

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF REVOCATION OF LICENSE NUMBER 59 HERETOFORE
ISSUED UPON PERMIT NUMBER 145, APPLICATION NUMBER 322 CON-
FIRMING THE RIGHT OF NELLIE BROWN CLOUGH TO APPROPRIATE FOUR
HUNDRED AND EIGHTY ACRE FEET PER ANNUM FROM MILL CREEK A
TRIBUTARY OF THE SACRAMENTO RIVER IN TEHAMA COUNTY FOR AGRIC-
ULTURAL PURPOSES AND PERMIT NUMBER 1028 HERETOFORE ISSUED
UPON APPLICATION NUMBER 1861 OF GEO. A. CLOUGH ALLOWING THE
APPROPRIATION OF SIXTEEN CUBIC FEET PER SECOND FROM MILL
CREEK A TRIBUTARY OF THE SACRAMENTO RIVER IN TEHAMA COUNTY
FOR AGRICULTURAL PURPOSES.

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DECISION NO. 322, 1861 D 124

Decided October 19, 1926

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APPEARANCES AT HEARING HELD May 3, 1926.

For Licensee and Permittee:

Nellie Brown Clough and Geo. A. Clough Geo. A. Clough

EXAMINER: Everett M. Bryan, Deputy Chief of Division of
Water Rights.

O P I N I O N

On September 12, 1919, a license was issued on Permit Number 145,
Application Number 322 to Clarence V. Clough (assigned to Nellie V. Clough
confirming the right of
on December 17, 1925)/licensee to appropriate 480 acre feet per annum from
the waters of Mill Creek, without storage, for agricultural purposes on
300 acres of land lying in the E¹/₄ of Section 14, T. 25 N. R. 2 W. The period
of diversion under the license was from January 1st to June 1st of each year.

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On April 12, 1922, a permit was issued to George A. Clough on Application Number 1861 allowing the permittee to appropriate for agricultural purposes 16 cubic feet per second of the waters of Mill Creek. The diversion dam of reinforced concrete had already been constructed and the only construction work to be done under the permit was the enlargement of an existing ditch and the construction of new laterals. The areas to be irrigated under the permit were as follows:

S $\frac{1}{4}$	Section 2, T 25 N, R 2 W,	160 acres
E $\frac{1}{4}$	" 14, " "	320 "
NW $\frac{1}{4}$	" 14, " "	160 "
N $\frac{1}{4}$	" 12, " "	320 "
SE $\frac{1}{4}$	" 12, " "	160 "
NW $\frac{1}{4}$	" 23, " "	160 "
Total		1280 acres

Under the terms of the permit the use of water was to begin about April 1st and end about August 1st of each year. Actual construction work was to begin on or before September 1, 1922, and be completed on or before July 1, 1924. Complete application of the water to beneficial use was to be made on or before July 1, 1924. The permit was issued subject to that certain decree of the Superior Court of the State of California in and for the County of Tehama entered August 16, 1920, in the case of Los Molinos Land Company a corporation, and Coneland Water Company a corporation, Plaintiffs vs. Clarence V. Clough et al, Defendants.

The paragraph of the Decree relating to the rights of George A. Clough is as follows:

"The Defendant George A. Clough at all times when the gross flow of said river as hereinabove defined shall be as much as two hundred and three (203) cubic feet per second will be entitled to divert from said river eleven (11) cubic feet per second, continuous flow, and at all times when such gross flow shall be less than two hundred and three (203) cubic feet per second but not less than two hundred (200) cubic feet per second will be entitled to divert from said river eight (8) cubic feet per second plus the

whole amount of any additional water at such times flowing in said river over and above two hundred (200) cubic feet per second; and at all times when such gross flow shall be less than two hundred (200) cubic feet per second, but not less than one hundred and eighty (180) cubic feet per second, will be entitled to divert from said river seven (7) cubic feet per second, continuous flow; and at all times when such gross flow shall be less than one hundred and eighty (180) cubic feet per second but not less than one hundred and fifty (150) cubic feet per second will be entitled to divert from said river six (6) cubic feet per second, continuous flow; and at all times when such gross flow shall be less than one hundred and fifty (150) cubic feet per second will be entitled to divert from said river five (5) cubic feet per second continuous flow".

