

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25016 )  
to Appropriate from an Unnamed )  
Spring in Placer County, )

RUDOLF K. and PATRICIA A. SACHAU, )

Applicants, )

CARL and MARY WAHLBERG, ET AL. )

Protestants. )

Decision 1494

DECISION APPROVING APPLICATION 25016

BY THE BOARD:

Rudolf K. and Patricia A. Sachau (applicants) having filed Application 25016 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before Board Member Adams on February 16, 1978; the applicants and protestants having appeared and presented evidence; the evidence received into the record having been duly considered; the Board finds as follows:

Substance of Application

1. Application 25016 is for a permit to appropriate 1,000 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic, stockwatering and fire protection uses from an unnamed spring tributary to Peavine Creek, thence North Fork of the Middle Fork of the American River. The point of diversion is located within the NW 1/4 of SE 1/4, Section 16, T14N, MDB&M, which is located within the Tahoe National

Forest. The place of use is one acre within SE 1/4 of SW 1/4, Section 16, T14N, R12E, MDB&M and three acres within SW 1/4 of SE 1/4 of said Section 16.

### Applicants' Project

2. Applicants own a residence and a duplex (rental) on the four acres which is the proposed place of use. Presently, applicants hold License 5447B which authorizes the direct diversion of 220 gpd for domestic purposes, or 32,500 gpd total for domestic and fire protection purposes, from the same point of diversion as is proposed by the existing application. The total amount diverted for combined domestic and fire protection uses under License 5447B and License 5447A (an entitlement owned by protestants Carl and Mary Wahlberg) is limited to 32,500 gpd.<sup>1/</sup> The purpose of Application 25016 is to provide applicant with sufficient water to rent the duplex, to raise four to six head of cattle and assorted fowl, and to irrigate a garden; License 5447B provides sufficient water for applicants' use within its residence. Since the existing diversion facilities under License 5447B would be utilized for the diversion of water under Application 25016, if approved, no construction is contemplated by the applicant.

### Protests

3. Protests against the approval of Application 25016 were filed as follows:

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1. The relationship of License 5447A to the instant application will be more fully explained infra.

Carl and Mary Wahlberg;<sup>2/</sup> Gladys Caples; Roy A. Tompkins, Jr.; George F. and Lydia G. Meyers; Robert and Roberta McKinley, Gary and Louise Eiler; James and Mary Green; Marshall M. Long; Thomas G. Moon; Delb W. Daniel; Charles R. Shaw; Thomas A. L. McGlynn; Mr. and Mrs. Jerry Newfeld; George Sanderson; and Dennis C. Fields.

4. Protestant Wahlberg protested on the ground of injury to his vested right to divert water from an unnamed spring in accordance with License 5447A. Protestant Wahlberg owns the Flite Strip Resort, Inc., which is the place of use for License 5447A. Protestant Caples protested on the ground that the approval of Application 25016 would not be in the public interest; Protestant McKinley protested on the ground that the approval of Application 25016 would be contrary to law; all other protestants protested on the grounds that the approval of Application 25016 would be both contrary to law and not in the public interest. In addition, protestant Tompkins, protestant Meyers, and protestant Green protested on the ground of adverse environmental impact. In answer to the protests, applicants generally deny the above allegations.

5. Protestant Wahlberg holds License 5447A which authorizes year-round direct diversion of 32,500 gpd for domestic and fire protection purposes from an unnamed spring tributary to Peavine Creek with a limit on domestic use of 10,780 gpd. The

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2. Bill L. Disbrow filed this protest. Carl and Mary Wahlberg have succeeded to the interest of Bill L. Disbrow.

total diverted for combined domestic and fire protection uses under Licenses 5447A and 5447B is limited to 32,500 gpd. The point of diversion is within NE 1/4 of SW 1/4, Section 16, T16N, R12E, MDB&M. The place of use is within the SE 1/4 of SW 1/4 and SW 1/4 of SE 1/4, both of Section 16, T16N, R12E, MDB&M. Protestant Wahlberg alleges injury to his vested right under License 5447A. However, that license does not authorize use from the spring which is proposed as the source for Application 25016. The previous licensees, Bill L. and Fay Disbrow, under License 5447A petitioned the Board to add as a point of diversion the spring, which is proposed to be the source under Application 25016. That petition is to be denied, because the U. S. Forest Service refused to grant access for any new conveyance works and because the Board had determined that it was in the public interest to split License 5447 and to grant applicant a change in point of diversion to the spring which is proposed to be the source under Application 25016. The purpose of the Board's action was to avoid frequent conflict between the parties.

6. Protestant Meyers appeared at the hearing held on this matter and made the following points in support of her contention that Application 25016 should not be approved:

a. The water sought to be appropriated is not needed by applicants; a well on the applicants' property along with applicants existing License 5447B supply sufficient water for the applicants' needs because there is only one permanent resident on the property now.

b. The water sought to be appropriated will be used in structures which are not authorized under the zoning laws of Placer County. Protestant Meyers introduced into evidence copies of a portion of a zoning ordinance of Placer County and several entitlements for use.

c. The applicants have caused environmental damage by the construction of an illegal road to the spring even though another road existed which would have provided the necessary access to the spring.

d. The applicants have diverted and used water from the spring in excess of their entitlements under License 5447B.

e. It is not in the public interest to allocate this water to the applicants when another entity, Flite Strip Resort, Inc., which provides services to many persons, needs the water.

