

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25255)

ROBERT S. AND JANICE E. HOOPER )

Applicants )

ROLLAND AND SUSAN OLSEN )  
EDWARD B. AND SHIRLEY E. CASSINA )

Protestants )

Decision: 1548

Source: Unnamed Spring

County: Trinity

DECISION APPROVING APPLICATION 25255 IN PART

BY THE BOARD:

Robert S. and Janice E. Hooper having filed Application 25255 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 Section 737 of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the evidence received at the investigation having been duly considered; the Board finds as follows:

Substance of the Application

1. Application 25255 is for a permit to appropriate 8,000 gallons per day (gpd) from February 1 to October 1 for irrigation; 490 gpd from January 1 to December 31 for domestic use; and 210 gpd from January 1 to December 31 for stockwatering. The point of diversion is on an unnamed spring within the NE1/4 of NW1/4 of Section 19, T30N, R11W, MDB&M.

Applicants' Project

2. The applicants divert water from the spring to an existing 1,800 gallon capacity holding tank, both spring and tank being on U. S. Forest Service (Forest Service) land. Water is then conveyed through an existing one-inch diameter pipeline, which traverses the protestants' properties

to the place of use downstream from the protestants. The project has been in existence for about 30 years.

### Protests

3. The Department of Fish and Game (Fish and Game) filed a protest against Application 25255 and Edward and Shirley Cassina and Rolland and Susan Olsen are successors in interest to prior protestants. They claim riparian rights to the unnamed stream. The Cassinas who filed Statement of Water Diversion and Use S9145, are closest to the spring, being just downstream from Forest Service property, and depend on the flow as their sole source of water. The Metcalfs (Statement S9144), former owners of the Olsen property, diverted from the unnamed stream when water was available and used an existing well to supplement their supply. Protestants claim that the applicants are taking water from the spring without a Forest Service permit and that there is no right of access for the pipeline from the spring across their property.

4. Determination of right of access to the Forest Service spring and across the protestants' property is not within the Board's jurisdiction. However, since the issues were raised by the protestants, they were considered during analysis of the record. The record indicates the following:

a. The Forest Service staff has recommended that special use permits for water lines be granted to the Hoopers and to the Cassinas.

b. The entire property, including that of the applicants and protestants, was once owned by B. B. Byard. Mr. Byard diverted from the spring without a Forest Service permit and used the water on the property now owned by the Hoopers. As Byard divided and sold separate parcels, he reserved by deed, the right to take water from the spring and reserved access through the protestants' properties for the pipeline to his house, eventually sold to Hooper. It thus appears that applicants have right of access to both the spring and access to protestants' property.

5. Fish and Game withdrew its protest with the understanding that the proposed Forest Service terms would be included in any permit issued. Those terms specify that at least 500 gpd be reserved as free standing water at the diversion site, that the pipeline carry no more than 3,000 gpd and that any flow exceeding that 3,500 gpd be returned to the stream channel.

#### Availability of Unappropriated Water

6. A Forest Service hydrologist estimated that the mean daily flow in the unnamed stream is about 16,700 gpd in July, 10,500 gpd in August, 9,500 gpd in September and 19,000 gpd in October. The Forest Service specialists estimate that a diversion from the spring of 3,000 gpd will cause no injury to the resources of the forest, and devised the terms previously referred to. If diversion under Application 25255 is limited to conform with these terms, there should be more flow in the stream than has been there in the past.

#### Environmental Considerations

7. This decision authorizes a project which constitutes only a minor modification to land, water and/or vegetation, and such project is thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

#### Record in this Matter

8. The record, documents and other data used in determining this matter include the files of Application 25255 and all relevant material on file therewith including the Report of Field Investigation and Engineering Staff Analysis dated May 18, 1979, and Statements of Water Diversion and Use S9144 and S9145.

Conclusions

9. From the foregoing findings, the Board concludes that Application 25255 should be approved in part and that a permit should be issued to the applicants subject to the conditions set forth in the following order:

ORDER

IT IS HEREBY ORDERED that Application 25255 be approved in part and a permit issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (6, 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) 3,000 gpd by direct diversion from February 1 to October 1 of each year for irrigation.
  - (b) 490 gpd by direct diversion from January 1 to December 31 of each year for domestic purposes.
  - (c) 210 gpd by direct diversion from January 1 to December 31 of each year for stockwatering.

The maximum amount diverted under this permit for all uses shall not exceed 3,000 gpd or a total of three acre-feet per year.

2. Construction work shall be completed on or before December 1, 1982.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1983.
4. This permit shall not be construed as conferring upon the permittees right of access to the point of diversion.
5. Diversion under this permit is subject to the following conditions:
  - (a) At least 500 gpd will be reserved as freestanding water at the diversion site.
  - (b) The conveyance system will have a capacity of no more than 3,000 gpd.
  - (c) Any flow exceeding the 3,500 gpd (a and b above) shall be released to the downstream channel.

Dated: November 15, 1979

/s/ CARLA M. BARD  
Carla M. Bard, Chairwoman

/s/ WILLIAM J. MILLER  
William J. Miller, Vice Chairman

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

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