

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 16750)	Sources: Soldier Creek and Bell Gulch
and 16808 by G. C. Cottingham)	
	County: Trinity

Decision No. D 883
Decided: January 15, 1958

Appearances at Hearing conducted at Weaverville on
November 6, 1957, by John B. Evans, Member, State Water Rights
Board:

For the Applicant

G. C. Cottingham In pro per

For the Protestants

Ralph S. Brabrook In pro per

Clyde Ashwill Donald R. Kennedy,
attorney

For Interested Parties

E. C. Chapman In pro per

Department of Fish and Game Robert Murray, Fisheries
Manager, Department of
Fish and Game

DECISION

Substance of the Applications

Application 16750 seeks a permit to appropriate 0.25 cubic foot per second (cfs) from Soldier Creek tributary to Trinity River from May 1 to November 1 of each year. Diversion is to be made by means of an earth and rock dam 2 feet high and 10 feet long to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 30, T33N, R10W, MDB&M. Water is to be conveyed to the place of use via an existing earth ditch 2,500 feet in length having an estimated capacity of one cfs. Water is to be used for domestic purposes and for the irrigation of 20 acres of land comprising 2 acres within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 30 and 18 acres within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 29, T33N, R10W, MDB&M.

Application 16808 seeks a permit to appropriate 0.063 cfs from Bell Gulch tributary to Trinity River from May 1 to November 1 of each year. Diversion is to be made by means of an earth dam 2 feet high and 4 feet long to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 30, T33N, R10W, MDB&M. Water is to be conveyed to the place of use via 1,000 feet of earth ditch and 3,000 feet of 6-inch pipe. Water is to be used for the irrigation of 5 acres of land within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 29, T33N, R10W, MDB&M.

Protests

Ralph S. Brabrook protests against the approval of Application 16750 alleging that the approval thereof will deprive him of water under riparian claim for domestic, mining, and irrigation use; and against Application 16808 alleging that the approval

thereof will deprive him of water under riparian claim for mining use and for future domestic and irrigation uses. He further states that his protest against Application 16750 may be disregarded and dismissed "if applicant takes 0.25 second-feet from Soldier Creek at a point on his own property, lifting it by use of a ram or pump"; and that his protest against Application 16808 may be disregarded and dismissed if applicant proves that there is 0.063 cfs flowing in Bell Gulch during the proposed season of diversion.

Clyde Ashwill protests against the approval of Application 16808 alleging that there is insufficient water in Bell Gulch; that by the approval of Application 16808 he will be deprived of water under prior claim of appropriation for domestic and mining purposes. He further states that there is no condition under which his protest may be disregarded and dismissed.

Answers to Protests

In answer to the protests of Ralph S. Brabrook, the applicant states that to his knowledge Mr. Brabrook has not used water from Bell Gulch nor done any mining. There is no reply of record to the protest of Clyde Ashwill.

Notice and Hearing

Applications 16750 and 16808, having been completed in accordance with the Water Code and applicable rules and regulations, were set for hearing under the provisions of the California Administrative Code, Title 23, Waters, before the State Water Rights Board (hereinafter called "the Board") at 10 a.m. o'clock

on November 6, 1957, in the Board of Supervisors' Room, Courthouse, Weaverville, California. Of the hearing, the applicant and protestants were duly notified. The following discussion is based on evidence received at said hearing.

Description of the Watersheds

Soldier Creek, the source of the proposed appropriation under Application 16750, rises on the easterly slopes of Hayfork Divide and flows for about four miles in an easterly direction to a confluence with the Trinity River. The watershed has an area of 7.2 square miles of which approximately 7 square miles are above the proposed point of diversion of the applicant and 6.7 square miles are above the Chapman point of diversion under License 2619 (Application 9632). The watershed is steep and rough with a moderate to heavy covering of brush and timber. The applicant's proposed point of diversion is about 0.5 mile downstream from the Chapman point of diversion and about 0.9 mile upstream from the confluence of Soldier Creek and Trinity River. Protestant Brabrook is located about 0.75 mile downstream from the applicant's point of diversion (Exhs. 6 & 7).

Bell Gulch, the source of the proposed diversion under Application 16808, rises in the easterly slopes of the Hayfork Divide and flows in a northerly, thence easterly direction for approximately 1.5 miles to a confluence with the Trinity River. The watershed has an area of approximately 0.75 square mile of which approximately 0.25 square mile is above the proposed point of diversion. The topography and vegetation is similar to that in

the Soldier Creek watershed. The applicant's proposed point of diversion is about 0.75 mile upstream from Protestants Brabrook and Ashwill, and about 0.9 mile upstream from the confluence of Bell Gulch and Trinity River (Exhs. 6 & 7).

Use of Water

Present use of water from Soldier Creek includes diversion by Earl P. Chapman under License 2619 which confirms a right to 3 cfs from about December 1 to about July 1 of each season for mining purposes, 0.35 cfs from about May 1 to September 30 of each season for irrigation purposes, and domestic use as required throughout the year. The point of diversion is located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 25, T33N, R11W, and the place of use is substantially all within the SW $\frac{1}{4}$ of Section 19 and N $\frac{1}{2}$ of Section 30, T33N, R10W, MDB&M (Exh. 7).

