

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23078
of Edley Rusher and Myrtle Rusher
to Appropriate from an Unnamed Spring
in Trinity County.

Decision 1352

DECISION APPROVING APPLICATION

Edley Rusher and Myrtle Rusher having filed Application 23078 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 23078 is for a permit to appropriate 0.04 cubic foot per second by direct diversion from January 1 to December 31 of each year for domestic and irrigation purposes from an unnamed spring in Trinity County.

The point of diversion is to be located within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 19, T34N, R11W, MDB&M.

Applicants' Project

2. The water from the unnamed spring is collected in a spring box and conveyed approximately 600 feet by vinyl hose to a 70-gallon steel regulatory tank. From the tank another 600-foot vinyl hose carries the water to applicants' cabin, which has indoor plumbing. Applicants intend to plant 3 acres of orchard adjacent to the cabin.

Protestant's Water Requirements and Source of Supply

3. Application 23078 was protested by F. L. Di Napoli on the basis that the source of supply is used by protestant under prior rights.

4. Protestant's property consists of about 1,100 acres bordering both sides of the North Fork Trinity River. While most of the property consists of steep forested mountainside, there is some irrigable land and a private residence. Protestant's water requirements for irrigation and domestic use are approximately 0.15 cubic foot per second or 67 gallons per minute.

5. Protestant presently obtains water from an unnamed stream just downstream from a spring which is in the same watershed and about 1-1/2 miles downstream from applicants' source of supply. The spring produces about 120

gallons per minute. The flow of the spring is constant throughout the year; however, additional water is available at protestant's point of diversion when winter rains provide surface runoff.

Lack of Hydraulic Continuity

6. Except possibly during heavy rain, there is no hydraulic continuity between applicants' source of supply and the unnamed stream from which protestant diverts.

Existence of Unappropriated Water

7. Since there is no hydraulic continuity between applicants' and protestant's sources of supply and since protestant has adequate water for his needs, applicants' use of the water from the unnamed spring will cause no injury to protestant.

8. 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.

9. The intended use is beneficial.

Conclusions

From the foregoing findings, the Board concludes that Application 23078 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 23078 and all relevant information on file therewith, particularly the report of field investigation made on September 22, 1969.

ORDER

IT IS HEREBY ORDERED that Application 23078 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 0.04 cubic foot per second by direct diversion to be diverted from January 1 to December 31 of each year. The total amount of water appropriated under this permit shall not exceed 15 acre-feet annually.

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

3. Construction work shall be completed on or before December 1, 1972.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

6. 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 Resources Control 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.

7. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. Permittee shall allow representatives of the State Water Resources Control 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.

Adopted as the decision and order of the State
Water Resources Control Board at a meeting duly called and
held at Sacramento, California.

Dated: January 8, 1970

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member

RONALD B. ROBIE
Ronald B. Robie, Member