

STATE OF CALIFORNIA  
PROCEEDINGS BEFORE THE  
STATE WATER RIGHTS BOARD

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In the Matter of Application 16151 by Faith B. Drobish to  
Appropriate Water from Lincoln House Ravine, Tributary via  
Kings and Wilson Creeks to South Boncut Creek, in Butte County,  
for Irrigation, Domestic and Recreational Purposes.

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Decision A 16151 D 861

Decided August 30, 1956

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In Attendance at Investigation Conducted by the Division of  
Water Resources on February 16, 1956:

Faith B. Drobish	Applicant
H. Boardman Drobish	Applicant's son
Frank Alpers	Protestant, representing also Christina M. Alpers, his mother
Joie Osgood	Protestant
K. L. Woodward	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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DECISION

Substance of the Application

The application initiates an appropriation of 350 acre-  
feet per annum, to be collected between September 15 of each year  
and June 1 of the next, from Lincoln House Ravine, in Butte County,

for irrigation, domestic and recreational purposes. Lincoln House Ravine is tributary via Kings, Wilson, South Honcut and Honcut Creeks to Feather River. The water is to be impounded by an earth fill dam, 52 feet high by 516 feet long, located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T18N R5E, MDB&M; the dam creates a reservoir approximately 18 acres in surface area and 273 acre-feet in capacity. The project includes some 3.75 miles of ditch, conveying the water to and distributing it over the place of use, the latter aggregating 856 acres and including portions of Sections 31 and 32, T18N R5E and portions of Sections 5 and 6, T17N R5E, MDB&M. The place of use is all to be irrigated and irrigation is to extend throughout the year. It includes a 20-acre orchard and otherwise is to be devoted to general crops. The applicant claims to own both the diversion site and the proposed place of use. In addition to the proposed use for irrigation the applicant desires to use water for incidental domestic purposes and for recreation, i.e. boating and swimming in the reservoir.

#### Protests

Frank Alpers represents that the applicant's proposed development will result in the loss of his sole supply for watering livestock on some 80 acres within Section 36 of T18N R4E, MDB&M, and within the adjoining Section 31. He bases his claim of a water right upon usage and upon possible riparian ownership.

Christina M. Albers represents that the proposed appropriation will interfere with her stockwatering operations on 750 acres located within Sections 30 and 31 of T18N R5E, MDB&M.

Joie Osgood represents that the proposed appropriation will interfere with her use of water for stockwatering under a claimed right based upon use over a period of some 60 years. She states that the entire flow of the source filed upon by the applicant, from March 1 to November 1 of each year, is reasonably required for stockwatering, that she diverts at a point within the NW $\frac{1}{4}$  of Section 18, T17N R5E, MDB&M, that her land is riparian, that it was agreed and adjudged in a certain court action (Bill Gianella vs Croville-Wyandotte Irrigation District, March 11, 1930) that her predecessor in interest should have the sole right to waste and seepage waters.

#### Answers

The applicant answers the protests by denying that the proposed appropriation will injure the protestants or impair their supply for stockwatering and by asserting that she (the applicant) seeks only to appropriate water that occurs during the periods of fall, winter and spring runoff, that when the proposed reservoir is being filled flow from other tributaries that join the source below the proposed dam is plentiful, and that a portion of the water that she proposes to store will revert to the stream as return flow and seepage and thereby actually increase summer flows on downstream properties.

The answer to the Osgood protest contains additional assertions to the effect that the judgment in Cianella vs. Oroville-Wyandotte Irrigation District is not binding upon applicant because applicant was not a party to that action, that protestant has not made sole and exclusive use of the water in question, that applicant is also a riparian owner, that her lands are upstream from protestant's, that she has herself established rights as against protestant's.

#### Field Investigation

The applicant and the protestants with the approval of the Division of Water Resources having stipulated to the submittal of the application and protests upon the official records, a field investigation was conducted on February 16, 1956, by an engineer of that Division. The applicant and the protestants were present or represented during the investigation.

