

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23778
of RICHARD R. and NEVADA S. LEWIS
and Application 23795 of
MOSCO F. SMART to Appropriate from
Wixon Spring and Unnamed Spring in
Sierra County.

Decision 1388

DECISION APPROVING APPLICATIONS

Richard R. and Nevada S. Lewis and Mosco F. Smart having respectively filed Applications 23778 and 23795 for permits 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of Applications

1. Application 23778 is for a permit to appropriate 0.06 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year for irrigation, domestic, recreation and fire protection from Wixon Spring and an unnamed

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spring in Sierra County. The points of diversion are to be located within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 28, T20N, R12E, MDB&M.

1a. Application 23795 is for a permit to appropriate 0.02 cfs by direct diversion from January 1 to December 31 of each year for domestic purposes from Wixon Spring and an unnamed spring in Sierra County. The points of diversion are to be located within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 28, T20N, R12E, MDB&M.

Applicants' Projects

2. Applicants Robert R. and Nevada S. Lewis (Application 23778) and Mosco F. Smart (Application 23795) propose to divert and convey the water applied for through existing joint use facilities located in part on forest service land and on land owned by Henry and Sophie Tschopp, who hold Permit 15665. The attached sketch map depicts the diversion and conveyance system and indicates the facilities that are or will be jointly used by the several claimants to water from the two springs.

Protestants' Use of Water

3. Claim of right and use of water by protestants Verne J. Veale, et al. is the same as previously considered in connection with their protests against Application 23329 of Larson and Sills (Decision 1384) and against Application 22265 of Tschopp (Decision 1300). They contend that the proposed appropriations will interfere with use of water by Sierra City and the Kentuck Mine under claimed pre-1890 appropriative and

riparian rights. Sierra City diverts from Schubert Spring which is located in a different ravine some distance away from the springs named in these applications; there is no evidence that the proposed appropriations would have any effect on Sierra City's water supply.

On October 8 when the field investigation of this matter was conducted, the water diverted into Veale's Kentuck Mine 7-inch pipe from Wixon Spring was measured at 20 gallons per minute (gpm) and the water reaching and flowing into the 1,000-gallon-wooden tank at Kentuck Mine was measured at 11.54 gpm. The calculated loss in the pipeline amounting to 8.45 gpm is accounted for by rusty pipe which for the most part is buried below large shale rocks.

Use by protestants of the 11.54 gpm reaching Kentuck Mine appeared to be only for keeping the wooden storage tank at the mine full of water as a standby fire control supply, and for domestic drinking water necessary for about four persons during the short period of time each year when minimum assessment work is being done to keep the mining claim in good standing. Domestic requirements for four persons should not exceed about 200 gallons per day. At the time of the investigation, the 11.54 gpm was overflowing at the Kentuck Mine storage tank and sinking into the ground.

Availability of Unappropriated Water

4. The total flow available from Wixon Spring and the unnamed spring on October 8, 1971, was determined to be 78 gpm, which is considered to be representative of the low flow of the springs.

A summary of the claims to water from Wixon Spring and the unnamed spring follows:

	<u>cfs</u>	<u>gpm</u>
Tschopp, Permit 15651 (Application 22265)	0.06	27
Larson & Sills permit ordered by Decision 1384 (Application 23329)	0.025	11
Lewis (Application 23778) pending	0.06	27
Smart (Application 23795) pending	0.02	9
	<hr/>	<hr/>
Totals	.165	74

The difference between the 78 gpm total flow from the two springs and the 74 gpm total of permits and applications (four gpm) exceeds the quantity of water reasonably required for the beneficial use being made by Veale, et al., under a reasonable method of diversion and use.

5. Unappropriated water is 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.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 23778 and 23795 should be approved and that permits should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 22265, 23329, 23778 and 23795 and all relevant information on file therewith, particularly the report of a field investigation made October 8, 1971.

ORDER

IT IS HEREBY ORDERED that Applications 23778 and 23795 be, and they are, approved, and that permits be issued to the respective applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.06 cubic foot per second under Application 23778 and 0.02 cubic foot per second under Application 23795 by direct diversion to be diverted from January 1 to December 31 of each year.

