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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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| In the Matter of Application 16809) | Source: Mountain House Creek |
| by Mary M. Brown) | County: San Joaquin |

Decision No. D 908

Decided: June 25, 1958

In attendance at investigation conducted by the staff of the State Water Rights Board on September 26, 1957:

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| J. C. Cordes | Applicant's ranch manager |
| Armand Bankhead | Protestant |
| Earl S. Odell | Attorney for protestant |
| J. V. Scammon | Associate Hydrographer, representing the State Water Rights Board. |

DECISION

Substance of the Application

Application 16809, filed December 22, 1955, by Mary M. Brown is for a permit to appropriate 0.38 cubic foot per second by direct diversion between April 15 and October 31 of each year and 17 acre-feet per annum by onstream storage to be collected between October 31 of each year and April 30 of the succeeding year from Mountain House Creek for irrigation and stockwatering purposes. Mountain House



Creek is tributary to Old River in San Joaquin County. Both direct diversion and diversion to storage are to be effected at a point within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 4, T2S, R4E, MDB&M, by means of an earth dam with flash boards, the dam being about 50 feet long and 5 feet high. The water is to be conveyed to the place of use through approximately 1,400 feet of 14-inch pipe. Included in place of use are 25 acres within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and 5 acres within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 4, T2S, R4E, MDB&M. Approximately 100 head of beef cattle are to be watered.

Protest

Armand Bankhead protested Application 16809 on apprehension that the construction of the dam will cut off the supply of water entering his property, thus forcing him to purchase additional water. He also apprehends that the proposed dam will endanger his pumps in time of flood in the event large quantities of water should be released from the dam. Protestant claims riparian rights and states that his diversion point is located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4, T2S, R4E, MDB&M. His present use of water is stated to be for irrigation of a field through which the creek flows and for watering stock. He also claims that he and his predecessors in interest have used water from the source in question since 1865.

Answer

The answer to the protest indicates that the purpose of the application is to make of record a right to divert the exact amount of water which has been applied upon the applicant's land by means of existing dams and reservoirs over the past 60 years; that the application contemplates no physical change in facilities, flow, or contours

that have existed for many years; and that downstream landowners will continue to receive the same flow and drainage waters as they have received in the past.

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 a field investigation was conducted on September 26, 1957, by J. V. Scammon, an engineer of the Board. The applicant and protestant were present or represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 16809 and all relevant information on file therewith, with particular reference to "Report of Field Investigation," dated October 31, 1957; United States Geological Survey, Bethany (1952), Altamont (1953) and Midway (1953) Quadrangles, 7½ minute series; Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams" dated 1923; Bulletin 21, Division of Engineering and Irrigation, "Irrigation Districts in California" dated 1929; Senate Document 113, Eighty-first Congress, 1949, "Central Valley Basin."

Source

According to USGS Altamont Quadrangle, 7½" series, Mountain House Creek rises in the N½ of Section 4, T3S, R3E, MDB&M, about 5 miles southwest of the town of Mountain House at an elevation of about 1,300 feet. From this point the stream courses northerly for

about one mile thence in a general northeasterly direction approximately 9 miles to the confluence with Old River. The creek drains an area of approximately 17 square miles, of which approximately 16 square miles are above the applicant's project. The protestant's project is approximately 0.5 mile above the confluence with Old River; the applicant's project is about 1.0 mile above that of the protestant; and a reservoir owned by the Frederickson and Watson Construction Company is located about 1.5 miles above the applicant's project.

Information Secured by Field Investigation

Extracts from the report covering the field investigation of September 26, 1957, are as follows:

"(Applicant's) dam as presently constructed is about 3 feet (high) and 100 feet or more in length.

"Mr. Cordes (applicant's ranch manager) stated that this small reservoir has been in use for many years and that the filing...was for a slight enlargement of the reservoir and to make of record the amount used by direct diversion.

"There was no flow above or below the dam but the channel showed evidence of a recent high flow. Mr. Cordes said that this flow had been caused by the opening of a reservoir located upstream on Mountain House Creek on the Frederickson and Watson Construction Company's ranch.

"The Brown Ranch is within the Byron-Bethany Irrigation District and Mr. Cordes stated that the...district had contracted with Mrs. Brown for a flowage right to dump waste water through her property and into Mountain House Creek.

"Mr. Bankhead stated that all he desires is to be able to receive the same flow from Mountain House Creek that his ranch has enjoyed in the past. He also stated that he would withdraw his protest if applicant would amend the application (so as to delete the direct diversion) therefrom....

"Protestant's ranch is located on the north side of Mountain House Creek between Byron Road and Old River. The lower portion of the ranch...is lower...than (Old River)... In order to irrigate the upper portion of the ranch, water

is pumped from Old River into the mouth of Mountain House Creek.... Mr. Bankhead stated that water is always available in Old River and that (water is pumped) into the lower reach of Mountain House Creek (and) repumped by...pumps belonging to him and his neighbor. The water in Mountain House Creek requires less pumping lift for use on the property of Bankhead and his neighbor than the water which is taken from Old River.

"Protestant's property is not within the boundary of any irrigation district.

