

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20400 )  
of Raymond R. and Mary M. Early )  
to Appropriate from Ruby Hill Spring )  
in Tuolumne County )

Decision D 1192

ADOPTED AUG 18 1964

DECISION APPROVING APPLICATION

Raymond R. and Mary M. Early having filed Application 20400 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 20400 is for a permit to appropriate 5,000 gallons per day by direct diversion year-round for irrigation, domestic, fire protection, and fish culture purposes from Ruby Hill Spring in Tuolumne County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 17, T3N, R16E, MDB&M.

2. Ruby Hill Spring rises at an approximate elevation of 3,200 feet. Water from the spring flows through a channel in

a general northerly direction approximately 1,500 feet to Grub Gulch. Grub Gulch continues in a general northwesterly direction approximately 500 feet to join Rose Creek. The spring flows year-round at an approximate rate of four gallons per minute.

3. The applicants propose to construct a concrete box at the spring and divert the water through approximately 600 feet of pipe for the irrigation of two acres of pasture, for use at two homes, and for fish culture and fire protection purposes.

4. Protests were filed by Charles M. Pruden and E. J. Norris. Each owns an undivided one-half interest in a 40-acre mining claim within which the spring is located. They use the water from the spring for domestic, mining, and irrigation purposes.

5. The flow from the spring is usually sufficient to satisfy the needs of the protestants and the uses proposed by the applicants.

6. There is unappropriated water available to supply the applicants, 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.

7. The intended use is beneficial.

8. Protestants' main objection to approval of the application is to the applicants installing a conduit from the spring across their property. As authority to cross the protestants' property, the applicants rely on alleged permission from Arthur D. Mulligan to whom rights in the property have been

transferred from the protestant, Norris. The nature and extent of these rights are not clear, and no answer has been received to letters addressed to these parties seeking further information as to the rights transferred. However, this controversy is not within the jurisdiction of the Board, and the permit to be issued should contain a clause stating that its issuance should in no way be construed as conferring upon permittee right of access to the point of diversion.

From the foregoing findings, the Board concludes that Application 20400 should be approved.

The records, documents, and other data relied upon in determining the matter are: Application 20400 and all relevant information on file therewith, particularly the report of the field investigation made November 5, 1963, and United States Geological Survey, "Long Barn," 15-minute quadrangle.

#### ORDER

IT IS HEREBY ORDERED that Application 20400 be, and it is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 5,000 gallons per day by direct diversion year-round. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual construction work shall begin on or before December 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

6. 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.

7. 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.

8. Permittee shall allow representatives of the State Water Rights Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

9. The issuance of this permit shall not be construed as conferring upon permittee right of access to the point of diversion.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this                    day of                    , 1964.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

/s/ Ralph J. McGill  
Ralph J. McGill, Member

/s/ W. A. Alexander  
W. A. Alexander, Member