

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20626  
of Lydia S. Smith to Appropriate  
from an Unnamed Spring Tributary to  
Bear Creek in Calaveras County

Decision D 1178

ADOPTED MAR 18 1964

DECISION APPROVING APPLICATION

Lydia S. Smith having filed Application 20626 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 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 20626 is for a permit to appropriate 2,000 gallons per day by direct diversion, year-round, for domestic purposes from an unnamed spring in Calaveras County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 1, T6N, R13E, MDB&M.

2. The unnamed spring rises northeast of the Town of West Point and courses about 100 feet to its confluence with an unnamed stream. The unnamed stream continues in a general southeasterly direction approximately 700 feet to join Bear Creek.

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Bear Creek continues from this junction approximately 1.5 miles to join Middle Fork Mokelumne River.

3. The applicant's project is complete and consists of a pump installed directly over the unnamed spring from which water is conveyed through a 3/4-inch pipe for use at a fully-plumbed home and for the irrigation of surrounding garden and shrubs.

4. Protestant Earl E. Walsh diverts from Bear Creek approximately one-half mile below its junction with the unnamed stream under claim of pre-1914 appropriative rights, principally for the irrigation of 5 acres of orchard, 20 acres of permanent pasture, and for stockwatering. He claims that for the past two years he has been unable to irrigate due to the diversion of practically all the summer flow of Bear Creek by the Town of West Point.

5. On September 26, 1963, with no diversions being made from the unnamed spring or by a user on the unnamed stream, very little of the flow from the spring was reaching the unnamed stream. The flow of the unnamed stream disappeared in a marshy area. The unnamed stream makes little or no contribution to the flows of Bear Creek during the summer months.

6. The diversion proposed by the applicant would have no significant effect on the protestant during the summer months due to lack of hydraulic continuity between their respective points of diversion. During the balance of the year, there is ample water supply for both the applicant and the protestant.

7. There is unappropriated water available to supply the applicant, 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.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20626 should be approved and that a permit should be issued to the applicant 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 20626 and all relevant information on file therewith, particularly the report of the field investigation made March 26, 1963, United States Geological Survey 15-minute "Blue Mountain" and "Mokelumne Hill" quadrangles.

#### ORDER

IT IS HEREBY ORDERED that Application 20626 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 2,000 gallons per day by direct diversion to be diverted year-round.

2. The maximum amount 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, 1967.

4. Progress reports shall be filed promptly by permittee 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. Permittee 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.

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                    , 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member