Paragraph VI of the Decree reads as follows:

"The defendant Clarence V. Clough prior to the commencement of this action pursuant to a permit granted by the State Water Commission of the State of California had duly acquired by appropriation a right to divert from said river in each calendar year until but not after the first day of June for the benefit of the tract of land described in his answer and cross complaint a total of four hundred and eighty (480) acre feet of water and had beneficially used on said land said quantity of water. Said right of said Clarence V. Clough is subordinate and subject to the rights in respect to the waters of said river hereinabove declared and adjudged to be vested in the parties above named other than himself".

On May 30th and 31st 1924 an inspection of construction and use under Application 1861 Permit No. 1028, was made by an engineer of the Division accompanied by Mr. George A. Clough. The report of this inspection on file in the office of the Division is to the effect that no new construction had proceeded under this permit. The concrete diversion dam and a ditch leading to the land to be served had been constructed prior to the issuance of Permit No. 1028 and used in connection with the decreed rights of permittee heretofore mentioned and License No. 59 of Nellie V. Clough.

No use was being made of water under the permit at the time of inspection. The use under the permit was reported desultory and of doubtful benefit. It appeared that small distributing ditches or furrows were being used on the South half of Section 2 in order to secure a more equal

distribution of the water. The land in Section 23 had not been acquired by permittee and no effort had been made to serve it. Permittee claimed that water had been used upon the E $\frac{1}{2}$ and the NW $\frac{1}{4}$ of Section 14 and upon those lands in the NW $\frac{1}{4}$ of section 12 lying west of the main ditch but there was no evidence of distributing laterals and at best the water could only be said to have been allowed to find its way westward from the main ditch across very uneven uncultivated land along the depressions - the permittee claiming that he had derived benefit therefrom by the encouragement of a growth of pasturage. No provision had been made to irrigate any land in the E $\frac{1}{2}$ of Section 12. Permittee claimed that some work had been done upon the enlargement of the main canal.

Permittee stated at the time of this inspection that he would petition for a change in place of use to include certain lands north of Mill Creek and was asked to submit a map showing more accurately the lands which were susceptible of irrigation and which it was intended to irrigate under the permit. This petition and map were never presented and action on permittee's request for an extension of time within which to complete construction and use was therefore held in abeyance.

On September 25, 1925, a second inspection was made by an engineer of the Division of construction and use under this permit. He reported construction work remained approximately as found at the time of inspection the previous year. This was not the season of use under the permit but 6.2 second feet were being diverted presumably under the decreed rights of permittee. The report of this inspection shows that the ranch superintendent stated that a maximum of 12 second feet had been diverted in the spring, and that permittee had irrigated a total of 580 acres in Sections 2, 12, 13, and 14 and 50 acres

mouth of Mill Creek in Section 2. It appears however that use upon lands described in the permit was limited to 160 acres in the South half of Section 2, 120 acres in the $\frac{1}{2}$ E $\frac{1}{2}$ Section 14 and an indeterminate amount in the $\frac{1}{2}$ Section 12.

