

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 22254
of Clarence A. and Bertha E. Donaldson
to Appropriate from Tunnel No. 4,
Keysville Mine, in Kern County

Decision D 1263

1263

DECISION APPROVING APPLICATION

Clarence A. and Bertha E. Donaldson having filed Application 22254 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 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 22254 is for a permit to appropriate 5800 gallons per day by direct diversion, year-round, for domestic and irrigation purposes from Tunnel No. 4, Keysville Mine, in Kern County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 35, T26S, R32E, MDB&M.

2. The previous owners of the applicants' property installed approximately 1600 feet of 3/4-inch pipe

from the mouth of the abandoned mine tunnel, for the purpose of serving water to residences and outbuildings. The water, which is from a spring in the tunnel, is also used for the irrigation of ornamental plants and approximately five acres of orchard. The present capacity of the system is 2.44 gallons per minute. The applicants plan to install a larger pipeline and serve a home which is to be constructed.

3. On June 22, 1966, there were approximately 7.45 gallons per minute flowing from the tunnel, and water occurs in this source throughout the year.

4. Protestant Kern County Canal and Water Company and its subsidiaries claim rights to divert from the Kern River through historical use and under court decrees. Mine Tunnel No. 4 is approximately one mile from the Kern River. The water covered by Application 22254, if not diverted by applicants, would be consumed by phreatophytes or would disappear in the ground before reaching the Kern River. The approval of Application 22254 should not result in any interference with protestant's prior rights.

5. There is unappropriated water 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 the water.

6. The protestant has requested that a special term be included in any permit issued on Application 22254 subjecting it to the protestant's vested water rights and providing further that an invasion of these rights would give a right of action in favor of the protestant. As the permit will contain the usual statement that it is issued subject to vested rights, and as the protestant may take legal action for any invasion of its rights without the suggested pronouncement by the Board, the inclusion of the requested special permit term is considered unnecessary.

7. Tunnel No. 4 is on United States Government land. The applicants are negotiating with the U. S. Bureau of Land Management to obtain a right-of-way for their pipeline. The permit issued on Application 22254 should contain a term stating that the issuance of the permit will in no way be construed as conferring upon the permittee right of access to the point of diversion.

From the foregoing findings, the Board concludes that Application 22254 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 22254 and all relevant information on file therewith, particularly the report of the field investigation made June 22, 1966; U.S.G.S. water supply papers; and U.S.G.S. topographic maps of the area under consideration.

ORDER

IT IS HEREBY ORDERED that Application 22254 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 5800 gallons per day by direct diversion to be diverted year round. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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 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.

7. The issuance of this permit shall in no way be construed as conferring upon permittee 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: DEC 22 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