

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

D File

oOo

IN THE MATTER OF APPLICATION 4744 OF WILLIAM B. MCGILL
AND GEORGE A. TEBBE FOR A PERMIT TO APPROPRIATE
UNAPPROPRIATED WATER FROM BUCKHORN CREEK, IN
SISKIYOU COUNTY, FOR AGRICULTURAL PURPOSES

oOo

DECISION NO. A4744, D 164
Decided August 12, 1927.

APPEARANCES AT HEARING HELD JUNE 17, 1927:

For Applicant:

William B. McGill and George A. Tebbe: George A. Tebbe, Attorney
at Law, Yreka, California

For Protestants:

A. R. Maplesden and L. D. Maplesden: Clifford E. Butler,
Attorney at Law, Yreka, Calif.
Antone De Avilla: Horace V. Ley (By Clifford
E. Butler) Attorney at Law,
Yreka, California
John Silva: James D. Fairchild, Attorney
at Law, Yreka, California

EXAMINER: GORDON ZANDER, Associate Hydraulic Engineer,
Division of Water Rights

IN ATTENDANCE: HARRISON SMITHURUM, Assistant Hydraulic Engineer,
Division of Water Rights

O P I N I O N

On August 24, 1925, William B. McGill and George A. Tebbe filed
Application 4744 for a permit to appropriate one and one quarter cubic feet
per second of the unappropriated waters of Buckhorn Creek, in Siskiyou County,
the waters sought to be appropriated to be used during the period between
June 10th and October 1st of each year for the irrigation of 111.1 acres
of land situated adjacent to Klamath River in Section 14, T. 46 N., R. 10 W.,

M.D.B.&M.

The application was duly advertised, and protests against the same were filed by A. R. Maplesden, L. D. Maplesden, and John Silva.

The application was accordingly set for public hearing in the Council Chamber of the City Hall at Yreka, California, at 10:00 o'clock A.M., on June 17, 1927, of which hearing the applicants and protestants were duly notified. The hearing was held at the time and place specified, Associate Hydraulic Engineer Gordon Zander presiding. Assistant Hydraulic Engineer Harrison Smitherum also attended the hearing as a representative of the Division of Water Rights. Mr. George A. Tebbe, Attorney at Law of Yreka, appeared for the applicants, Mr. Clifford E. Butler, Attorney at Law of Yreka, appeared for Protestants A. R. Maplesden and L. D. Maplesden, and Mr. James D. Fairchild, Attorney at Law of Yreka, appeared for Protestant John Silva. In addition to the record protestants Mr. Horance V. Ley, Attorney at Law of Yreka entered an appearance on behalf of Antone De Avilla, and requested that he be represented at the hearing by Attorney Clifford E. Butler, it being necessary that Mr. Ley attend the trial of a case in the superior court.

On June 13th, 1927, Mr. Harrison Smitherum, Assistant Hydraulic Engineer of the Division of Water Rights, made a field investigation of physical conditions on Buckhorn Creek, accompanied by Messrs. George Dietrick, L. D. Maplesden, and Ben Maplesden, and on the following day, June 14th, he inspected the Silva Ranch with Mr. Gene Lambert and the McGill and Tebbe Ranch with Mr. W. B. McGill. Mr. Smitherum attended the hearing and, with the consent of all attorneys present, made a comprehensive statement for the record covering his investigation.

Buckhorn Creek is tributary to Horse Creek, which, in turn, is

tributary to Klamath River at a point about five miles below Oak Bar. The applicants propose to utilize an existing ditch known as the "Mountain Ditch" which heads on Buckhorn Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T. 47 N., R. 10 W., M.D.B.&M., and which also diverts from seven unnamed ravines, all tributary to Buckhorn Creek. The applicants claim a right to the use of the Mountain Ditch by virtue of adverse use for more than thirty years, and claim that they have been diverting up to eighty miner's inches of water through the ditch, from the seven ravines above mentioned, during the early part of each irrigation season since 1917. The applicants contend that there is unappropriated water in Buckhorn Creek for a period each season after the water supply available to them from the ravines fails. The area which it is proposed to irrigate, as described in the application, consists of 111.1 acres of land in Section 14, T. 46 N., R. 10 W., M.D.B.&M., which is adjacent to Klamath River. Mr. W. B. McGill testified that it has been his practice since about 1920 to pump water from Klamath River for the irrigation of this land during the latter part of the irrigation season.