7. The Board's findings regarding the contentions of protestant Meyers are as follows:

a. The evidence on the need for the water is disputed. Evidently there is presently only one permanent resident on the applicants' property. However, applicants propose to use in a reasonable and beneficial manner the additional water sought by Application 25016 and there is no reason to believe that they will not carry out their proposal. Furthermore, while the existence of alternative sources of supply, such as groundwater, is relevant to our action on an application, there are several advantages to a surface diversion such as a reduced reliance on electricity or other

energy sources to pump groundwater. Finally, applicants contend that the present yield of their well is too low to support both parties' uses and this information was not disputed.

b. At the hearing it became evident that the issue of conformance to local land use regulations could not be resolved without checking with the County of Placer to assure that the record was complete. The record was held open for ten additional working days to allow staff to contact the County of Placer. The County of Placer was contacted and initially the information received was inconclusive as to whether the applicants were proceeding in violation of County zoning ordinances. By a letter dated August 31, 1978, the Department of Public Works of the County of Placer informed the Board that the applicants were serving water to some illegal structures.<sup>3/</sup> However, the County of Placer conducted a subsequent inspection of applicants' property and concluded by letter to the Board dated October 17, 1978, that all items which were cause for their original rejection had been clarified. The County of Placer requested that Application 25016 be approved.

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3. Since this letter was received after the close of the hearing record, and since it was relevant to Board action on the pending application, the Board advised the applicants and protestants on October 5, 1978, that it would reopen the hearing record for the limited purpose of accepting this letter and any comments they may have regarding it. The applicants and protestants were given 20 days to submit such comments. The County of Placer submitted a letter dated October 17, 1978, at the request of the applicants.

c. Assuming the contention regarding an illegal road is true,<sup>4/</sup> the Board finds that it is not relevant to this application.

d. Contrary to protestant Meyers' contentions, there is nothing within the files, reports of the Board, or knowledge of the Board's employees that indicates a diversion of water by the applicants in excess of their entitlements; rather, the Reports of Licensee, that are sworn to under penalty of perjury, indicate compliance with the terms and conditions of License 5447B. Article 17.3, Subchapter 2, Chapter 3 of Title 23, California Administrative Code, contains a procedure for resolving contentions regarding the violation of any term or condition of a permit or license. If protestant Meyers possesses substantial evidence of such a violation by the applicants, this procedure is available to her.

e. Whether the approval of Application 25016 is in the public interest will be discussed infra.<sup>5/</sup>

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4. Applicants did not attempt to rebut the evidence against them, even though Section 733(h), Article 14, Subchapter 2, Chapter 3 of Title 23, California Administrative Code, allows such rebuttal. Consequently, there was no dispute in the evidence.
  5. Protestant Meyers and Wahlberg were the only protestants who made an appearance at the hearing. Protestant Wahlberg was assisted with the testimony of Bill L. Disbrow, the previous owner of Flite Strip Resort, Inc.

### Existence of Unappropriated Water

8. The unnamed spring which is proposed to be the source under Application 25016 has been developed into a small pond that is fenced to prevent cattle from contaminating the water. A pump covered by a shed diverts the water from the pond to a 3-inch diameter pipe for delivery to the place of use. On September 7, 1976, the Forest Hydrologist of the Tahoe National Forest visited the point of diversion. He estimated the surface inflow to be about one gallon per minute (1,440 gpd). He could not determine the extent of subsurface seepage, if any, into the pond. The outflow was estimated to be also one gallon per minute. Since the existing demand is 220 gpd and since the requested amount is 1,000 gpd, it is likely that more than 1,220 gpd was available in September 1977. Moreover, since this flow was measured in September after a year of drought, it is evident that the unnamed spring has more than sufficient water for the proposed appropriation.

9. The intended use is beneficial.

### Public Interest Considerations

10. The community of interest of all the protestants is that they use the Flite Strip Resort and protestant Meyers' argument is essentially that by authorizing protestant Wahlberg, dba Flite Strip Resort, Inc., to divert and use the water from the unnamed spring the interests of the general public rather the private interests of the applicant will be served. In other factual



situations we might find this analysis persuasive. However, here protestant Wahlberg does not have a reasonable expectation of acquiring the necessary access to the unnamed spring because the Tahoe National Forest administers this property owned by the United States and has denied protestant Wahlberg access thereto. In addition, the quantity available from the spring appears to be insufficient to supply both parties and any joint operation by the parties may lead to the same conflict that was resolved by splitting the original license and approving applicants' petition to change the point of diversion under License 5447B to the spring which is proposed to be the source under Application 25016. For these reasons the Board denied the petition of protestant Wahlberg to add this unnamed spring as a point of diversion under License 5447A.

Findings Concerning the California Environmental Quality Act

11. The Secretary for Resources has exempted from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) that class of projects which are defined as Minor Alterations to Land in Section 15104, Article 8, Chapter 3 of Title 14, California Administrative Code. Said Section 15104 states in part:

"Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes...."

12. As earlier stated, the applicant's project contemplates the use of existing diversion facilities. Since the

only change is to increase the use of water for domestic purposes by a thousand gallons per day, the applicants' project is a minor alteration to land as defined in said Section 15104.

13. From the foregoing findings, the Board concludes that Application 25106 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 25016 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard terms\* and the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1,000 gallons per day to be diverted from January 1 to December 31 of each year. The maximum amount diverted shall not exceed 1.12 acre-feet per year.

Dated: April 19, 1979

/s/ W. DON MAUGHAN  
W. Don Maughan, Chairman

/s/ WILLIAM J. MILLER  
William J. Miller, Member

\* The Board maintains a list of standard permit terms. Copies of these are available upon request.

/s/ L. L. MITCHELL  
L. L. Mitchell, Member