

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17443)
of Alvin H. Kelsey) Source: Bishop Creek
County: Inyo

Decision No. D924

Decided: January 23, 1959

In attendance at the investigation conducted by the
staff of the State Water Rights Board on August 19, 1958:

Alvin H. Kelsey	Applicant
E. I. Bulpitt, Superintendent of Hydro-Generation Plant 4	Representing Protestant California Electric Power Company
J. J. Heacock, Senior Hydraulic Engineer	Representing State Water Rights Board

DECISION

Substance of the Application

The application, filed January 29, 1957, seeks a permit to appropriate 30 gallons per day from Bishop Creek tributary to Owens River in Inyo County from July 1 to October 31 of each year for domestic purposes. Water is to be diverted within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 30, T8S, R31E, MDB&M* and will be used at a summer cabin on Government Lot 17 in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said projected Section 30.

* All township references are to Mount Diablo Base and Meridian (MDB&M).

Protest and Answer

Protest against Application 17443 is of record from California Electric Power Company. The protestant alleges that injury will result by approval of the application as the amount of water available for generating power at its power plants on Bishop Creek will be accordingly reduced. The protestant recognizes that the amount involved is extremely small but that the accumulative effect of several similar diversions would result in substantial injury to it. The protestant's claim of right is based upon riparian ownership and a decree of the District Court of the United States in and for the Southern District of California, Northern Division, in the case of Hillside Water Company, a corporation, et al. vs. William A. Trickey, et al., recorded in Volume 37 of Deeds, page 85, of the Inyo County Records on April 19, 1922. The protestant contends that the waters of Bishop Creek have been used for the production of electricity at its hydroelectric plants below the applicant's point of diversion since 1905.

In answer to the protest, Applicant Kelsey states that his cabin has been at its present location for many years; that he personally has dipped and carried water from the creek for domestic use; that piping of water would be a matter of convenience; that he is only at the cabin for perhaps two or three weeks during vacation, and in addition perhaps two or three weekends during the remainder of the year; that the requested 30 gallons per day is an extremely small amount which would have

no affect on the protestant's water supply, and as there is no more land to be allotted to the public for cabins in the area further development of this nature is not possible.

Field Investigation

The applicant and 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, and a field investigation was conducted on August 19, 1958, by J. J. Heacock, engineer of the Board. The applicant was present and the protestant was represented during the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 17443 and all relevant information on file therewith, with particular reference to the report of field investigation made on August 19, 1958, by the above-named engineer on the staff of the Board; and the various United States Geological Survey Quadrangles of the area involved.

Description of Watershed

Bishop Creek rises high on the northeasterly slopes of the Sierra Nevada and flows approximately five miles in a northerly direction to Lake Sabrina of the California Electric Power Company. Lake Sabrina Dam, which was constructed in 1908, controls the flow of approximately 16 square miles of steep, rugged high mountain area ranging in elevation from 9,089 feet

at the crest of the dam to approximately 13,800 feet. There are several small glaciers within the watershed and numerous lakes control the runoff. At the time of investigation on August 19, 1958, the flow of water through the outlet works and over the spillway of the dam amounted to about 98 cubic feet per second. The proposed point of diversion of the applicant is approximately one-half mile downstream from the dam.

Applicant's Project

In July, 1958, the applicant installed a small pump in Bishop Creek which operates automatically and lifts water approximately 70 feet to a 30-gallon receiving tank. The system operates at 65 pounds pressure. Water is delivered to the place of use through approximately 275 feet of 1½-inch plastic pipe. The place of use consists of a cabin with one large combination living room-kitchen and two small bedrooms. According to the applicant, the cabin is normally occupied about four weeks during the summer vacation season by from four to six persons. Water is piped to one tap at the kitchen sink only and there is no use of water other than for human consumption and culinary purposes.