On May 2, 1926, another inspection was made of the projects under License Number 59 and Permit Number 1028 and according to the report of the inspecting engineer, the $\frac{1}{2}$ NE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 14, T. 25 N., R. 2 W. was fenced and an effort had been made during the past spring to cultivate it. Water was running through the ditch to this parcel of land and was turned out upon it, finding its way in the depressions and not wetting the higher portions of the land and it appeared that not more than 15 to 25% of the area was receiving any benefit from the water. The water was flowing on westward across the $\frac{1}{2}$ NW $\frac{1}{2}$ of the NE $\frac{1}{2}$ and a portion of the $\frac{1}{2}$ SW $\frac{1}{2}$ of the NE $\frac{1}{2}$ of the section and it appeared doubtful that any larger proportion of those two forties was receiving any benefit from the water. There was no water flowing south of these three forties although there was indication of a ditch leading south as far as the East and West center line of the section. There was no evidence of any cultivation or attempt to irrigate the $\frac{1}{2}$ S $\frac{1}{2}$ or the $\frac{1}{2}$ E $\frac{1}{2}$ of Section 14 and it appeared evident that water could not be delivered to the extreme south end of the $\frac{1}{2}$ of the section by the means which had been provided. Water was being run to and upon the $\frac{1}{2}$ S $\frac{1}{2}$ of the $\frac{1}{2}$ S $\frac{1}{2}$ of Section 2, T. 25 N., R. 2 W., M. D. B. & M. This parcel of land not only had lateral ditches across it but also had been plowed with furrows about 10 to 15 feet apart which furrows distributed the water rather evenly. This area was uncultivated and used for pasture only. There were twenty acres in the $\frac{1}{2}$ of section 12 of the same township

and range below the constructed ditch which were susceptible of irrigation from the ditch but there was no evidence that water had been used on the quarter section at any time and the land was unprepared. No attempt had been made to irrigate the remaining portions of this section which are under the permit and in fact the remaining portion could not be irrigated except by pumping. No ditch had ever been constructed to the NW $\frac{1}{4}$ of Sec. 23 of this township and range and therefore no beneficial use had been made under this permit. The water which had been turned loose from the ditches to the east had found its way westward through the depressions across portions of the NW $\frac{1}{4}$ of Section 14 of this township and range.

The inspecting engineer also stated that the use had been desultory and of doubtful benefit due to the fact that there was no evidence that the land had ever been prepared to receive the water, it was doubtful that more than 25% and certainly not more than 50% could ever have received any benefit from irrigation by the means provided. The lands were used for pasture only.

The use being of doubtful benefit and incomplete, a hearing was set upon the license and permit to be held in the Supervisor's Room in the Court House at Red Bluff at 10:00 A. M. May 3, 1926, at which the licensee and permittee were required to show cause why the license should not be revoked for ceasing to apply the water to beneficial use and why the permit should not be revoked for failure to comply with the terms thereof.

Geo. A. Clough appeared at the hearing on behalf of himself and the licensee and sworn testimony was introduced by him and by the examiner through Mr. C. D. Conway, engineer of the Los Molinos Land and Water Co. who has kept a record of the measured diversions through the ditch in

is question since 1916.

It appears that water has been diverted for and used upon the $\frac{1}{4}$ of Section 14 during recent years as contemplated in License No. 59. An effort has been made to cultivate the $\frac{1}{4}$ of the $\frac{1}{4}$ of this section. It appears doubtful that the entire 320 acres described in this license can be irrigated by the works provided but the evidence presented is insufficient to justify any action being taken at this time toward revoking the license. The licensee did consent however that this area should be eliminated from Permit No. 1028 - it being sufficient to have it served under License No. 59.

It appears that the use in the $\frac{1}{4}$ of Section 14, the $\frac{1}{4}$ of Section 2, and the $\frac{1}{4}$ of Section 12 has been as reported at the time of inspection by engineers of the Division. The use upon the 160 acres in the $\frac{1}{4}$ of Section 2 is rather complete and satisfactory on account of the distributing ditches provided. It is probable that not more than 20 acres have been irrigated in the $\frac{1}{4}$ of Section 12, the remaining portion of this section described in the permit being either above the ditch or not susceptible of irrigation because of inequalities in the ground surface. Of the 160 acres in the $\frac{1}{4}$ of Section 14 it is probable that not more than 25% and certainly not more than 50% have been irrigated or are susceptible of irrigation on account of inequalities in ground surface. It is our conclusion therefore that not more than 260 acres as last described above have been irrigated under Permit No. 1028 and that the amount to which right should be confirmed through the issuance of a license on this permit should be limited accordingly on the basis of one second foot to each eighty acres to the gross amount of 3.25 cubic feet per second.

