

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 22206)
of Harold B. and Vangie M. Story)
to Appropriate from Swamp Spring)
in Plumas County.)

Decision D 1261

DECISION APPROVING APPLICATION

Harold B. and Vangie M. Story having filed Application 22206 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 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 22206 is for a permit to appropriate 0.034 cubic foot per second (cfs) by direct diversion year-round, for irrigation, stockwatering and domestic purposes from Swamp Spring in Plumas County. The point of diversion is located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T25N, R11E, MDB&M.

2. Swamp Spring rises on U. S. Forest Service land near the base of an unnamed mountain south of Genesee

Valley. The applicants divert from the spring by gravity through a 2-inch pipeline which crosses Forest Service land for a distance of approximately 150 feet and then crosses the properties of protestants Van Alostyne and the National Youth Foundation. The pipeline terminates at the applicants' stockwatering trough, which is used by approximately 80 head of cattle.

3. The spring has been developed by excavation and boxing. Its flow on July 13, 1966, was approximately 4 gallons per minute. The applicants' project which has been in existence since the year 1918 uses substantially all the water that is available at the spring.

4. Protestants Van Alostyne and the National Youth Foundation do not use water from the spring and they do not intend to do so in the future. At the time of the field investigation they abandoned claims made in their protests on file that the approval of Application 22206 would interfere with riparian and pre-1914 appropriative rights to water from the spring. Their protests are now limited to claimed lack of right of access to the source on the part of the applicants.

5. Unappropriated water is 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.

6. The intended use is beneficial.

7. The Board has no jurisdiction to determine the question of right of access raised by the protestants. However, through long use of the pipeline the applicants have shown a sufficient apparent right to continue to convey the water from the spring across the protestants' lands to justify the approval of the application. The permit issued on Application 22206 should contain a term stating that the issuance of the permit shall in no way be construed as conferring upon permittees' right of access to the point of diversion.

From the foregoing findings, the Board concludes that Application 22206 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 22206 and all relevant information on file therewith, particularly the report of the field investigation made July 13, 1966, and U. S. Geological Survey Maps of the area in question.

ORDER

IT IS HEREBY ORDERED that Application 22206 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 0.034 cubic foot per second by direct diversion to be diverted year-round.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

4. 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.

5. 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.

6. 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.

7. The issuance of this permit shall in no way be construed as conferring upon permittees' right of access to 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.

Dated: **OCT 26 1966**

/s/ Kent Silverthorne, Chairman
Kent Silverthorne, Chairman

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

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