ditch system are now in the same general condition as they have existed for the last six or seven years.

Present use of water at Whiskeytown directly or indirectly from the protestant's ditch supply includes the domestic requirements of about 75 persons, 25 houses, a service station, store, and bar, and the irrigation requirements totaling approximately one acre of fruit trees and gardens (Staff Exh. 7). The excess or unused water reaching the end of the ditch is returned either to Whiskey Creek or is discharged into Clear Creek (R.T. p. 43).

Water Supply

Hydrological data for the general area and particularly for Whiskey Creek are sparse, and hearing testimony regarding this subject is not conclusive. According to testimony, the flow of Whiskey Creek originates, at least in part, from springs in the headwaters and in the tributary creeks; however, the runoff depends greatly on the amount of precipitation received during the winter and spring months (R.T. pp. 81-87). Although the months of August and September are the critical low flow period (R.T. pp. 40, 79, 84, 91, 92), according to John Roberts, a witness for the protestant and a resident of Whiskeytown for about 65 years, only on rare occasions is the Woodward Ditch supply inadequate for all the needs of the users (R.T. p. 103). According to the recollection of some of the witnesses the flow of the creek ceased entirely on several occasions (1924, 1927 or 1928 and 1948 and possibly one or two other years), (R.T. pp. 50, 60, 79, 92 161) feet per square mile, with maximum and minimum seasonal runoff for the same period estimated at 3,390 and 173 acre-feet per square mile, respectively. The same table shows that the average monthly distribution of runoff will vary from 20.3 per cent in March to 1.4 per cent in September. Assuming that runoff of Clear Creek Watershed is representative of that occurring on Whiskey Creek, on the basis of Bulletin No. 5 estimates, the unimpaired flow at the protestant's point of diversion during a year of normal run-off will average 3.3 cubic feet per second during September, the month of lowest flow. For a year of minimum expected runoff, the flow in cubic feet per second at the same point will average 1.6 in June, 0.7 in July and October, 0.5 in August and September, and 1.7 in November.

On July 9, 1957, the flow at the protestant's point of diversion was measured to be approximately 4.8 cubic feet per second and at the applicant's point of diversion some three miles upstream the flow was measured to be approximately 1.5 cubic feet per second (Staff Exh. 7).

Discussion

Under existing conditions, diversion of water from Whiskey Creek into the Woodward Ditch is limited to a maximum of 1.5 cubic feet per second, the capacity of the ditch intake. As the record is silent as to any other use of water from the creek under a valid claim of right, the Board must conclude that any flow in excess of the requirements of the Woodward Ditch users, not to exceed 1.5 cubic feet per second, is subject to appropriation under Application 16976 and 16977.

The testimony indicates that from the beginning of the fall rains until about the middle of July, the flow is usually in excess of protestant's needs. During the remaining portions of the year, and particularly during the months of August and September, the evidence is not entirely conclusive either as to the adequacy or inadequacy of a water supply. During 1957, a year of average or slightly less than average streamflow, the flow of Whiskey Creek at protestant's point of diversion decreased from a measured 4.8 cubic feet per second, over three times the capacity of the Woodward Ditch on July 9, to a flow of about one-half capacity of the ditch in September. During a portion of 5 of the past 34 years, the flow ceased entirely.

Based upon the data contained in the aforementioned Bulletin No. 5, the estimated flow of Whiskey Creek at the protestant's point of diversion will be considerably more than the capacity of her ditch during every month of a year of average runoff. During a year of minimum expected runoff, the flow will be inadequate during the months of July, August, September, and October, and the flow will be only slightly in excess of the capacity of her ditch during June and November.

Conclusions

The evidence points to the conclusion that unappropriated water usually exists in Whiskey Creek, that the intended uses proposed under Applications 16976 and 16977 are beneficial and that said applications may be approved, if appropriately conditioned, without injury to any lawful user of water.

ORDER

Applications 16976 and 16977 for permits to appropriate unappropriated water having been filed, a protest having been submitted, a hearing having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 16976 and 16977 be, and the same are hereby approved, and it is ordered that permits be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated under the permit issued pursuant to Application 16976 shall be limited to the amount which can be beneficially used for power purposes and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year.

2. The amount of water appropriated under the permit issued pursuant to Application 16977 shall be limited to the amount which can be beneficially used and shall not exceed 0.5 cubic foot per second to be diverted from (a) about April 1 to October 1 of each year for irrigation purposes and (b) throughout the year as required for domestic purposes.

3. Water shall be diverted under the permit issued pursuant to Application 16977 only during such times and to the extent that surface flow of Whiskey Creek is passing the diversion dam on said creek at the head

of Woodward Ditch or that the flow in the intake of said ditch exceeds 1.5 cubic feet per second.

The equivalent of such continuous flow allowance for any thirty day period may be diverted under the permit issued pursuant to Application 16977 in a shorter time if there be no interference with vested rights.

4. The maximum amount herein stated may be reduced in the license if investigation so warrants.

5. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permits may be revoked.

6. Said construction work shall be completed on or before December 1, 1960.

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

8. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

9. All rights and privileges under these permits 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 Oakland, California, on this 15th day of January, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ John B. Evans

John B. Evans, Member

/s/ W. P. Rowe

W. P. Rowe, Member