

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24815 )  
RICHARD L. GATES )  
Applicant )  
WENDELL AND HAZEL RUMLEY )  
Protestants )

Decision: 1569  
Source: Unnamed Springs  
County: Plumas

DECISION APPROVING APPLICATION 24815

BY THE BOARD:

Richard L. Gates having filed Application 24815 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided by Section 737 of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the evidence received at the investigation having been duly considered; the Board finds as follows:

Substance of Application

1. Application 24815 is for 8050 gallons per day (gpd) from April 1 to October 1 for irrigation and 335 gpd from January 1 to December 31, for domestic use. The points of diversion are two unnamed springs tributary to Hunt Canyon thence Indian Creek, which are described in the application as being located within (1) SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 33, T27N, R10E and (2) NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 4, T26N, R10E, MDB&M.

Applicant's Project

2. The applicant diverts water from the two springs specified in Application 24815 from which there has allegedly been continuous use since the 1920s. Water flows

through approximately 40 feet of 1½-inch pipe and 80 feet of ¾-inch pipe from spring #1, and approximately 800 feet of 2-inch pipe from spring #2, to a junction point. At that point the waters comingle and flow through a 5-inch pipeline about 4,000 feet to the place of use. Application 24815 was filed to supplement a right from spring #1 under licensed application 18002 for 158 gpd and to establish an appropriate right to water from Spring #2. The diversion system provides water to the applicant for domestic use and for irrigating approximately one acre of pasture.

#### Background

3. There were originally three other houses using water from this system for domestic purposes. One house was disconnected from the system after a court hearing. None of the three houses are included under Application 24815, although it appears at least one of the users has an interest in the pipeline.

4. The various parcels of land on which water from both springs is used were at one time under one ownership. When the original owner subdivided the land, a portion of water from the springs was apparently deeded to the various parcels and a 15-foot easement was set aside for a pipeline from Spring #1. While the use of water at the other houses are not covered by a water right application, riparian rights could be claimed if the original owner reserved the right in the various deeds when dividing the property. The right confirmed in the license issued on Application 18002 duplicated the right deeded to the Gates property in 1932 by the original owner.

5. When Application 18002 was filed in 1958, Spring #1 was described as being within the SE¼ of SE¼ of Section 33, T27N, R10E, MDB&M. During a field investigation on October 28, 1958 it was determined that the most probable location of Spring #1 was within the NW¼ of NE¼ of Section 4, T26N, R10E placing it on land now owned by protestant Rumley. The description was changed to show Spring #1 to be within Section 4, and a license was issued in 1961. Section 33 is held by the U. S. Forest Service.

6. When the field investigation was conducted for Application 24815 on October 4, 1977, it was again determined that Spring #1 was probably within Section 4 and not as described in the application as being within Section 33. The applicant maintains that Spring #1 is Section 33 and stated that licensed Application 18002 should be changed back to Section 33 as originally filed.

7. It appears the location of Spring #2 is such that it never was included in the original ownership. However, both springs were developed and pipelines installed in the 1920's.

#### Protest and Complaint

8. The application was protested by Wendell and Hazel Rumley. They allege that spring #1 rises and falls on their property and belongs to them. Although they agree that the Gates deeded right to 5 barrells per day (158 gpd) from spring #1 is valid, they just object to any increase in diversion by Gates from spring #1. A tentative agreement was reached during the field investigation under which the applicant would not change or enlarge the existing diversion works. However, the Rumleys have declined to sign a formal agreement. The applicant's present point of diversion from spring #1 is below the spring used by Rumley and should not adversely affect the amount of water the Rumleys are diverting. The controversy over location of Spring No. 1 was not settled. Right of access to the spring is a civil matter and cannot be adjudicated in this decision. Term 3 of the order following covers that matter. However, our records need to be accurate concerning the description of the point of diversion. Because of the continuing ocntroversy regarding the location of Spring #1, the Board will require that a survey be made verifying the location of Spring #1 prior to issuance of a permit on the Application - 24815.