"The parties present...inspected the creek channel from a point at Mountain House just upstream from Delta-Mendota Canal crossing to its mouth at Old River. The flow of the creek at Mountain House Road Crossing was about 0.01 cubic foot per second. A well just below the road crossing appeared to be artesian and was contributing about 0.01 cubic foot per second to the creek. There was no flow in the tributary ravine which enters Mountain House Creek just above Delta-Mendota Canal. ...leakage from the canal into the creek (measured) approximately 0.4 cubic foot per second. The canal was at a low stage.... Three canals of Byron-Bethany Irrigation District cross Mountain House Creek below Delta-Mendota Canal and above applicant's proposed diversion, any one of which could produce waste or return flow.... At the time...no water was flowing from the Irrigation District's upper canal into the creek or into the reservoir below owned by Frederickson and Watson Construction Company.... This reservoir can be filled from natural flow, (from) leakage from Delta-Mendota Canal or by purchase from Byron-Bethany Irrigation District's upper canal. . . . The capacity of this reservoir is estimated to be slightly less than 50 acre-feet.

"The channel...below the Frederickson and Watson Reservoir is fenced and is used by the Company for sheep pasture. Upon leaving the Company's land the creek channel widens out so that there are no steep banks....

"...the summer flow (in Mountain House Creek) is mostly foreign water.

* * *

"All parties attending the field investigation in effect agreed that after June 30 the natural flow of Mountain House Creek would be too small to be of any consequence."

Information Secured from Other Sources

According to Table 62 on page 207 of Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams,"

dated 1923, streams of the Orestimba Group (which includes Mountain House Creek) are estimated to yield a mean seasonal runoff of 83 acre-feet per square mile of tributary watershed, distributed percentage-wise, by months, as set forth in Table I. To Table I have been added computed values of the flows that may be supposed, on an average, to emanate from the 16 square miles of Mountain House Creek watershed reported to lie above the applicant's proposed point of diversion.

TABLE I

Mean Seasonal Estimated Runoff of Mountain House Creek

| <u>Month</u> | <u>Percentage of year total</u> | <u>Acre-feet during month</u> |
|--------------|-------------------------------------|-----------------------------------|
| January | 12.9 | 171 |
| February | 14.9 | 198 |
| March | 15.4 | 205 |
| April | 21.4 | 284 |
| May | 17.4 | 231 |
| June | 8.9 | 118 |
| July | 4.3 | 57 |
| August | 0 | 0 |
| September | 0 | 0 |
| October | 0.9 | 12 |
| November | 1.5 | 20 |
| December | <u>2.4</u> | <u>32</u> |
| Total | 100 | 1,328 |

According to Bulletin No. 31, Division of Engineering and Irrigation, "Irrigation Districts in California" dated 1929, the construction of the Byron-Bethany Irrigation District system was commenced in 1915, and use of water therefrom commenced in 1917. The source is the Sacramento-San Joaquin Delta channels. The Delta-Mendota Canal was completed subsequent to 1949 (see Senate Document 113, 81st Congress, August, 1949, "The Central Valley Basin", p. 213).

Discussion

Protestant's objection to the appropriation proposed by applicant is based upon claimed interference with protestant's riparian right to the use of Mountain House Creek flow. The records indicate that there is ample water during the season the applicant proposes to appropriate water by storage (October 31 to April 30) to satisfy the requirements of all parties, and this is confirmed by protestant's statement that he would withdraw his protest if applicant would amend her application by deleting provision for direct diversion. The only real issue appears to be the effect upon protestant's riparian use of water by direct diversion by applicant between April 15 and October 31 as proposed in the application.

Riparian rights of protestant extend only to the natural flow of Mountain House Creek and do not include water introduced into the creek channel, directly or indirectly, from another source through either the Delta-Mendota Canal or the canals of the Byron-Bethany Irrigation District. Such foreign water is subject to appropriation pursuant to application and permit in accordance with provisions of the Water Code.

From July 1 to the end of the irrigation season, the natural flow of Mountain House Creek is non-existent or is too small to be of any consequence (see Report of Field Investigation and Table I on page 6 of this decision). The Report of Field Investigation further indicates that there are seepage and drainage waters from the Delta-Mendota Canal, Byron-Bethany Irrigation District canals, and irrigation of lands within the district available at applicant's point of diversion on Mountain House Creek at times during the irrigation season. Such water, together with the natural flow of the creek in

excess of requirements for reasonable beneficial use upon protestant's riparian lands, may be diverted by applicant without interfering with protestant's riparian right.

Conclusion

The evidence indicates and the Board finds that unappropriated water exists in the source from which the applicant seeks to appropriate, that such water may be taken and used in substantially the manner proposed by the applicant without interference with the exercise of any superior right, that the uses to which the water is to be applied are beneficial and that the application may be approved and a permit issued without injury to any lawful user of water.

ORDER

Application 16809 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, a protest having been filed, stipulations to the proceedings in lieu of hearing having been submitted and jurisdiction of the administration of water rights including the subject application having been subsequently transferred to the State Water Rights Board, an investigation having been made by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16809 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 0.38 cubic foot per second by direct diversion to be diverted from about April 15 to about October 31 of each

year and 17 acre-feet per annum by storage to be collected from about October 31 of each year to about April 30 of the succeeding year.

The equivalent of the 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. Construction work shall be completed on or before December 1, 1960.

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

5. 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.

6. 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 Fresno, California, on this 25th day of June, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member