Engineer Smitherum found six ditches diverting from Buckhorn Creek below the head of the Mountain Ditch, as follows:

<u>Name of Ditch</u>	<u>Estimated Capacity c.f.s.</u>	<u>Estimated acreage Irrigated</u>
Barton	7.0	*95
Maplesden West	2.0	12
Maplesden Upper East	1.8	8
Maplesden Lower East	1.5	4
Silva Upper	1.5	75
Silva Lower	3.0	
Total	<u>16.8</u>	<u>194</u>

* 15 acres owned by L. D. and A. R. Maplesden and 80 acres owned by Antone De Avilla

From the above tabulation/^{it}would appear that while there is ditch capacity diverting from Buckhorn Creek below the proposed point of diversion to the extent of approximately 17 cubic feet per second, there are only about

200 acres of land irrigated by the same. Assuming a gross duty of water of one cubic foot per second to forty acres of land, which would appear ample, the present use of water below the proposed point of diversion would require about five cubic feet per second.

Engineer Smitherum made estimates of the flow of Buckhorn Creek on June 13, 1927, as follows:

<u>Location</u>	<u>Estimated Flow c.f.s.</u>	<u>Time</u>
Below Head of Mountain Ditch	50	A.M.
Below Head of Silva Ditch	58	A.M.
Below Head of Barton Ditch	95	P.M.

He testified that there is a considerable variation in the flow of Buckhorn Creek between night and morning due to the melting of snow on the upper portion of the watershed, and estimated the average flow of the stream on June 13, 1927, at between 60 and 100 cubic feet per second (see page 10, lines 19 to 24 of Transcript). For conservatism the average flow will be assumed at 60 cubic feet per second.

Mr. W. B. McGill testified that the flow of Buckhorn Creek at the time of Engineer Smitherum's investigation was about twice the average flow that has existed at the same time during the past ten years (see page 23, lines 3 to 5 of Transcript). On this basis it may be assumed that in average years there will be at least 30 cubic feet per second available in Buckhorn Creek at the beginning of the period of diversion specified in the application, which is about twice the aggregate ditch capacity below the proposed point of diversion, and about six times the estimated total requirements of the owners of lower vested rights. It would, therefore, appear certain that in years of normal stream flow there will be unappropriated water available for the applicants during at least the early part of the period of diversion specified in the application.

Mr. McGill also testified that in his opinion there will be ample water for all users, including the contemplated new appropriation, throughout

the entire 1927 irrigation season. (See page 18, lines 7 to 9, and page 22, lines 22 to 25 of Transcript.) This testimony was not refuted by the protestants, and in the absence of any testimony to the contrary it may be assumed that during some years there will be unappropriated water available for the applicants throughout the entire irrigation season.

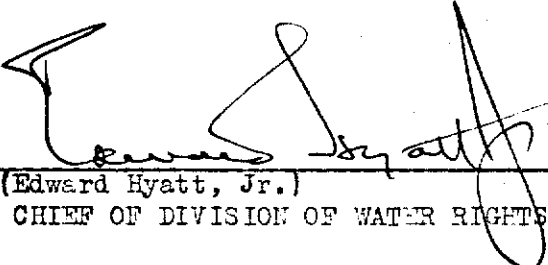
Both attorneys Butler and Fairchild admitted at the hearing that there is unappropriated water available for the applicants during a portion of each year (see page 14, lines 28 to 30, and page 15, lines 4 to 8 of transcript). In view of this admission none of the protestants presented any testimony against the approval of the application, subject, of course, to vested rights.

O R D E R

Application 4744 for a permit to appropriate unappropriated water from Buckhorn Creek, in Siskiyou County, having been filed with the Division of Water Rights, protests against the same having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 4744 be approved, and that a permit be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California this 12th day of August 1927.



(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

GZ:HJ

AUG 15 1927