#### Records Relied Upon

Applications 3332, 9602, 9603 and 16151 and pertinent information on file therewith; Bangor, Loma Rica and Honcut quadrangles (1:24,000) and Bangor quadrangle (1:62,500), United States Geological Survey; Bulletin No. 5, Division of Engineering and Irrigation, Department of Public Works -- "Flow in California Streams" - 1923.

Information Obtained by Field Investigation

Extracts from the report covering the field investigation of February 16, 1956 are as follows:

"Lincoln House Ravine is an intermittent stream originating at an elevation of about 900 feet ... on the west slope of the Sierra Nevada (foothills) ... about one mile southwest of ... Bangor. The watershed above the proposed dam site is about one square mile. The ravine joins Kings Creek ... below the dam site (whence it is) about two miles to Wilson Creek. Rainfall ... would appear to be similar to that recorded at ... Serriterre ... a mean of 29.10 inches ...."

"On February 16, 1956 flow of Lincoln House Ravine at the dam site was an estimated 0.4 cubic foot per second. All parties present at the investigation ... agreed that the flow during the summer is considerably better than the adjacent streams as the Ravine receives runoff from upstream orchard irrigation which water is carried into the area by Oroville-Wyandotte Irrigation District through the Bangor Ditch."

"The only work done by the applicant prior to the investigation toward the proposed development was limited exploratory work on the dam site. However water from the source has been used by the applicant in former years under Application 3332 ...."

"Protestant Frank Alpers operates his property and that of his mother, Christina M. Alpers, as a single unit and their protests may be considered one and the same. Mr. Alpers claims to have owned his property for 8 years, that Mrs. Alpers has owned her property considerably longer, that no water has been used even for stock for a number of years but that he wants conditions to remain in "status quo" should he elect to use water from the source at some future date."

"Mrs. Osgood owns a considerable acreage along both sides of Wilson Creek and claims to run stock thereon each year until the water supply fails which is usually about the middle of June. She agreed however that she was not interested in maintaining

flow through the entire length of the property as her needs are satisfied so long as water is available inside Section 1, T17N R4E, MDB&M."

"Protestant Osgood claims a prior right to use of the water in question by virtue of the judgment in the case of Bill Gianella v. Oroville-Wyandotte Irrigation District. Mrs. Osgood was formerly Mrs. Gianella and is present owner of the property involved. Briefly stated, about 1930 Bill Gianella, a riparian owner, brought suit to enjoin the District from taking water from South Honcut Creek. The case was settled by compromise agreement in which it was stipulated that Gianella would have sole right to the waste and seepage water from the District ditches on North and South Honcut Creek watershed."

#### Other Information from Office Files

Under Application 3332 Permit 1725 License 3267 H. E. Drobish and Faith B. Drobish may divert 0.1 cubic foot per second from Kings Creek at points along the reach extending from a point within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 5, T17N R5E to a point within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T18N R5E, MDB&M; and may divert 0.35 cubic foot per second from Lincoln House Ravine at a point within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T18N R5E, MDB&M, the water to be used for irrigation and stockwatering from about April 1 to about November 1 of each year or a total of 29.83 acres within the Sections 31 and 32 above mentioned.

Along the course followed by flows passing the applicant's proposed point of diversion (Lincoln House Ravine and Kings, Wilson, South Honcut and Honcut Creeks) the only other active filings before this office are licensed Applications 9602 and 9603, under which John L. Sullivan, Jr. et al. may divert a

total of 3.76 cubic feet per second, from Honcut Creek and Feather River, at a point within Section 27, T17N R3E, MDB&M, from March 15 to September 15 of each season, for irrigation.

According to Bulletin No. 5, Division of Engineering and Irrigation, Department of Public Works, 1923, annual runoff carried by streams of the so-called Honcut Creek group, which among other streams includes Lincoln House Ravine, ranges from 188 to 1,664 acre-feet and averages 636 acre-feet per square mile of tributary watershed. According to the same reference, the distribution of such runoff, by months, expressed as a percentage of average annual runoff, is as per following tabulation, in which have also been inserted values of probable monthly flows reaching applicant's proposed reservoir, computed by applying the percentages to the figure for average annual runoff.

