

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24634)
to Appropriate from an Unnamed Stream)
Tributary to Browns Creek)

HELEN A. JOHNSON,)

Applicant,)

SHELDON M. AND MARY FIGOTEN,)

Protestants)

Decision: 1510

Source: Unnamed Stream

County: Trinity

DECISION APPROVING APPLICATION

BY THE BOARD:

Helen A. Johnson having filed Application 24634 for a permit to appropriate unappropriated water; a protest having been received; the applicant 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 the Application

1. Application 24634 is for a permit to appropriate 0.04 cubic foot per second (about 25,920 gallons per day) by direct diversion from April 15 to October 15 for irrigation, domestic and stockwatering purposes. The application is also for direct diversion of 545 gallons per day for the remainder of the year for domestic and stockwatering purposes. The application covers two points of diversion from an unnamed stream tributary to Browns Creek in Trinity County. The first point of diversion is within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 15, and the second is within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 14, T32N, R10W, MDB&M. The maximum annual diversion is not to exceed 12 acre-feet per annum.

Applicant's Project

2. The applicant has installed a small sump in the stream at the first diversion point and conveys water to her property via a 1.5 inch diameter, 1,000 foot long, plastic pipe for domestic use, irrigation of a lawn and small garden, and for stockwatering. This diversion point is on Southern Pacific Land Company property, but the Company has permitted encroachment for a water pipeline. She also proposes to divert water from the second diversion point into an old ditch for irrigation of 5½ acres.

Protest

3. Sheldon M. and Mary Figoten protested Application 24634 on the basis of injury to vested rights covered by Statement of Water Diversion and Use S8533. They have reported approximate use of 520,000 gallons per annum for 1975, 1976, and 1977. The protestants' point of diversion is on the same unnamed stream and is about 8 feet upstream of the applicant's existing first point of diversion. This diversion point is also on Southern Pacific Land Company property and the protestants also have an encroachment permit from the Company. They use the water at a permanent residence, irrigate about a quarter-acre of grass, and water about a dozen chickens. Mr. Figoten stated that he has no intention of increasing the area served. About 700 feet of the protestants' property borders the source stream. Protestants expressed concern regarding damage to the riparian vegetation.

Availability of Unappropriated Water

4. The drainage area above the applicant's diversion point is about 200 acres of relatively steep wooded terrain. Flow in the stream below the protestants' diversion on September 30, 1975, was measured to be 25 gallons per minute while 4.3 gallons per minute was being diverted by the protestants. Therefore, the total flow reaching the protestants was about 30 gallons per

minute. A previous measurement in June 1974 was 28 gallons per minute. Runoff in 1974 and 1975 was above normal, so neither of the measured flows can be expected to occur on a sustained basis. However, statements made during the field investigation indicate that there is always flow in the stream.

5. The applicant's and protestants' properties both border Browns Creek, which carries a flow many times that in the source stream, and both parties are apparently riparian. Accordingly, they both have alternate sources.

6. According to the protestants, water is kept flowing continuously in their pipeline either to the lawn or the garden to prevent freezing of the line in the winter and to avoid overheating of water in the black plastic pipe in the summer. The protestants could protect the riparian vegetation by diverting only the quantity of water they use beneficially. Moreover, underflow in the stream would probably continue to supply water to most of the riparian vegetation. Protestants' use of water is wasteful.

Environmental Considerations

7. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

The State Board has reviewed and considered the information in the Negative Declaration.

Other Considerations

8. Any permit issued to the applicant under Application 24634 is junior to the riparian rights of the protestants. In addition, the protestants are slightly upstream from the applicant and can take the water they need before it reaches the applicant.

9. The records, documents, and other data relied upon in determining this matter are: Files of Application 24634 and Statement of Water Diversion and Use S8533 and all relevant information on file therewith, particularly the Engineering Staff Analysis of Record dated November 21, 1975.

Conclusions

From the foregoing findings, the Board concludes that unappropriated water is available, that the protestants have the physical capability to take their supply prior to the applicant should a shortage occur and that approval of the application will not cause adverse environmental effects.

ORDER

IT IS HEREBY ORDERED that Application 24634 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (5b, 6, 7, 8, 9, 10, 11, 12, and 13)* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed:

(a) 0.04 cubic foot per second by direct diversion from April 15 to October 15 of each year for irrigation, domestic and stockwatering purposes.

(b) 545 gallons per day by direct diversion from October 16 of each year to April 14 of the succeeding year for domestic and stockwatering purposes.

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

1. (cont.)

The maximum amount diverted under this permit for all uses shall not exceed 12 acre-feet per year.

2. Construction of the project and complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. Permittee shall not exercise any other existing right to the use of water named herein so long as this permit or any license issued pursuant thereto remains in effect.

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

Dated: JUNE 21, 1979

/S/ W. DON MAUGHAN

W. Don Maughan, Chairman

/S/ WILLIAM J. MILLER

William J. Miller, Member

/S/ L. L. MITCHELL

L. L. Mitchell, Member

/S/ CARLA M. BARD

Carla M. Bard, Member

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