

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21557
of Herbert E. Bell, Jr., dba Fitzhugh
Creek Ranch, to Appropriate from
Little Juniper Creek and an Unnamed
Stream Tributary to Fitzhugh Creek
in Modoc County

Decision D 1236

ADOPTED OCT 19 1965

DECISION APPROVING APPLICATION IN PART

Herbert E. Bell, Jr., doing business as Fitzhugh Creek Ranch, having filed Application 21557 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 21557 is for a permit to appropriate 1,370 acre-feet per annum (afa) by storage from October 1 of each year to May 31 of the succeeding year for irrigation purposes from Little Juniper Creek and an unnamed stream in

Modoc County. The points of diversion are to be located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35 and the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T41N, R13E, MDB&M.

2. Little Juniper Creek rises west of the Warner Mountains at an elevation of approximately 5,500 feet and flows in a northwesterly direction to a point where it divides into two branches. One branch flows in a southwesterly direction into Little Juniper Reservoir. The other branch continues in a northwesterly direction approximately $\frac{3}{4}$ mile to join an unnamed stream. The unnamed stream continues approximately $\frac{3}{4}$ mile to enter Fitzhugh Creek. Fitzhugh Creek continues in a westerly direction to discharge into various channels in the valley of the South Fork Pit River.

3. The applicant proposes to repair an existing ditch and convey water from the unnamed stream to Little Juniper Creek at the point where the creek branches. Water from both sources will then be diverted by a low dam into the southwest branch of the creek for storage at Little Juniper Reservoir.

4. The applicant now holds Licenses 2169 and 6143 for off-stream storage of 1,370 acre-feet from Big Juniper Creek at the Little Juniper Creek Reservoir. He also holds a right under a decree of the Superior Court, Modoc County (No. 3273), commonly referred to as the South Fork Pit River Decree, to store 900 afa in the reservoir from Little Juniper Creek and Big Juniper Creek. There has not been sufficient

water available from these sources in the past to use the entire capacity of the reservoir (1,370 acre-feet). The purpose of Application 21557 is to cover additional water for storage in the reservoir from the portion of the flow of Little Juniper Creek that now flows toward Fitzhugh Creek and from the flow of the unnamed stream.

5. Protestant John Galvin holds a 0.40 cfs first priority right and a 5.0 cfs second priority right to divert from Fitzhugh Creek under the terms of the South Fork Pit River Decree. The decree provides a year-round diversion season for first priority rights and a diversion season from April 1 to October 15 under second priority rights.

6. There are no records of the flow of Little Juniper Creek or the unnamed stream. On May 13, 1965, there was no flow in the unnamed stream and a flow of approximately 0.2 cfs in the branch of Little Juniper Creek which leads to Fitzhugh Creek.

7. Reports of the watermaster service in the South Fork Pit River service area (for the period 1949 through 1957) show there is not sufficient water in Fitzhugh Creek to supply the holders of allotments under the South Fork Pit River Decree during the month of May for more than half the years of record, and that during at least two years this deficiency was considerable. The applicant's storage season should terminate on or about May 1. During the remainder of the

applicant's storage season, there is sufficient water to supply the applicant and the decreed allotments to users holding prior rights.

8. There is unappropriated water available to supply the applicant from October 1 of each year to May 1 of the succeeding year, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21557 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 21557 and all relevant information on file therewith, particularly the report of the field investigation made on May 13, 1965; USGS 7½-minute topographic quadrangle, "Little Juniper Reservoir, California," and 15-minute topographic quadrangle, "Alturas, California"; USGS Water Supply Papers with reference to records of flow of Pit River; files of Applications 2383 and 13339; Judgment and Decree, Case No. 3273 in the Superior Court of the State of California, in and for the County of Modoc; State of California, Department of Water Resources, "Report on Watermaster Service in South Fork Pit River

Watermaster Service Area, Modoc and Lassen Counties, California," 1942 through 1958; and Department of Water Resources, "Watermaster Service in Northern California," 1959 through 1963.

ORDER

IT IS HEREBY ORDERED that Application 21557 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1,370 acre-feet per annum by storage to be collected at a maximum rate of 200 cfs from about October 1 of each year to about May 1 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. The total quantity collected to storage in Little Juniper Reservoir shall not exceed 1,370 acre-feet per annum under this permit, License 6443, License 2169, and the South Fork Pit River Decree, No. 3273, of the Superior Court of Modoc County.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before June 1, 1966, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Construction work shall be completed on or before December 1, 1968.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

7. 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.

8. 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.

9. Permittee shall allow representatives of the State Water Rights Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

10. Water entering the reservoir or collected in the reservoir during and after the current storage season

shall be released into the outlet ditch to Fitzhugh Creek to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit.

11. Rights under this permit are and shall be subject to existing rights defined by the South Fork Pit River Decree, Superior Court of Modoc County, No. 3273, and such other rights as may presently exist on the streams insofar as said existing and adjudicated rights are maintained.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of 1965.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member