

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 3850 )  
of the City of Los Angeles to )  
Appropriate from Rock Creek in )  
Mono County )

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Decision No. D 975

ADOPTED JUN 30 '60

DECISION APPROVING APPLICATION  
SUBJECT TO REQUIRED RELEASES

Application 3850 was filed by the City of Los Angeles on February 15, 1924. The application is for a permit to appropriate 50 cubic feet of water per second by direct diversion and 40,000 acre-feet per annum by storage, year-round, from Rock Creek, a tributary of the Owens River, in Mono County. The water would be diverted by gravity through a canal about  $2\frac{1}{2}$  miles long to Lake Crowley and would be used for power purposes at three existing power plants of the applicant located just below Lake Crowley on the Owens River.

Protests having been filed, Application 3850 and other applications relating to the Owens River and the Owens River Project of the applicant were set for hearing in 1939. Decision No. D-455 of the State Engineer, predecessor of the Board, was issued April 11, 1940, and approved or denied other applications. With respect to Application 3850, the decision approved a petition to change the proposed point of diversion to a downstream point near the highway bridge at a resort called Tom's Place. This action was taken by the applicant to

eliminate several protests based on agricultural and domestic uses. In other respects Decision D-455 indicated that insufficient evidence had been introduced with respect to requirements for domestic and recreation purposes and for proper sustenance of fish life in the public interest, and the decision ordered that further action be withheld with respect to Application 3850 until further order was entered.

The Board held a hearing of a preliminary nature on Application 3850 in Los Angeles on April 22, 1959, Board Member Ralph J. McGill presiding, and a hearing on the merits was held in Bishop on September 15, 1959, Chairman Kent Silverthorne presiding. The applicant and protestants of record were duly notified of the hearing. The applicant was represented by Rex B. Goodcell, Jr., Assistant City Attorney. Protestant California Department of Fish and Game was represented by Joan Gross, Deputy Attorney General. Other protestants who appeared at the hearing included Mono County, Inyo County, United States Forest Service, Isaac Walton League of America, Bishop Chamber of Commerce, and various individuals. The evidence introduced at the hearing by applicant and protestants having been duly considered, the Board finds as follows:

1. About 14 or 15 miles of Rock Creek would be affected by the diversion of water under subject application. The affected reach of Rock Creek would extend from the point of diversion near Tom's Place in Inyo National Forest at about elevation 7,000 feet above sea level down to Birchim Canyon and Birchim Reservoir at about elevation 4,500 feet where Rock

Creek joins the Owens River. Most of this part of Rock Creek follows a main highway and is one of the most heavily fished streams in the Western United States. The National Forest in this area contains cabins, camping areas, and picnicking grounds, and farther downstream there are privately owned properties using water for domestic, power and irrigation purposes.

2. There is unappropriated water in Rock Creek available for nonconsumptive power use at applicant's proposed point of diversion, particularly in the late spring and early summer months, resulting from the snow melt in the high Sierras. The real issue for the Board to decide is the extent of any releases to be required in the public interest for the preservation of fish, fishing, and recreation as well as the protection of vested rights. The applicant's attorney stated that the record before the Board "suggests a range of flows from three second feet to twenty-five second feet for the maintenance of this fishing" (RT 10 of 9/15/59). Applicant proposed in subsequent testimony releases ranging between 8.0 second feet in October and 30.8 second feet in June, or natural flow when less, as measured at the gaging station Below Tom's Place. The Department of Fish and Game and most protestants urged that required releases be 25 second feet, or natural flow of the stream when less than 25 second feet. No one objected to diversion by the City of water in excess of 25 second feet; in fact, a witness for the Department of Fish and Game testified that flows substantially in excess of 25 second feet could be harmful to fish in Rock Creek.

During the 1948-58 period the mean daily flows of Rock Creek measured at Below Tom's Place gaging station show that during April a flow of 25 cubic feet per second was equaled or exceeded in only 7.9 per cent of the time (Applicant's Exh. No. 4). In May the corresponding figure was 54.8 per cent, June 83.3 per cent, July 71.1 per cent, August 29.9 per cent, and September 11.2 per cent. During the other six months encompassing winter and early spring, flows of this magnitude were infrequent. However, the same exhibit shows that a flow of 15 cubic feet per second or greater occurred on 413 days during the October-March eleven-year period or about 22 per cent of the time.

3. The applicant's proposed point of diversion near Tom's Place is a reasonable place to measure any required releases. The Department's evidence was based upon measurement of releases at the Below Tom's Place gaging station,  $1\frac{1}{2}$  miles downstream. However, consumptive use of water in this stretch of the stream totals only a fraction of a second foot, so that it appears equally reasonable and more convenient to measure the releases at the proposed point of diversion. Farther downstream Rock Creek usually gains more water than it loses. On infrequent occasions Rock Creek is a losing stream at the same time that the flow at the proposed diversion point at Tom's Place is in excess of 25 cubic feet per second. However, during these periods a flow of 25 cubic feet per second passing the proposed point of diversion would be ample to supply the present domestic, irrigation, and power uses between Tom's Place and Birchim Canyon.

In requesting a release of 25 cubic feet per second the Department of Fish and Game considered that the afore-mentioned uses would continue to be exercised and that they would not unduly deplete the stream flow to the detriment of the fishery.

4. In determining the public interest, the Board has given consideration to the economic benefit to the City of its being able to use Rock Creek water for the generation of electricity through existing power plants with only minor additional capital expenditures. Consideration has also been given to the great importance of Rock Creek for fishing and other recreational purposes; to the economic importance of fishing and other recreation to the local area; to the year-round requirements of a sustained flow for the spawning of trout in fall, winter and spring months as well as for active fishing conditions in summer months; and to the fact that the applicant's construction of power plants on the near-by Owens River has eliminated fishing in that part of the local area. It is the judgment of the Board that in order to best develop, conserve and utilize in the public interest the water to be appropriated, applicant should be required to release a minimum flow of 25 cubic feet per second, or the entire flow of the stream when less than 25 second feet down Rock Creek past applicant's point of diversion near Tom's Place during the months of April to September, inclusive, of each year, and during the period October to March, inclusive, a minimum flow of 15 cubic feet per second, or the entire flow of the stream when less than 15 second feet.

5. There is unappropriated water available to supply the applicant, 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.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 3850 should be approved and that a permit should be issued to the applicant subject to the terms and conditions set forth in the following Order. A petition to change points of rediversion and places of use for power purposes will be required to conform the application to the location of the three power plants and their points of diversion as already constructed on the Owens River.

IT IS HEREBY ORDERED that Application 3850 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 50 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year, and 40,000 acre-feet per annum by storage to be collected from January 1 to December 31 of each year.

2. Permittee shall continuously bypass not less than 25 cubic feet of water per second, or the natural flow of Rock Creek when less than 25 cubic feet per second from April 1 to

September 30 of each year and 15 cubic feet per second, or the natural flow of the stream when less than 15 cubic feet per second from October 1 of each year to March 31 of the succeeding year for the maintenance of fish life.

3. In accordance with Section 5946 of the Fish and Game Code, this permit is conditioned upon full compliance with Section 5937 of said Code.

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

5. Actual construction work shall begin on or before June 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1963.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1964.

8. 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.

9. 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 \_\_\_\_\_,  
California, on the \_\_\_\_\_ day of \_\_\_\_\_, 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member