This amount should not be considered as being in addition to the prior rights claimed by permittee under court decree heretofore mentioned and License No. 59 of this office issued upon Application No. 322 - in fact permittee appears not to have distinguished between these various rights in his diversions from Mill Creek. The records of diversion through the so called South Clough Ditch (which is the one described in this permit) as reported by Engineer Conway show that only once have the diversions through this ditch exceeded the amount decreed to permittee in the court decree heretofore mentioned, and that was during the month of July 1917. At various times permittee has diverted in excess of the amount decreed to him when the flow was less than 203 second feet which was the total of the decreed rights on the stream. Such diversions were in technical violation of the decree and therefore in violation of the terms of Permit No. 1028. However, as no complaint has been made to the Division it would appear there was no serious violation of prior vested rights.

Mr. Conway's report of measured diversions on this ditch do not substantiate the claim of permittee that he has enlarged it since permit was issued. As a matter of fact the maximum measured diversions through the ditch have decreased from 14.3 second feet in July 1917 to a maximum of 7.5 second feet during the three years 1923, 1924 and 1925. It appears clear from the sworn testimony and data presented by Mr. Conway that the maximum diversion through the ditch during the three years 1923, 1924, and 1925 was 7.5 second feet and that this is the limit of the rights which can be claimed under the decree, License No. 59 and Permit No. 1028, which facts should be so stated in any license to be issued upon Application 1861 Permit No. 1028.

As to the season of use under Permit No. 1028 there is no clear showing. The record of diversions kept by Mr. Conway shows the ditch was in operation during the period April 1st to August 1st in the years 1923, 1924 and 1925 and it therefore appears for lack of better evidence, that license issued upon Permit No. 1028 should confirm the right to divert during this period which is the season of diversion named in the permit.

ORDER

A joint hearing having heretofore been held in accordance with the provisions of Section 20 of the Water Commission Act upon Application No. 322 Permit 145, License 59 and Application No. 1861, Permit No. 1028 in the matter of revoking said license and said permit on the grounds that licensee had ceased to put the water to beneficial use and permittee had failed to comply with the terms and conditions of the permit, the Division of Water Rights now being fully informed in the premises and good cause appearing therefor

IT IS HEREBY ORDERED that said Application No. 322, Permit No. 145, License No. 59 be allowed to maintain its present status until further order is entered, and

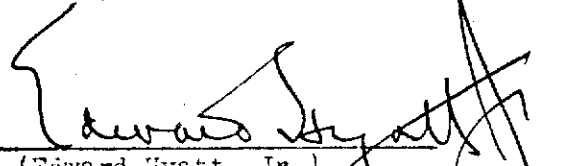
It Is Further Ordered that license be issued upon Application 1861, Permit 1028 confirming the right of licensee under said application, permit and license to appropriate not to exceed 3.25 cubic feet per second during the period from about April 1st to about August 1st of each season for the irrigation of lands in the South half of Section 2, the Northwest quarter of Section 12 and the Northwest quarter of Section 14, Township 25 North, Range 2 W., M.D.B. and M., under a priority as of June 12, 1920 and,

It Is Further Ordered that there be endorsed upon the face of said license a notation to the effect that during the years 1923, 1924 and 1925 not to exceed seven and one half (7.5) cubic feet per second were diverted

and 1861 which amount is therefore the maximum beneficially used during said period by means of such works under rights initiated by said Applications 322 and 1861 or claimed by court decree, or otherwise.

Dated at Sacramento, California, this 19th day of October

1926.


(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS.

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