Protestant's Project

California Electric Power Company alleges rights to the use of water from Bishop Creek watershed by virtue of riparian ownership by a decree entered in 1922, and by beneficial use dating back to its first power development on the stream in

1905. The protestant has a series of five power plants along Bishop Creek from Plant No. 2, about four miles downstream from Lake Sabrina, to Plant No. 6, approximately eight miles downstream from Plant No. 2. The total output for the five plants is 28,000 kilowatts. Water for the power plants is obtained from Bishop Creek, South Fork Bishop Creek, controlled by South Lake Reservoir, North Fork Bishop Creek, controlled by North Lake Dam, and water is imported into Bishop Creek from McGee and Birch Creeks which lie northerly of Bishop Creek,

The protestant's representative, Mr. Bulpitt, advised the investigating engineer on August 19, 1958, that normally the water supply is ample for the protestant's needs and that sufficient quantities remain for releases for the protection of fish life below the company's diversion points.

Additional Information

Protest against the application contains the following statement:

"While the amount involved is relatively small accumulative effect of several similar diversions would result in substantial injury to the protestants."

The District Ranger of Inyo National Forest and the Forest Supervisor's office has informed the Power Company, Applicant Kelsey, and the investigating engineer that there would be no more cabin sites available within the area. Accordingly, there will be little likelihood of additional applications for domestic use from Bishop Creek. Mr. Bulpitt displayed to the investigating

engineer two letters from the headquarter's office of California Electric Power Company relative to the subject application.

A letter, dated June 21, 1957, to Mr. D. J. Carmen, General Counsel, from Carl C. Ernest, Vice President and General Manager, reads in part as follows:

"Some time ago we were advised of the application (Application 17443) and we entered a protest to the State Water Rights Board. The protest we filed was a matter of form, in that it is our policy to protest any application for appropriation of water from Bishop Creek.

"Mr. and Mrs. Kelsey were in to see me last week, and I told them we could not withdraw our formal protest, but if the State Water Rights Board granted them the 30 gallons per day that they asked for it would be all right with us."

"In accordance with our policy we must let the protest stand even though we might wish them success in their application."

A letter dated August 7, 1958, to Mr. Bulpitt from H. M. Hammack, Senior Attorney, reads in part as follows:

"... While the Company will not formally protest the application at the time of the hearing inasmuch as only 30 gallons per day of water are sought to be appropriated, I feel that it should be made clear to Mr. Heacock (the investigating engineer) and others present at the hearing that as and when similar and other additional applications to appropriate Bishop Creek water are made, it may become necessary for the Company to protest such applications and oppose the granting of them inasmuch as a large number of such applications might definitely and adversely affect the Company's right to use Bishop Creek water for the generation of power."

Discussion

The protestant has indicated that normally the water supply of Bishop Creek is ample for its needs in addition to releases of

water for the protection of fish life in the streams below its points of diversion. The protest is not so much in opposition to the small diversion requested by Application 17443 but was filed as a matter of policy considering that potentially there might be a great many similar applications which, cumulatively would be detrimental to the protestant's project. In fact, the protestant indicated in its letter of June 21, 1957, hereinabove referred to that it would have no objection to the approval of the application. The District Ranger of Inyo National Forest and the Forest Supervisor's office both have indicated that there would be no more cabin sites available within the area and if such is the case there is little likelihood of any additional applications for domestic use at cabin sites along the stream. However, should additional applications be filed in the future the Board would be required to consider them on the facts that then exist.

Conclusion

Evidence indicates and the Board finds that unappropriated water to the amount sought to be appropriated exists in the source from which the applicant seeks to appropriate; that such water may be taken and used in the manner proposed by the applicant without interference with the exercise of any prior right; that the use to which the water is to be applied is beneficial; and that the application may be approved and a permit issued without injury to any lawful user of water.

ORDER

Application 17443 for a permit to appropriate unappropriated water having been filed with the State Water Rights Board, stipulations to proceedings in lieu of hearing having been submitted, an investigation having been made by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17443 be, and the same is hereby approved and that a permit be issued to the applicant 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 30 gallons per day to be diverted from about July 1 to October 31 of each year.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

4. 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.

5. 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 a decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 23rd day of January, 1959.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe, Member

W. P. Rowe, Member

/s/ Ralph J. McGill, Member

Ralph J. McGill, Member