The equivalent of the continuous flow allowance by direct diversion for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

The maximum amount diverted shall not exceed 43 acre-feet per year under Application 23775 and 10 acre-feet per year under Application 23795.

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

3. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control 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 Resources Control 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.

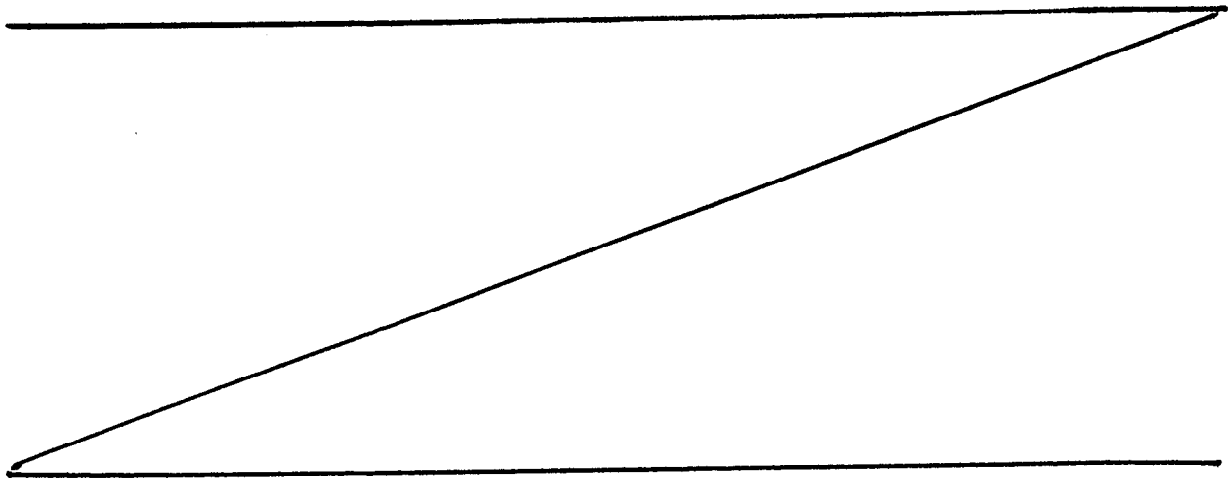
8. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant

to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. Permittee shall allow representatives of the State Water Resources Control 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.

11. No water shall be diverted for use by permittee until a measuring device satisfactory to the State Water Resources Control Board has been installed in order that accurate measurement can be made of the quantity of water diverted for his use. Thereafter, such device shall be properly maintained.

12. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.



Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: January 6, 1972

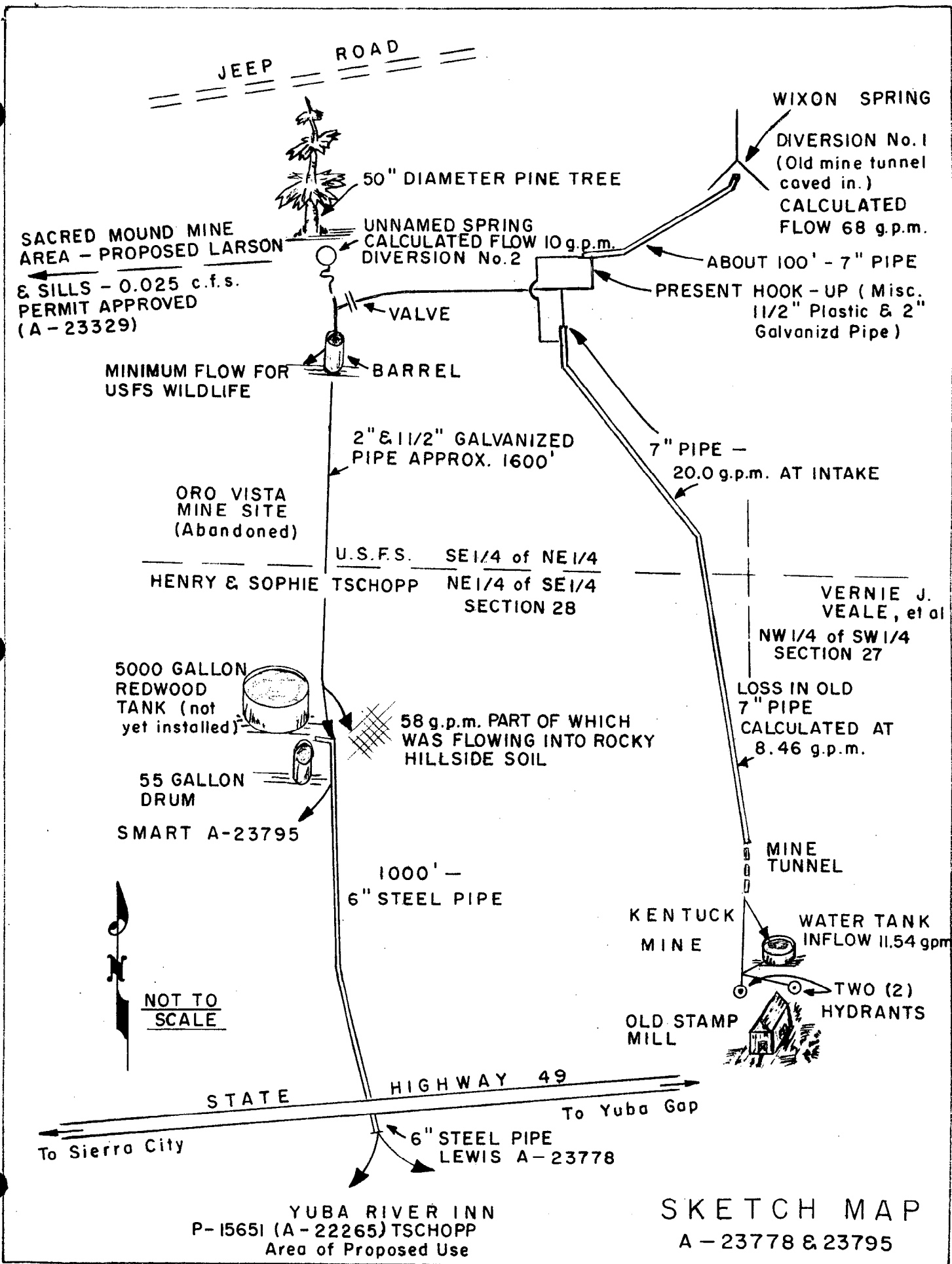
KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member



SACRED MOUND MINE
 AREA - PROPOSED LARSON
 & SILLS - 0.025 c.f.s.
 PERMIT APPROVED
 (A - 23329)

WIXON SPRING
 DIVERSION No. 1
 (Old mine tunnel
 caved in.)
 CALCULATED
 FLOW 68 g.p.m.

UNNAMED SPRING
 CALCULATED FLOW 10 g.p.m.
 DIVERSION No. 2

ABOUT 100' - 7" PIPE
 PRESENT HOOK - UP (Misc.
 1 1/2" Plastic & 2"
 Galvanizd Pipe)

MINIMUM FLOW FOR
 USFS WILDLIFE

2" & 1 1/2" GALVANIZED
 PIPE APPROX. 1600'

7" PIPE -
 20.0 g.p.m. AT INTAKE

ORO VISTA
 MINE SITE
 (Abandoned)

U.S.F.S. SE 1/4 of NE 1/4
 HENRY & SOPHIE TSCHOPP NE 1/4 of SE 1/4
 SECTION 28

VERNIE J.
 VEALE, et al
 NW 1/4 of SW 1/4
 SECTION 27

5000 GALLON
 REDWOOD
 TANK (not
 yet installed)

58 g.p.m. PART OF WHICH
 WAS FLOWING INTO ROCKY
 HILLSIDE SOIL

LOSS IN OLD
 7" PIPE
 CALCULATED AT
 8.46 g.p.m.

55 GALLON
 DRUM

SMART A-23795

1000' -
 6" STEEL PIPE

MINE
 TUNNEL

KENTUCK
 MINE

WATER TANK
 INFLOW 11.54 gpm

TWO (2)
 HYDRANTS

OLD STAMP
 MILL

NOT TO
 SCALE

STATE HIGHWAY 49
 To Sierra City To Yuba Gap
 6" STEEL PIPE
 LEWIS A-23778

YUBA RIVER INN
 P-15651 (A - 22265) TSCHOPP
 Area of Proposed Use

SKETCH MAP
 A - 23778 & 23795