

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21891)
of Eugene and Kathleen M. Wixson)
to Appropriate from an Unnamed)
Tributary of Kekawaka Creek in)
Trinity County)

Decision D 1239

ADOPTED MAR 2 1966

DECISION APPROVING APPLICATION

Eugene and Kathleen M. Wixson having filed Application 21891 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 21891 is for a permit to appropriate 0.1 cubic foot per second (cfs) by direct diversion from May 1 to December 1 of each year for irrigation from an unnamed stream tributary to Kekawaka Creek thence Eel River in Trinity County. The point of diversion is to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 12, T4S, R6E, HB&M.

2. The applicants' project calls for the diversion of water for a distance of about 1/4 mile for the irrigation of 8 acres of pasture. Return flow from the irrigation would re-enter the unnamed stream which is the source at a point about 1/2 mile downstream from the point of diversion.

3. The protestants range cattle within three separate quarter sections, one of which is located on the unnamed stream. Their cattle are now watered directly by this stream under a claimed riparian right. Return flow from the applicants' project would re-enter the stream at the downstream edge of this quarter section and would not be available to cattle grazing in the upper portions of this property.

4. To date, there has nearly always been sufficient water in the unnamed stream for protestants' cattle. In dry years when the visible surface flow has disappeared, there have been pools of water in the streambed from which the cattle have drunk. No diversion has yet been made for the applicants' project.

5. To some extent the flow of the unnamed stream just downstream from the point of diversion is augmented by inflow from springs. On June 30, 1965, it was estimated by an engineer on the Board's staff that the flow at the point of diversion was 0.2 cfs, and about 1/3 of a mile downstream, on the protestants' property, was about 0.25 cfs.

6. Applicants claim an unadjudicated riparian right. There is no intention on their part to have the requested appropriative right added to the riparian right.

7. In most years there will be ample streamflow for applicants' project without interfering with the livestock requirements of protestants. In dry years, and at especially dry times, diversion by applicants would interfere with that right. A permit term will provide that applicants shall not divert water at any time that there is insufficient water running in the unnamed stream or available in its pools to water the cattle of protestants.

8. There is unappropriated water 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21891 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 21891 and all relevant information on file therewith, particularly the report of the field investigation made June 30, 1965.

ORDER

IT IS HEREBY ORDERED that Application 21891 be, and it is, approved, and that a permit be issued to the 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 0.1 cubic foot per second by direct diversion to be diverted from about May 1 to about December 1 of each year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual construction work shall begin on or before September 1, 1966, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1968.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

6. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights 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 Rights 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. Permittees shall allow representatives of the State Water Rights 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.

9. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

10. No water shall be appropriated under this permit at any time when there is insufficient water flowing in the stream or available in pools to water livestock within the half-mile reach of the stream immediately downstream from the point of diversion.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member