

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24029
of CLEM G. AND PHYLLIS H. SINS
to Appropriate from an Unnamed Spring
Tributary to South Yuba River in
Nevada County

Decision 1419

DECISION DENYING APPLICATION

Clem G. and Phyllis H. Sins having filed Application 24029 for a permit to appropriate unappropriated water; protests having been received; the applicants 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:

Substance of Application

1. Application 24029 is for a permit to appropriate 3,000 gallons per day (gpd), total annual appropriation not to exceed two acre-feet 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 South Yuba River, in Nevada County. The point of diversion is to be located in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 20, T17N, R9E, MDB&M.

Applicants' Project and Present Source of Water

2. Applicants have a residence where they live year round on a small acreage on the south side of North Bloomfield Road near Nevada City. The application states that the domestic use will consist of "sprinkler irrigation of 1/4 acre lawn and garden March 15 to November 15. Other months water is used for washing porch, car, walk, etc." A plastic pipe is already in use to convey water by gravity from the spring to the place of use, and present use is for irrigation of shrubs and the lawn (an area about 70 feet by 50 feet) near the house. No water from the source named in Application 24029 (herein called the application spring) will be used for human consumption or household purposes.

3. Applicants have an undivided interest in License 4864 (Application 15246) for diversion from another spring. License 4864 confirms the right to appropriate 2,050 gpd, year round, for domestic use. This source of water supplies all the household domestic requirements of the Sins, and also supplies water for domestic use at another residence which is located within the authorized place of use.

Protests

4. At the time Application 24029 was filed, owners of the property where the application spring is located were David and Mary Schroll, who filed a protest. At the time of the field investigation held August 18, 1972, pursuant to stipulated in-lieu proceedings, Mr. and Mrs. Gary J. Lewis had purchased the Schroll property. The Lewises were present and the Schrolls were represented at the field investigation.

5. The only other protestant was the U. S. Bureau of Reclamation which subsequently withdrew its protest.

6. Mr. Sins says that in 1947 he developed the application spring when the property where the spring is located was owned by his in-laws, Jonathan G. and Hazel Miller. The property changed hands several times, and was purchased by the Lewises in June 1972. Apparently Mr. Sins has been using water from the spring continuously since 1947, and until recently no steps have been taken by any owners of the spring property to terminate the use of water by the applicants. Protestant Schroll stated in the protest: "We have allowed the Sins temporary use of the spring until such times as we moved on to the property or sold it." Protestant Lewis stated that he purchased the property with the understanding that he would have "sole use of the water from the spring."

7. To date, water from the application spring has been used very little upon the property where it is located. One of the prior owners did use water from the application spring to irrigate fruit trees for several years following some repair work to the spring in 1959. The Lewises have erected a large mobile home about 100 feet from the spring, and plan to develop 2.5 acres of pasture and a small orchard. Any overflow from the spring goes into a small regulatory pond. Water for household use is pumped directly from the spring to the Lewis residence. Water for future irrigation use will be pumped from the overflow regulatory pond. Protestants' proposed uses under riparian claim, when added to their present uses, exceed the present yield of the spring.

8. The Answer to Protest, filed by Clem G. Sins, claims prescriptive rights to use of the spring, based upon use since 1947, which has been, subsequent to sale by his in-laws, "adverse to the owners of the property upon which said spring is located."

Discussion

9. If applicants have a valid prescriptive right to water from the application spring, the water supply of the spring is not unappropriated, and, furthermore, applicants have no need of any further water right based upon this application. The validity of the claimed prescriptive right cannot be determined by the Board, but must be determined by a court. If the applicants do not have a valid prescriptive right, there is insufficient water now developed at the application spring to satisfy needs of the protestant Lewises and in addition leave sufficient unappropriated water to justify approval of this application. Furthermore, if applicants do not have a prescriptive right to use the spring water, then undoubtedly they also lack a prescriptive right of access required in connection with this application.

From the foregoing findings, the Board concludes that Application 24029 should be denied.

The records, documents, and other data relied upon in determining the matter are: Applications 24029 and 15246 and all relevant information on file therewith, particularly the report of field investigation made August 18, 1972 in connection with Application 24029.

ORDER

IT IS HEREBY ORDERED that Application 24029 be denied.

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

Dated: February 15, 1973

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBBIE

Ronald B. Robbie, Vice Chairman

E. F. DIBBLE

E. F. Dibble, Member

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member