

In the Matter of Application 7232 of
Willis W. Quigley to appropriate
from Beaver Creek in Siskiyou
County for Power Purposes.

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DECISION A 7232 D, 349

Decided October 19, 1933

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APPEARANCES AT HEARING HELD AT YREKA, August 8, 1933.

For Applicant

Willis W. Quigley

James D. Fairchild.

For Protestants

A. S. Calkins and Roy I. Faber

Wm. V. Cowan

Lichens Brothers

L. L. Lichens.

EXAMINER: Gordon Zander, Supervising Hydraulic Engineer,
Division of Water Resources, Department of Public
Works, State of California.

OPINION

DESCRIPTION OF PROJECT

Application 7232 was filed June 6, 1932, by Willis W. Quigley. It proposes an appropriation of 1.00 cubic foot per second of the waters of Beaver Creek, a tributary of Klamath River, for use throughout the entire year for generating electrical energy. The power generated is to be utilized at the store and camp of applicant.

The proposed point of diversion from Beaver Creek is located within Lot 9 Sec. 31, T. 47 N., R. 8 W., M.D.B. & M. From this point the water applied for is to be conveyed through the Klamath River Cooperative Ditch for a distance of 1.5 miles and thence through ^a pipe line 150 feet in length and 8 inches in

diameter to applicant's power plant located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 6, T 46 N, R. 8 W., M.D.B. & M. The water is to be utilized through a fall of 50 feet and will be returned to the Klamath River within the last above described legal subdivision.

PROTESTS

Lichens Brothers own an interest in the Klamath River Cooperative Ditch and protest against use of said ditch by applicant for the conveyance of the 1.00 cubic foot per second of water which applicant proposes to divert. They allege that applicant has no right to convey said water through said ditch and that the granting of said application would cause heavy expense to protestant and the other parties using said Klamath River Cooperative Ditch for enlargement and maintenance of same.

A. S. Calkins and Roy I. Tabor claim a right to the waters of Beaver Creek as riparian owners. Protestants own a strip of ground about $2\frac{1}{2}$ miles in length along Beaver Creek known as the Beaver Creek Place Mine. Applicant's proposed point of diversion is about one mile upstream from the lower end of protestants' mining claim. Protestants allege that they have the right as riparian proprietors to have the waters of Beaver Creek flow over and across their lands without interference; that the taking of 1.00 cubic foot per second of water would destroy the value of protestants land for public camp ground purposes and deprive them of necessary water for irrigation; and that all of the available water of Beaver Creek not heretofore appropriated is required for the operation of a fish culture and egg saving plant maintained by the State Fish and Game Commission on lands leased from protestants.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 7282 was duly completed and advertised in accordance with law as set forth in the Water Commission Act and being protested was set for a

public hearing on August 8, 1935, at 2:00 o'clock P. M. in the court room, Siskiyou County Courthouse, Yreka, California. Applicant and protestants were duly notified of this hearing and appearances were made on their behalf as noted above.

GENERAL DISCUSSION

Beaver Creek, the source of the proposed appropriation, rises on the southerly slopes of the Siskiyou Mountains in Oregon and flows in a general southerly direction to its junction with the Klamath River at a point about five miles west of Gottville, Siskiyou County, California. The watershed area is approximately 100 square miles of rough mountainous terrain fairly well covered with timber. In normal seasons the flow of Beaver Creek is more than adequate to supply the maximum demands of the present water users along the stream.

The results of measurements made by the Division of Water Resources at the intake of the Klamath River Cooperative Ditch, the point of diversion proposed in the application, follow:

<u>Date</u>	<u>Discharge in Cubic Feet per Second</u>
July 30, 1924	11.8
August 25, 1924	9.8
June 9, 1925	180.0
August 17, 1935	34.5

The Klamath River Cooperative Ditch through which applicant proposes to divert the water applied for is the lower most diversion from the stream, consequently, except for the riparian claims of Galkins and Tabor, any water in Beaver Creek at this point in excess of the prior rights in said ditch is water available for appropriation. The amount of water necessary to supply the prior rights in said ditch is 16.68 cubic feet per second apportioned as indicated below:

<u>Name</u>	<u>Status of Claim</u>	<u>Amount of water in cubic feet per second</u>
Willis W. Quigley (Tom Quigley Ranch)	Appropriation prior to 1914	4.00
Willis W. Quigley (Cassie Quigley Ranch)		2.00
Major Fleishman) George L. Smith) Clyde C. Smith) Edith Alice Smith) Albert Heglar) Lichens Brothers)	Division of Water Resources License 1163	9.58
Calkins and Tabor	Riparian. Permissive use of ditch	1.00 <u>16.58</u>

The Klamath River Cooperative Ditch is a mutual ditch. An agreement dated January 19, 1921, sets forth the conditions governing the construction and operation of said ditch (see Transcript of Testimony line 26, page 16, to line 32, page 22). A deed dated September 22, 1924, Lichens to Brown (pages 23 to 26 of Transcript) and a deed dated September 30, 1924, Brown to Quigley (pages 26 to 29 of Transcript) expressly conveys title to that portion of the ditch from the intake to and through the Tom Quigley Ranch in language as follows:

"Lots Six (6) and Seven (7) and the East half of the South West quarter of Section Six (6) Township Forty-six (46) North, Range Eight (8) West, M.D.M., commonly called the "Thomas Quigley Homestead", with all improvements thereon, together with that certain water ditch taking the waters of Beaver Creek to said place, and all water rights connected therewith, being the right to the use of two hundred inches of water measured under a four inch pressure, the use and ownership of said Ditch being subject to the rights of Klamath Ditch Company."