Month	: Percentage of : : annual runoff :	: acre-feet : : probably : : reasoning : : reservoir :	: Equivalent : : steady flow : : in cfs :
January	21.5	136.7	2.23
February	21.6	137.5	2.48
March	14.6	92.9	1.51
April	9.5	60.4	1.02
May	5.6	35.6	0.58
June	3.9	24.8	0.42
July	0.8	5.1	0.08
August	0.1	0.6	0.01
September	0.9	5.7	0.10
October	2.7	17.2	0.28
November	6.6	41.9	0.71
December	<u>12.2</u>	<u>77.6</u>	<u>1.26</u>
Year	100.0	636.0	0.88

The area of the watershed tributary to Wilson Creek at the intersection of that stream with the north boundary of Section 1, T17N R4E, the section within which Protestant Osgood desires that a sufficient supply for stockwatering be maintained, scales approximately 9 square miles, on the Bangor quadrangle (1:62,500).



### Discussion

The protestants Alpers, according to the report of field investigation, have not used water for a number of years but oppose Application 16151 merely because they may wish to divert at some future time and therefore desire the flow of Lincoln House Ravine to continue as at present. Their protests are an insufficient basis for denial of the application, it being an accepted principle that anticipated future use by the holder of a right that is currently unexercised cannot bar approval of an application to appropriate such water as may be available meanwhile.

Protestant Osgood's alleged point of diversion in Section 18 of T17N R5E is on South Honcut Creek, above the junction of Wilson Creek with that stream. It is evident that flows reaching that point of diversion cannot be affected by the appropriation that the applicant seeks. Mrs. Osgood does not claim dependence upon the flow of Wilson Creek for any purposes except stockwatering. She appears to be mainly concerned with the period extending from March 1 to November 1, yet, according to the report of field investigation she places the date upon which her water supply fails at about the middle of June. The tabulation (page 3 supra) indicates that streams of the Honcut Creek group subside during June, carry relatively little water during July, August, September and October, and increase rather sharply

in November. Since the applicant seeks to appropriate only prior to June 1 and subsequent to September 15, any conflict between her project and use for stockwatering on the Osgood lands appears limited to periods extending from mid-September into early November.

The tabulation indicates that in a normal season the applicant might readily collect the 350 acre-feet per annum that she seeks to appropriate, in periods extending from November to May, both inclusive, without adverse effect upon users below her. In view of possible conflict in September and October between collection by the applicant and stockwatering on the Osgood property and the absence of necessity for the applicant to collect during those two months, any permit issued in the matter of Application 16151 should be so conditioned as to limit collections thereunder to periods extending from about November 1 of each year to about June 1 of the next.

#### Conclusion

The information indicates that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used in the manner proposed by the applicant without injury to downstream users. It indicates further however that in view of the excess of runoff probably occurring between November 1 and June 1 from the watershed above the applicant's proposed storage dam, over the

amount that the applicant seeks therefrom, collection of runoff occurring between September 15 and November 1 is unnecessary, and, in view of the low water conditions then prevailing, collection by the applicant between such dates might cause inadequacy of supply at points downstream. In view of these circumstances it is the opinion of the State Water Rights Board (successor in jurisdiction to the Division of Water Resources on July 5, 1956 in matters relating to the appropriation of water) that Application 16151 should be approved and permit issued, subject to the usual terms and conditions, but with collection of runoff in the proposed reservoir limited to periods extending from November 1 to June 1.

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ORDER

Application 16151 for a permit to appropriate unappropriated water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been made and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16151 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject further to the limitation of collection in storage to periods extending from November 1 of each year to June 1 of the next.

Dated at Sacramento this 30th day of August , 1956.

*Henry Holsinger*

*W. P. Rowe*

*John B. Lewis*

