

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24852)
DONALD C. RASK)
Applicant)
ARBOGAST RANCH)
PAUL AND NANCY CLEMENS)
Protestants)

Decision: 1536
Source : Rock Creek
County : Nevada

DECISION DENYING APPLICATION 24852

BY THE BOARD:

Donald C. Rask having filed Application 24852 for a permit to appropriate unappropriated water; protests 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; investigations having been made by the State Water Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24852 is for a permit to divert 0.036 cubic foot per second (cfs) by direct diversion from May 1 to June 30 and from September 1 to September 30 for irrigation of five acres and 450 gallons per day (gpd) from September 1 to June 30 for stockwatering. At the field investigation of June 7, 1977, the applicant said he intended to divert about 28 gallons per minute (gpm) to sprinkler irrigate two acres of pasture and garden.

Applicant's Project

2. The applicant proposes to divert from Rock Creek into an existing diversion structure and earth ditch known as the Rock Creek Canal. Water is to be rediverted through a sump box and conveyed by gravity through a 1½ inch pipe to a regulatory storage tank. The applicant plans to drill a well to meet the domestic needs of a single family home.

Protests

3. The Arbogast Ranch and Willis Hough filed protests against the approval of Application 24852. Paul Clemens has succeeded to the interests of Willis Hough.

4. The Arbogast Ranch protested the application because (a) the ditch and diversion facility are on its property, and the Ranch does not want trespass resulting from facilities maintenance, (b) contemplated sale of Ranch property would be affected by additional rights in the ditch, (c) breaching of the ditch levees has caused washouts and blockage of ranch roads, and (d) diversions from Rock Creek would be detrimental to fish and wildlife.

5. Protestant Clemens uses water from the Rock Creek Canal under claim of right for fire protection and for irrigation of 4½ acres. Protestant Clemens predecessor presented evidence of use from the canal from the 1890's to the present.

6. The Rock Creek Canal is an earthen, gravity flow ditch which diverts water from Rock Creek at a point located on the Arbogast Ranch. The canal travels a portion of the Arbogast Ranch, then the applicant's property, and then other private property not relevant here. It delivers water to Protestant Clemens' property about four miles from the point of diversion.

7. The Arbogast Ranch concedes that Protestant Clemens has a valid right to convey water in the Rock Creek Canal. However, the Arbogast Ranch has not granted an easement to the applicant to convey additional water in the Rock Creek Canal; Protestant Clemens has not granted the applicant any of his apparent right to convey water in the Rock Creek Canal. Section 747 of Title 23, California Administrative Code requires an applicant to present satisfactory evidence of the applicant's ability to acquire the necessary right of access. Here, there is a clear denial of access by the affected property owners. Since the applicant does not have the power of eminent domain, there is no reasonable expectation that the applicant will obtain the necessary right of access. Therefore, the applicant will not be able to proceed with the proposed appropriation.

Record in This Matter

8. The records, documents, and other data relied upon in this matter are: Licensed Application 5880, Application 24852 and all relevant information on file therewith; previous Board Decisions 878, 1045, 1159, 1176, 1275, and 1291; and the Engineering Staff Analysis.

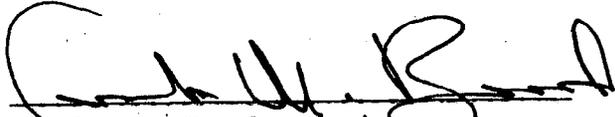
Conclusions

9. From the foregoing findings, the Board concludes that Application 24852 should be denied.

ORDER

IT IS HEREBY ORDERED that Application 24852 be denied.

Dated: SEP 20 1979


Carla M. Bard, Chairwoman

ABSENT


L. L. Mitchell, Member


William J. Miller, Vice Chairman


W. Don Maughan, Member