

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22913 of  
Warm Springs Community Services Dis-  
trict to Appropriate from an Unnamed  
Spring in Inyo County

Decision 1346

DECISION APPROVING APPLICATION

Warm Springs Community Services District having filed Application 22913 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants 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:

1. Application 22913 is for a permit to appropriate 0.06 cubic foot per second (cfs) [27 gallons per minute (gpm)] by direct diversion from January 1 to December 31 of each year for domestic purposes from an unnamed spring tributary to an unnamed stream thence Owens River Canal in Inyo County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 7, T8S, R33E, MDB&M.

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2. Several protests were filed against the application by downstream diverters from the unnamed stream which is fed by the spring. All protestants based their protests upon the unavailability of unappropriated water. Protestants A. Thurman Wilkerson and Grace Wilkerson hold Board Permit 15051 to divert 0.28 cfs (about 125 gpm) year-round from the unnamed stream twenty feet below the spring. Reports of diversion filed by the Wilkersons and a field investigation by a Board engineer indicate, however, that the probable maximum rate of diversion is 25 gpm. Protestants Elliott, Luper and Keleman all divert at the downstream end of a culvert under Gerkin Road approximately one-quarter mile downstream from the spring. These diversions are made pursuant to Board Permits 15339, 15553 and 15340, respectively, and the total authorized diversion rate is 14 gpm. Keleman and Elliott also claim riparian rights.

3. Flow from the spring on May 7, 1968, was measured at 90 gpm. Probable use by protestants and channel losses to Gerkin Road amounted to 55 gpm. Therefore, on May 7, approximately 35 gpm was available for appropriation. A measurement of flow on September 26, 1968, indicated that 18 gpm was available for appropriation.

4. The applicant's proposed point of diversion is located on land controlled by the United States Bureau of Land Management. The Bureau has indicated that no right-of-way will

be granted to the applicant unless a flow is maintained of 15 gpm or the amount required by Elliott, Keleman and Luper, whichever is greater (see Condition 11 of the following Order).

5. Some unappropriated water is available at most times and the quantity requested (27 gpm) is available some of the time.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22913 should be approved and that a permit should be issued to the applicant 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 22913 and all relevant information on file therewith, particularly the reports of field investigations made on May 7, 1968, and September 26, 1968.

#### ORDER

IT IS HEREBY ORDERED that Application 22913 be, and it is, approved, and that a permit be issued to the applicant 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 0.06 cubic foot per second or a total of 26 acre-feet per annum by direct diversion to be diverted from January 1 to December 31 of each year.

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

3. Actual construction work shall begin on or before June 1, 1970, 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, 1972.

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

6. 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.

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 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.

8. 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.

9. 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.

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

11. Diversion under this permit is authorized only when there is flow through the culvert on Gerkin Road, approximately one-quarter mile downstream from the point of diversion, of enough water to meet diversion requirements under rights of William S. Keleman, Kemp M. Elliott and Thomas U. Luper, or 15 gallons per minute, whichever is greater.

12. This permit does not authorize interference with the rights of others either in their diversion of water or by disturbance of their diversion works or in any other manner.

13. In accordance with the requirements of Fish and Game Code Section 5946, this permit is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

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

Dated: October 16, 1969

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