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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17293)	Source: Branciforte Creek
by <u>Lillian S. Paine</u>)	County: Santa Cruz

Decision No. D 905

Decided: May 29, 1958

In attendance at investigation conducted by the staff of the State Water Rights Board on October 7, 1957:

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| Willard D. Paine | Attorney for Applicant |
| Stephen Smedley | Representing Protestant California Department of Fish and Game |
| J. J. Heacock
Senior Hydraulic Engineer | Representing State Water Rights Board |
| Arthur N. Webb
Assistant Hydraulic Engineer | Representing State Water Rights Board |

DECISION

Substance of the Application

Application 17293 of Lillian S. Paine was filed on September 24, 1956, for a permit to appropriate 0.167 cubic foot per second from May 1 to December 1 of each year for immediate application to beneficial use. The source is Branciforte Creek, tributary to Pacific Ocean via San Lorenzo River in Santa Cruz

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County. Diversion of water is proposed at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T11S, R1W, MDB&M, by means of a pump with a capacity of 75 gallons per minute which discharges into a 200 gallon pressure tank. From the pressure tank water is to be distributed and used for irrigation of 18 acres of pasture within the N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 6, T11S, R1W, MDB&M, and for domestic purposes.

Protest

The California Department of Fish and Game protests Application 17293 on the basis of Section 525 (now Section 5937) of the Fish and Game Code. Protestant claims the proposed diversion will cause destruction of steelhead trout which are present and spawn naturally in Branciforte Creek because the amount to be diverted is, according to the protest, greater than the known minimum flow of the stream at times. The protest provides that it may be disregarded and dismissed if any permit issued pursuant to Application 17293 contains the following special clause:

"A release of 10 c.f.s. shall be made past the point of diversion to the natural stream bed during the period December 1 through May 31 and a release of 1 c.f.s. or the natural flow of the stream, whichever is less, in the remainder of the year for maintenance of fish life."

Answer

In reply to the protest, Applicant Paine claims that Section 525 of the Fish and Game Code applies only to the operation of dams and does not apply to her project, there being no dam or other obstruction involved. She further claims that use of water from the creek in excess of the amount applied for has been made on her property since prior to 1877, that the City of Santa Cruz

has served notice that the City will abandon its past diversion from the stream, thereby increasing the flow over what existed in the past by many times that sought by her, and that the high bacteria count makes water in the creek unfit for fish.

Field Investigation

The applicant and protestant, with the approval of the State Water Rights Board, stipulated to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules and regulations, and a field investigation was conducted on October 7, 1957, by J. J. Heacock and Arthur N. Webb, engineers of the Board. The applicant and protestant were represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 17293 and all relevant information on file therewith with particular reference to the report on the field investigation of October 7, 1957; United States Geological Survey Topographic map, Santa Cruz (5 minute x 11 minute), Laurel (7½ minute), and Felton (7½ minute) quadrangles; United States Geological Survey Water Supply Papers, Part 11, Pacific Slope Basins in California covering years 1940 through 1954, and Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951.

Information Obtained by Field Investigation

According to the report of field investigation, Branciforte Creek rises on the western slopes of the Santa Cruz Mountains within Section 4, T10S, R1W, MDB&M, at an elevation of about

1200 feet. It courses in a southeasterly direction for about one-half mile, thence south about one-half mile, and thence in a general southwesterly direction about nine miles to a confluence with San Lorenzo River. The watershed area above the applicant's point of diversion comprises about eight square miles.

Relative to the water supply, the report indicates that at the time of the investigation (October 7, 1957) the measured flow near the point of diversion was 0.63 cubic foot per second. Mr. Paine indicated that this amount was about the usual low flow of Branciforte Creek.

The report of investigation further indicates that the applicant is using water almost 24 hours a day during the entire diversion season requested for the irrigation of 18 acres of pasture, for the domestic needs at two houses and for stockwater for 120 head of cattle. The applicant disclaimed any intent of increasing her use of water from Branciforte Creek, and allegedly filed the application to make her right a matter of record. It was also ascertained that the City of Santa Cruz, which had previously served about 140 consumers, abandoned as of November 15, 1956, its diversion from Branciforte Creek, which was about two and one-half miles upstream from applicant's point of diversion.

Information from Other Sources

The USGS Water Supply Papers contain records of discharge of Branciforte Creek at a gaging station "Branciforte Creek at Santa Cruz, Calif." which station is located about one mile downstream from the applicant's point of diversion and commands a watershed area of 18.5 square miles. The monthly mean

discharge in cubic feet per second and runoff in acre-feet for the water years (October 1 through September 30 of the following year) of published record are given in Table 1.

The lowest daily discharge of Branciforte Creek during the period of record was 0.2 cubic foot per second recorded on July 11, August 19 and 20, 1954.