"Lots Six (6) and Seven (7) and the east half of the Southwest quarter of Section Six (6), Township Forty-six (46) North, Range Eight (8) West, M.D.M., commonly called the "Thomas Quigley Homestead", with all improvements thereon, together with that certain water ditch taking the waters of Beaver Creek to said place, and all water rights connected therewith, being the right to the use of two hundred inches of water, measured under a four inch pressure, the use and ownership of said Ditch being subject to the rights of Klamath Ditch Company."

With the exception of Lichens Brothers it is apparent that the owners in the Klamath River Cooperative Ditch have no objections to applicant's use of said ditch for the conveyance of an additional 100 cubic foot per second of water. (Testimony of George L. Smith and Albert Russel Hegler, pages 38 and 39 and 39 and 40, respectively, of Transcript).

No witnesses were called in behalf of Calkins and Tabor but the applicant Willis W. Quigley testified that no mining operations had been carried on at the Beaver Creek Placer Mine for over 25 years; that the only use of water being made by Calkins and Tabor was for the irrigation of about two acres of land on said claim; and that the 1.00 cubic foot per second of water used for this purpose was carried through the Klamath River Cooperative Ditch by permission of the owners of said ditch. Applicant further testified that the fish culture and egg saving plant maintained by the State Fish and Game Commission on ground leased from Calkins and Tabor was operated only from about November 1st of each year to May 1st of the succeeding year or during the period when there was little or no demand for water.

On August 17, 1933, a field examination of the physical factors covered by the hearing was made by Harrison Smitherum, Senior Hydraulic Engineer, Division of Water Resources. James D. Fairchild, Wm. V. Cowan, Henry J. Barton, L. L. Lichens and Willis W. Quigley were present during various stages of the investigation.

The results of measurements made on the above date follow:

<u>No. of Measurement</u>	<u>Location</u>	<u>Discharge in C. F. S.</u>
1	Klamath River Cooperative Ditch at head	20.9
2	" " below	16.4
3	Willis Quigley P. H. Klamath River Cooperative Ditch below	9.36
4	Cassie Quigley Ranch Klamath River Cooperative Ditch below	2.65
	Hegler Pipe	
5.	Beaver Creek below Klamath River Co-operative Dam.	13.4

Following measurement No. 1, the ditch was inspected at several critical points and found to be of ample capacity to take care of the measured flow from the intake downstream to a spillway just above the Willis Quigley power plant. From statements made by L. L. Lichens and Willis Quigley the ditch was 100 miners inches short of full capacity. In comparison to the measured capacity of the ditch only 16.58 cubic feet per second capacity is required to carry the water covered by the present rights in the ditch.

Measurement No. 2 was taken on the ditch below the Willis Quigley power plant. Approximately 2.00 cubic feet per second was being diverted from the ditch above this point of measurement. Following the measurement the ditch was inspected through the Tom Quigley property and found to be carrying approximately a full head, consequently the measured flow of 16.4 cubic feet per second approximates the maximum capacity of the ditch below the Quigley power plant.

Measurements Nos. 3 and 4 were made at the request of Mr. L. L. Lichens but have no particular bearing on the controversy.

Measurement No. 5 represents the amount of water wasting into the Klamath River.

There were no mining operations under way and no extensive use of water was being made for camp ground purposes at the Beaver Creek Placer Mine. Mrs. Roy I. Tabor, interviewed on the ground, stated that the Calkins and Tabor interests were interested in maintaining their riparian status.

CONCLUSIONS

- (1) Except for very dry seasons there is unappropriated water in Beaver Creek in excess of the amount sought by this application.
- (2) The documentary evidence submitted would indicate that applicant has the right of access to Beaver Creek through the Klamath River Co-operative Ditch. It is also evident that, excepting Lichens Brothers, protestants, the owners of said ditch do not object to the use proposed by the applicant.

- (3) The Klamath River Cooperative Ditch is of more than sufficient capacity from the intake to the Quigley power plant to carry the 1.00 cubic foot per second of water sought by applicant and the 16.58 cubic feet per second to which the ditch is entitled under prior appropriations. The diversion and use of said 1.00 cubic foot per second of water at the Quigley power plant can be made as proposed in the application without injury or expense to the other owners in said ditch.
- (4) The protest of Lichens Brothers was directed against applicant's right to the use of the Klamath River Cooperative Ditch on the grounds that such use would seriously interfere with Lichens Brothers water right in said ditch and cause them much expense in the operation and maintenance of the same. The protest should be denied.
- (5) The Calkins and Tabor interests are interested principally in maintaining their status as riparian owners pending such time as they see fit to develop their property. Their protest should not act as a bar to the granting of a permit subject to the usual terms and conditions.
- (6) The application should be granted subject to such of the usual terms and conditions as may be appropriate.

ORDER

Application 7232 for permit to appropriate water having been filed with the Division of Water Resources, as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 7232 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 19th day of October, 1953.

EDWARD HYATT, State Engineer

By MARGED CONKLING

Deputy