E. G. Chapman, Coroner and Public Administrator of Trinity County, testified that he is familiar with Soldier Creek and the Chapman property owned by his nephews, Earl and John Chapman; that his father initiated the use of water from Soldier Creek about 1860; that the entire low flow of Soldier Creek is diverted for the irrigation of about 7 acres of alfalfa, and domestic and power uses; that use of water for mining has ceased; and that there is return flow back to Soldier Creek not physically possible for the Chapmans to collect and reuse (R.T. pp. 62-64).

Protestant Brabrook testified that his present use of water from Soldier Creek and Bell Gulch consists of washing his mining pans and sluicing in connection with about 20 days of

mining assessment work each year; that his mining claim comprises 35 acres at the mouths of Soldier Creek and Bell Gulch and extends across the Trinity River; that he makes no diversions out of Soldier Creek and Bell Gulch (R.T. pp. 25-31). James Albert Gilzean testified that from 1906 to 1955, water from Bell Gulch had been used for mining and domestic purposes; that use of water for mining was for assessment work about 10 to 15 days each year prior to May 15; that domestic use prior to 1926 comprised household and garden use of the entire normal low flow of Bell Gulch, which flow would fill a 3/4-inch diameter pipe 400 feet in length under 75 feet of head (probably less than 10 gallons per minute which is the equivalent of about .025 cfs); that from about 1926 on Mr. Gilzean leased the property to different people who mined it for him; that during said period from 1926 on the water from Bell Gulch was used only for assessment work on the claim; and that in 1955 he sold the property to Clyde Ashwill. Mr. Gilzean did not testify as to his successor's use of water (R.T. pp. 42-49). The Ashwill property is located on Bell Gulch immediately upstream from Brabrook's mining claim.

Water Supply

Measurements of stream flow made on July 10, 1957, by an engineer of the Board (Exh. 7) are as follows:

Soldier Creek immediately above Chapman Diversion	3.22 cfs
Soldier Creek immediately downstream from Chapman Diversion	0.2 cfs
Soldier Creek at applicant's point of diversion	0.2 cfs

Soldier Creek at Brabrook's place	2.63 cfs
Bell Gulch at applicant's point of diversion	0.14 cfs
Bell Gulch immediately above Ashwill's place	0.22 cfs

Recorded precipitation at Weaverville (Exh. 2) for the period October 1956 through June 1957 totals 31.01 inches which is about 90 per cent of the 68-year long-term average total precipitation for the same period. Mr. Gilzean testified that the aforementioned 0.14 cfs measured at Bell Gulch would be about the average flow he has observed for that time of year; and that 1924 was the only year he observed when the supply failed entirely (R.T. p. 51).

Other Matters

Concerning the injury that will result by reason of the approval of the applications, Mr. Brabrook testified that the taking of water by the applicant will not particularly prejudice him for the present but that his protest is based upon potential injury (R.T. p. 36). It is further clear that with the continuance of return flow from the Chapman diversion, which returns to Soldier Creek below the applicant's proposed point of diversion, there will be no significant interference with the water supply available to Brabrook's place (R.T. p. 39). There is no evidence concerning Clyde Ashwill's use of water from Bell Gulch. However, according to Mr. Gilzean, during such time as he (Gilzean) owned the Ashwill property it was not possible to carry on any mining operation when the flow of Bell Gulch was less than 25 miner's inches (R.T. p. 50).

Robert Murray, Fisheries Manager, Department of Fish and Game, testified that to his knowledge the Department of Fish and Game has made no studies as to the minimum flows required for the maintenance of fish life in Soldier Creek and Bell Gulch; but if there be fish life in the streams, allowances for minimum flows should be made (R.T. pp. 69-71). There is no protest of record from the Department of Fish and Game as to fish life and flow requirements in these sources.

Summary and Conclusions

The record indicates that there is to a limited extent unappropriated water in Soldier Creek and Bell Gulch during the season requested in Applications 16750 and 16808; that the intended uses are beneficial; and that no injury will result to any present user of water from the sources by reason of the approval of said applications. It is further concluded that the present limited use of water by protestant Brabrook is not an adequate bar to the approval of said applications; and that protestant Ashwill's right to use water from Bell Gulch, to the extent water has been used on his property within recent years will not be prejudiced by approval of Application 16808. It is, therefore, concluded that Applications 16750 and 16808 should be approved and permits issued subject to the usual terms and conditions.

ORDER

Applications 16750 and 16808 for permits to appropriate unappropriated water having been filed, protests having been

submitted, a hearing having been held by the Board and said Board now fully informed in the premises:

IT IS HEREBY ORDERED that Applications 16750 and 16808 be, and the same are, hereby approved, and it is ordered that permits be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated pursuant to Application 16750 shall be limited to the amount which can be beneficially used and shall not exceed 0.25 cubic foot per second, to be diverted from about May 1 to about November 1 of each year. 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 amount of water to be appropriated pursuant to Application 16808 shall be limited to the amount which can be beneficially used and shall not exceed 0.063 cubic foot per second, to be diverted from about May 1 to about November 1 of each year. 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.

3. The maximum amounts herein stated may be reduced in licenses if investigation so warrants.

4. Construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permits may be revoked.

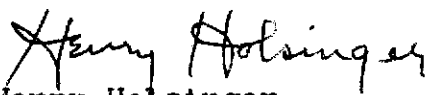
5. Said construction work shall be completed on or before December 1, 1960.

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

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

8. All rights and privileges under the permits 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 Oakland, California, on this 15th day of January, 1958.


/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ John B. Evans

John B. Evans, Member

/s/ W. P. Rowe

W. P. Rowe, Member