Based upon the above records the monthly average and median flow in cubic feet per second at the afore-mentioned gage during the proposed season of diversion are as follows:

	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>
Average	7.63	3.52	2.20	1.71	1.66	1.89	4.27
Median	8.24	3.15	2.17	1.82	1.80	1.70	3.56

The watershed area above the applicant's point of diversion scales about eight square miles from the USGS quadrangles. Assuming that the runoff per square mile above the USGS gage is representative of that occurring from the watershed tributary to applicant's place, it may be assumed that on the average, the following monthly average flows in cubic feet per second reached the applicant during the May-November period for the years of published record:

May	3.30	Sept.	0.72
June	1.53	Oct.	0.81
July	0.94	Nov.	1.85
Aug.	0.75		

There are no other active applications on file with the State Water Rights Board to appropriate from the stream system between the applicant and the Pacific Ocean.

TABLE I

Flow of Branciforte Creek at Santa Cruz, California

	<u>1940-41</u>		<u>1941-42</u>		<u>1942-43</u>		<u>1952-53</u>		<u>1953-54</u>		Total AF	Average AF	% Average Seasonal
	Mean Daily CFS	AF	Mean Daily CFS	AF	Mean Daily CFS	AF	Mean Daily CFS	AF	Mean Daily CFS	AF			
Oct.	1.5	92	2.0	123	2.55	157	1.7	104	1.69	104	580	116	0.6
Nov.	1.74	103	2.79	166	8.22	489	5.02	299	3.56	212	1269	254	1.4
Dec.	66.8	4100	65.1	4000	25.5	1570	55.8	3430	3.14	193	13293	2659	14.1
Jan.	140.0	8620	93.1	5720	111.0	6840	67.9	4170	11.7	720	26070	5214	27.7
Feb.	200.0	11080	105.0	5810	43.2	2400	7.42	412	25.1	1390	21092	4218	22.4
Mar.	83.3	5120	33.4	2050	75.4	4630	19.6	1210	32.5	2000	15010	3002	16.0
Apr.	118.0	7040	33.3	1980	10.6	631	19.5	1160	13.6	808	11619	2324	12.4
May	10.0	615	10.0	615	5.24	322	8.24	506	4.68	288	2346	469	2.5
June	4.5	268	5.0	298	3.15	188	2.88	171	2.07	123	1048	210	1.1
July	3.0	184	3.0	184	2.17	133	1.77	109	1.05	64	674	135	0.7
Aug.	2.2	135	2.0	123	1.82	112	1.72	106	0.80	49	525	105	0.6
Sept.	1.8	107	2.0	119	2.0	119	1.46	87	1.05	62	494	99	0.5
											94020	18805	100

Discussion

The Department of Fish and Game has agreed that its protest against the application may be disregarded and dismissed provided that any permit issued pursuant thereto contains a special clause requiring that the applicant by-pass 10 cubic feet per second or the natural flow of the stream between December 1 and May 31, and one cubic foot per second or the natural flow of the stream between June 1 and November 30. As the application seeks a permit to divert only between May 1 and December 1, the Board need consider only this latter period. Under the "by-pass" schedule proposed by the Department of Fish and Game, the applicant could divert only to the extent the flow at her point of diversion exceeded 10 cubic feet per second during May and exceeded one cubic foot per second between June 1 and December 1. Based upon the above figures, such a schedule would enable the applicant to divert in an average year only during the months of June and November. In fact, the by-pass requirement is over 300% of the average monthly mean flow during May and exceeds the flow from 106% during July to 140% during September.

The "by-pass" schedule recommended by the Department of Fish and Game is apparently in excess of the flow which, on the average has existed in the past during most of the diversion season requested. To invoke such a requirement would seriously impair the feasibility of the project.

The applicant stated in her answer to the protest that use of water from Branciforte Creek has been made on her property since 1877 and she advised the investigating engineer that the

application was filed merely to establish her right to use water as a matter of record, that she had no intention of increasing the use of water from the creek over that made in the past.

It is therefore evident that approval of Application 17293 will not create an additional draft upon the flow of Branciforte Creek, as far as the protestant is concerned.

In consideration of the history of the use of water from the source by the applicant and of the foregoing information regarding stream flow, the Board concludes that approval of Application 17293 without special condition in the interest of fish life is in order.

Conclusions

The evidence indicates and the Board finds that there is unappropriated water in the source designated in Application 17293 available to the applicant, which water may be appropriated to a substantial extent in the manner proposed in the application without injury to any other lawful user of water, that the intended uses are beneficial and that said application should be approved and permit issued to applicant subject to the usual terms and conditions.

ORDER

Application 17293 for a permit to appropriate unappropriated water having been filed, a protest having been received, applicant and protestant having stipulated to the proceedings in lieu of hearing as provided under Section 737 of the Board's rules, a field investigation having been made by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17293 be, and the same is hereby approved, and that a permit be issued 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 0.167 cubic foot per second to be diverted from about May 1 to about December 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 maximum amount herein stated may be reduced in the 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 the decision and order of the State Water
Rights Board at a meeting duly called and held at Sacramento,
California, on this 29th day of May, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member