam and from that dam is rediverted into its main canal. Commingled with this water is a small amount of natural flow. During the irrigation season the protestant company diverts the entire flow of the stream at this point with the exception of some water which escapes under or through the dam which has been constructed to a height of about 3 feet and a length of about 85 feet. The dam is equipped with flash boards which the protestant company proposes to eventually replace with a masonry structure.

At the time of the investigation it was estimated that approximately 1.0 cubic foot per second was escaping past the diversion dam. A portion of this water is admittedly water which escapes under or through the dam by reason of a break which has not yet been repaired and which protestant company intends to eventually salvage by repairing the dam. How long a period this

water has been allowed to escape is not indicated in the record but the amount is apparently in excess of the amount which applicant seeks to appropriate and also in excess of the remaining portion of the escaped water which protestant company considers impractical to stop under present conditions and which it deems necessary to sustain fish life in Gerle Creek below the dam (See letter from protestant company dated October 23, 1941).

Although protestant company considers it necessary to pass some water through the dam in order to support fish life, there is nothing in the record to indicate that such a demand has been placed upon it by the Division of Fish and Game. As a matter of fact there is only about a mile and a half of stream bed between the lower diversion dam and the junction of Gerle Creek with the South Fork of the Rubicon and even should the creek bed below the dam be completely dried up by the combined operations of both the applicant and protestant company we do not believe that this in itself would constitute an adequate reason for denying the appropriation.

As a matter of fact the proposed appropriation is for less than 0.018 of a cubic foot per second and is only a small portion of the water which is now escaping past the dam. The appropriation of this small amount of water above will not appreciably affect the conditions of the stream bed below the dam.

Whether the water wasting below the dam is the natural flow of Gerle Creek or water released from storage is of little import. The fact remains that water is passing the lower diversion dam of the protestant company which is not being applied to any useful or beneficial purpose by that company and therefore it is subject to appropriation under the Water Commission Act.

Application 10016 should therefore be approved and a permit issued to the applicant subject to the usual terms and conditions.

ORDER

Application 10016 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation by the Division of Water Resources having been made and a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10016 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 3rd day of November 1941.

EDWARD HYATT, STATE ENGINEER

By Harold Conkling
Deputy State Engineer

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