

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16590 by)	
John W. Riffe and Application 16789 by)	
W. S. and Marie Lombardo to appropriate)	Decision No. D 929
water from Burgan Spring and an unnamed)	
stream in Fresno County)	

929

Substance of the Application

Application 16590, filed September 6, 1955, by John W. Riffe, is for a permit to appropriate five gallons per minute (gpm) or 7200 gallons per day by direct diversion, year-round, from Burgan Spring tributary to Kings River in Fresno County for mining and domestic purposes. The location of point of diversion as described in the application is within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24, T12S, R42E, MDB&M*. The place of use is to comprise a camp site and mill within the NW $\frac{1}{4}$ of said Section 24 and the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 23, T12S, R24E. The applicant states that the point of diversion is located on an unpatented mining claim.

Application 16789, filed December 13, 1955, by W. S. and Marie Lombardo, is for a permit to appropriate five gallons per minute by direct diversion, year-round, for domestic purposes.

* Hereinafter references to lines of the public land survey are from Mt. Diablo Base and Meridian (MDB&M).

The point of diversion is described in the application as being identical to that named under Application 16590. The place of use is to consist of lands within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24, T12S, R12E. The applicant states that in his belief the lands on which the point of diversion is to be located are within Sierra National Forest and owned by the United States.

Protests and Answers

G. Lassotovitch and Farley Lassotovitch protested both applications alleging that the approval thereof will interfere with rights of protestants initiated prior to December 19, 1914; and that the source named in the applications is located on lands owned by protestants.

John W. Riffe, in reply to the protest, alleged that the description of the lands at the point of diversion is in error; that the source is on government land; and that unappropriated water is available.

There is no reply of record to the protest against Application 16789.

Hearing

Applications 16590 and 16789 were completed in accordance with the Water Code and applicable administrative rules and regulations and were set for public hearing under the provisions of the California Administrative Code, Title 23 "Waters", before the State Water Rights Board (hereinafter referred to as "the Board") on Wednesday, September 10, 1958, in Sacramento. Of the hearing the applicants, protestants and other interested parties were duly notified.

Corrections in Description of Source
and Point of Diversion Named in
Application 16590

Testimony by John W. Riffe (R.T. pp. 40-44) demonstrated that the source and point of diversion under Application 16590 is not Burgan Spring and that the source and location of the point of diversion under Application 16590 should be corrected to read as follows:

Source - an unnamed stream tributary to Kings River.

Location of Point of Diversion - south 700 feet and east 500 feet from the northwest corner of Section 24, T12S, R24E, MDB&M, being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 24, as said lines of the public land survey are shown and delineated on United States Geological Survey, Watts Valley Quadrangle, 15' series, Edition of 1944 (Staff Exhibit No. 4, Riffe Exhibit No. 2).

Condition for Withdrawal of Protests

Protestants Lassotovitch stipulated that if the applications were amended so as to describe the point of diversion as being outside of the lands allegedly owned or controlled by them the protests may be withdrawn (R.T. pp. 75-77). Mr. G. Lassotovitch testified that he uses the waters of Burgan Spring to supply a watering trough for stockwatering purposes and that at times he pastures 350 head of cattle on the area which includes Burgan Spring.

Water Supply

Testimony was offered by Mr. Riffe to the effect that a substantial portion of the water supply occurring at the point of diversion on the unnamed stream heretofore described originates from Burgan Spring and overflows from the watering trough supplied

therefrom; that the minimum flow observed in said source is about five gallons per minute; and that the flow from Burgan Spring does not vary substantially throughout the year (R.T. pp. 72-75).

Examination of United States Geological Survey Quadrangle, 15 minute series, Edition of 1944 (Staff Exh. No. 4) discloses that the source named under Application 16590 drains the south flank of Hog Mountain having a maximum elevation of about 2600 feet and that it is an intermittent stream of a foothill classification. The topography shown on said quadrangle further discloses that the configuration of the drainage is narrow and precipitous and that the watershed area tributary to the point of diversion described under said application is about one-fourth square mile. It is common knowledge that foothill streams in the vicinity of applicant's project flow at insignificant rates except during periods of rainfall. It also appears that Burgan Spring constitutes the principal source of flow in the unnamed stream. Accordingly, Mr. Riffe's observations on water supply appear reasonable.

Discussion and Conclusions

The evidence shows that the flow in the unnamed stream is supplied chiefly from the overflow from Burgan Spring; that the available flow in the sources herein considered is insufficient to support the total amount sought under both applications; that if surplus flows at Burgan Spring were diverted by Lombardo this diversion would in turn cut off the supply available to Applicant Riffe; that Application 16789 is junior in time and priority to Application 16590; and that no substantiative basis for rejection of this priority has been presented by Applicant Lombardo.

In consideration of the foregoing, the Board concludes that Application 16590 should be approved and Application 16789 should be denied. The corrections in the description and name of the source and point of diversion under Application 16590 are hereby approved.

ORDER

Applications 16590 and 16789 for permits to appropriate unappropriated water having been filed with the former Division of Water Resources, protests thereto having been filed, jurisdiction of water rights including the subject applications having been subsequently transferred to the State Water Rights Board, a public hearing having been held, evidence having been received and considered by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16590 be, and the same is, hereby approved, and it is ordered that a permit be issued to applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed five gallons per minute, to be diverted from January 1 to December 31 of each year.

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

3. Actual construction work shall begin on or before June 1, 1959, and shall thereafter be prosecuted with reasonable

diligence and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1962.

6. Progress reports shall be filed promptly by permittee on forms to 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.

IT IS FURTHER ORDERED that Application 16789 be, and the same is, hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at _____, California, on this _____ day of _____, 1959.

Henry Holsinger, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member