9. On July 27, 1977 a complaint was filed against the applicant by Thomas W. Smith who claims a riparian right to the water from spring #2 which runs through his property. He claimed that the applicant was taking water from the spring and not allowing him to have his share. The applicant and complainant agreed during the field investigation to share the water from spring #2 equally. However, the applicant has refused to sign an agreement to that effect. Every permit is issued subject to vested rights and interference with vested rights by the permittee can result in revocation of the permit, and prosecution through the courts. A permit issued on Application 24815 will be subject to any riparian right Smith (or others such as the Rumleys) may have. Violation of the permit would result in enforcement action by the Board, including but not limited to the sanctions cited above.

Availability of Unappropriated Water

10. Both points of diversion are within the Indian Creek Adjudication (See In Re Water of Indian Creek, Plumas County Superior Court No. 4185). Neither spring is listed as a point of diversion in the decree, nor is there enough flow from either spring to reach any flowing stream in the adjudicated area. The Indian Creek watermaster stated that use from the springs has no effect on adjudicated rights.

11. There are no records to indicate what the average flow would be from these springs. During a field investigation in June of 1960, the flow in the pipeline from each spring was measured. The flow being diverted from Spring #1 was measured at 2270 gpd and the flow being diverted from Spring #2 was measured at 3930 gpd. The field investigation held in 1977 was during drought conditions. Flow estimates during that investigation were not indicative of normal spring flows. However, since the use has been made for many years, it is assumed that in normal years the supply is adequate. Since the available supply is unknown a measuring device will be required. Any necessary adjustments can be made at time of license.

12. The proposed uses are beneficial.

Environmental Considerations

13. This Board decision authorizes a project which constitutes only a minor modification to land, water and 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

14. The records, documents, and other data relied upon in determining this matter are: Application 18002 and the field investigation during June 1960 in connection therewith; Application 24815 and all relevant information on file therewith, especially the Report of Field Investigation dated October 2, 1978, topographic maps published by the United States Geological Survey covering the watershed and project area.

Conclusions

15. From the foregoing findings, the Board concludes that Application 24815 should be approved and a permit issued to the applicant subject to the conditions in the order following:

ORDER

IT IS HEREBY ORDERED that Application 24815 be approved insofar as it relates to diversion from Spring #2 subject to vested rights.

IT IS FURTHER ORDERED that action is withheld on the portion of Application 24815 seeking to appropriate water from spring #1. Action on this portion of the application will not be taken until: 1) the applicant submits a survey made by a licensed surveyor or a registered Civil Engineer verifying the location of Spring #1 or otherwise resolves the issue of its location to the Boards

satisfaction, and 2) the applicant submits legal evidence of right of access to Spring #1 for diversion of water in excess of the 158 gpd authorized by licensed Application 18002. The permit issued shall contain all applicable standard permit terms (6, 10, 11, 12 and 13)\* in addition of the following conditions.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 8050 gallons per day to be diverted from April 1 to October 1 and 335 gallons per day to be diverted from January 1 to December 1, of each year. The maximum amount diverted under this permit shall not exceed 3.7 acre-feet per year.

2. Complete application of the water to the authorized use shall be made by December 1, 1984.

3. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

4. Permittee shall install and maintain a metering device satisfactory to the State Water Resources Control Board from which readings can be taken to establish the amount of water delivered to the place of use. Permittee shall record the total flow at the end of each month and submit this record to the Board at the end of each year.

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\*The Board maintains a list of standard permit terms.  
Copies may be obtained upon request.

5. Rights under this permit are, and shall be, subject to existing rights determined by the Indian Creek Adjudication, Superior Court, Plumas County, No. 4185 insofar as said adjudicated rights are maintained and such other rights as may presently exist.

Dated: November 20, 1980

/s/ CARLA M. BARD

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Carla M. Bard, Chairwoman

/s/ WILLIAM J. MILLER

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William J. Miller, Vice-Chairman

ABSENT

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L. L. Mitchell, Member

/s/ JILL B. DUNLAP

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Jill B. Dunlap, Member

/s/ F. K. ALJIBURY

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F. K. Aljibury, Member

