

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

ADOPTED JUL 27 1966

In the Matter of Application 21867
of Robert W. Irvine to Appropriate
from Little Bear Creek and an
Unnamed Tributary in Placer County

Decision D 1254

DECISION APPROVING APPLICATION

Application 21867 of Robert W. Irvine having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on October 21, 1965, conducted by Board Member W. A. Alexander; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 21867 is for a permit to appropriate one-fortieth ($1/40$) cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year, two (2) cfs by direct diversion from November 1 to May 31 of the succeeding year, and one acre-foot per annum (afa) by storage from November 1 of each year to May 31 of the succeeding year for power and incidental recreational use from Little Bear Creek and an unnamed stream tributary to Little Bear Creek in Placer County. The points of diversion are to be located within the $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 25, T16N, R10E, MDB&M.

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2. The applicant's project includes a small, concrete dam with flashboards on Little Bear Creek. The reservoir will have a surface area of less than 1/4 acre, and a capacity of less than 1 acre-foot.

3. For the power portion of the proposed project, water will be released from the reservoir through a 15-inch pipe equipped with a gate valve, and conveyed to the powerhouse by a concrete-lined flume. After being used through the powerhouse, water will be returned to Little Bear Creek upstream from the protestants' diversion. The power wheel would utilize the 2 cfs requested for diversion between November 1 and the succeeding May 31. The power would be used primarily for heating purposes and would supplement electric power purchased by the applicant from Pacific Gas and Electric Company (PG&E).

4. The recreational use described in this application consists of swimming in the reservoir and raising trout. The latter use is more properly described as fish culture, and the application will be corrected accordingly. Applicant proposes a small pond to catch sediment and 8 small fish-spawning ponds on the unnamed stream. Each pond would be about 8 feet wide, 10 feet long, and 1½ feet deep. Water conveyed from the reservoir on Little Bear Creek by a 2-inch pipe to the upper spawning pond on the unnamed stream would overflow through the series of small trout ponds and return in the unnamed stream to Little Bear Creek.

5. Little Bear Creek is a Sierra foothill stream about 4 miles long, tributary to Bear River. The applicant's property is located about 1-3/4 miles upstream from Bear River. The watershed above his property is about 1,280 acres. One-half mile upstream from the applicant's property is Alta Powerhouse of PG&E. During the summer months, the flow of Little Bear Creek consists partly of operating spill from Alta Powerhouse and partly of seepage from PG&E's afterbay dam across Little Bear Creek and from the Boardman Canal. There are no records of the flow of Little Bear Creek or the unnamed stream except for occasional spot measurements (Staff 1 and 2).

Summer spills by PG&E from Alta Powerhouse are very irregular. In 1965, they were almost continuous; but, in 1963, the summer spills were about 6 weeks apart, and lasted only from 2 to 3 hours (RT 8).

6. The protestants, William C. and Louise D. Melton, claim the right to use water from Little Bear Creek based upon appropriative use begun prior to December 19, 1914, and upon rights acquired from PG&E. The water is now used year-round for household purposes and during the irrigation season for irrigation of approximately one acre of garden (RT 46, 47 and 48). Water is diverted by a small dam made of logs and rock (RT 18) about 5 feet high and 30 feet long into an old dirt mining ditch about 3,000 feet long. The ditch empties into a small regulatory reservoir located near the

Melton residence. Immediately above the reservoir, water is taken from the ditch into a 700-gallon regulatory tank and then piped to the place of use. (See Application 15408, page 4, of report dated 1/19/54.)

7. The Meltons' claimed pre-1914 right to 300 miner's inches of water has been maintained by continuous beneficial usage only to a limited extent. Water was used only in the summer in the period 1902-1923, according to the protest filed by the Meltons to Application 15408. They have also used no water for mining since 1950, according to the same protest. They have continuously diverted and used water in the summers for household purposes and for the irrigation of one acre, but not all summer diversions have been used beneficially.

8. The reservoir area behind the Meltons' diversion dam is filled with sediment and lacks storage capacity. As a result, summer surges of PG&E spills, such as those of 1963, exceed the capacity of the Meltons' diversion works and to varying degrees are wasted. The diversion dam leaks, and water is usually to be found running five or six hundred feet downstream from the dam before sinking into the ground or evaporating (RT 18). The transmission losses in the Melton Ditch are very high. On October 10, 1964, losses above the protestants' tank were about 46 per cent (Protestants' Exh. 3). To this should be added the losses in the first 150 yards of

the diversion ditch, but this quantity is unknown. Protestants' regulating reservoir also leaks. Leakage from this reservoir was estimated to be about 30 gallons a minute (RT 19).

9. Applicants' project involves only nonconsumptive use of water, except for a small amount of evaporation and seepage losses. These losses are much less than the water diverted but not placed to beneficial use by the Meltons, even disregarding their high ditch losses. Water unreasonably diverted or wasted cannot be regarded as part of a water right, according to the California Constitutional Amendment of 1928 (Article XIV, Sec. 3.). If the applicant's project is built and operated as proposed, and if the Meltons eliminate their waste of water, the Meltons will have available to them more water in the future than they have today.

10. The Meltons consider that they own all the water flowing down Little Bear Creek, as a result of their 1937 contract with PG&E (Prot. Exh. 1, Item 4). PG&E quitclaimed to the Meltons whatever rights it had to the spill and seepage down Little Bear Creek over or around the diversion dam or from the Boardman Canal. Likewise, the Meltons quitclaimed to PG&E any of their rights to natural flow diverted by the Boardman Canal. The result was not ownership by the Meltons of each particle of water in Little Bear Creek which escapes from the possession and control of PG&E. Rather, the utility merely agreed to refrain from asserting a claim to that water.

The Meltons could continue to claim and rely on their pre-1914 appropriative right, but only to the extent they maintained it by continuous beneficial use. The Meltons' long non-use of water, except in the summer, gives them no basis to object to applicant's appropriation of water between November 1 and May 31. Likewise, for the reasons explained above, their summer diversion right, to the extent it has been maintained by beneficial use, will not be prejudiced by applicant's proposed diversion of 0.025 cfs in the summer.

11. There is unappropriated water available to supply the applicants; 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.

12. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21867 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Application 21867 be, and it is, approved, 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

0.025 cubic foot per second by direct diversion to be diverted from January 1 to December 31 of each year, two (2) cubic feet per second by direct diversion to be diverted from about November 1 of each year to about May 31 of the succeeding year, and one (1) acre-foot per annum by storage to be collected from about November 1 of each year to about May 31 of the succeeding year.

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

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

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

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.

7. 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.

8. Permittee shall, when required by the Board, install and maintain suitable measuring devices on Little Bear Creek (a) upstream from the high-water elevation of the reservoir and (b) immediately below the point where water enters the stream from the 8 fish ponds in order that accurate measurement can be made of the quantity of water flowing into the reservoir and below the permittee's project.

9. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall provide means satisfactory to the State Water Rights Board to comply with this paragraph.

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 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

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

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