

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 5447A) (Application 11523A) to add an) unnamed spring in Placer County) as a point of diversion.))	ORDER : WR 79-3
CARL and MARY WAHLBERG,)	SOURCE: Unnamed Spring
Petitioners.)	COUNTY: Placer County

ORDER DENYING PETITION TO ADD
POINT OF DIVERSION

BY THE BOARD:

Bill L. and Fay Disbrow having filed a petition to add a point of diversion under License 5447A; protests having been received; the petitioners and protestants having stipulated to proceedings in lieu of hearing as provided by Title 23, California Administrative Code, Section 737; an investigation having been made by the Board pursuant to said stipulation; Carl and Mary Wahlberg having succeeded Bill L. and Fay Disbrow as owners of License 5447A; the Board having considered all available information finds as follows:

Substance of Change Petition

1. License 5447 was held by original petitioners Disbrow and Rudolf K. and Patricia A. Sachau. The Sachaus are protestants in these proceedings. Because of frequent conflict between the parties over the joint use of the spring, protestants petitioned to move their point of diversion to a lower spring. The petition was

granted and separate licenses, Licenses 544711 and 5447B, were issued to the parties. License 5447A, which is owned by **petitioner**, is a license authorizing the direct diversion of 32,500 gallons per day (gpd) from an unnamed spring tributary to **Peavine** Creek for domestic and fire protection purposes with a limit of 10,780 gpd for domestic use. The season of diversion is year-round. The point of diversion is within the NE 1/4 of SW 1/4, Section 16, T16N, R12E, MDB&M, which is within the Tahoe National Forest. The place of use is within the SE 1/4 of SW 1/4, Section 16, T16N, R12E, MDB&M. Petitioner proposes to add a point of diversion at an unnamed spring located within the NW 1/4 of SE 1/4 of Section 16, T16N, R12N, MDB&M. The **spring** is located within the Tahoe National Forest. The **existing** point of diversion will not be abandoned. Petitioner represents that this change involves no change in source, both springs being tributary to **Peavine** Creek, and no increase in the amount of appropriation.

Project of Petitioner

2. Petitioner owns and operates a resort called the Flite Strip Resort, Inc., near Foresthill in Placer County. The resort, consists of a residence for petitioner, a trailer park, campground, gas station, cafe, bar, and several cabins. The resort area is completely surrounded by the Tahoe National Forest.

Protests

3. Rudolf K. and Patricia A. Sachau own the other portion of License 5447, which is now License 5447B. That license authorizes

the direct diversion of 220 gpd for domestic purposes or 32,500 gpd total for domestic and fire protection purposes. The total amount diverted for combined domestic and fire protection uses under this license and License 5447A is limited to 32,500 gpd. Protestants have a permit from the U. S. Forest Service covering the development of the spring and the conveyance pipeline to the place of use. The point of diversion is the spring which petitioner requests be added to License 5447A as an additional point of diversion. Protestants allege that the unnamed spring from which they divert will not support the combined diversion of petitioner and protestant and that petitioner's spring provides sufficient water for his needs if petitioner would repair leaky pipes.*

Access to the Proposed Point of Diversion

4. On August 17, 1975, the Board requested the supervisor of the Tahoe National Forest to indicate whether the petitioner would be granted a special use permit for the proposed development. In a letter dated September 10, 1976, the Forest Supervisor stated that the U. S. Forest Service will not issue a special use permit for the water transmission line.

5. Section 748, Article 16, Subchapter 2, Chapter 3 of Title 23, California Administrative Code, states:

* Protestants have filed Application 25016 for a permit to appropriate unappropriated water from the existing point of diversion under License 5447B. Their claim, here, that there is insufficient water for protestant and petitioner is arguably inconsistent with their request for a permit under Application 25016. For reasons given *infra*, it is unnecessary to resolve this inconsistency in the present order.

"If the proposed project will require a permit, license,, or approval from or by a federal or state agency or officer, and if it becomes evident that regardless of the action taken by **the board**, such permit, license, or approval could not be secured from the proper federal or state authority, the application will be rejected."

Although Section 748 specifically concerns only the approval of applications, the reason for the rule is equally applicable to change petitions. We therefore find that it is not in the public interest to approve an additional point of diversion under a license where it is evident that a licensee cannot obtain access thereto. Even if the access problem were resolved in petitioners' favor, the Board further concludes that it would not be in the public interest to grant the petition because the past conflicts between the parties caused the issuance of separate licenses. The Board knows of no reasons to reverse its previous findings that the solution to the conflict in the use of water is a separate license for each party and a separate point of diversion.

From the foregoing findings, the Board concludes that the petition to add a point of diversion, under License 5447A should be denied.

The records, documents, and the data relied upon in determining the matter are: Applications 11523, 11523A, and 25016 and all relevant information on file therewith, particularly the report of a field investigation made on August 11, 1976; and topographic maps published by the United States Geologic Survey covering the area under consideration.

ORDER

IT IS HEREBY ORDERED that the petition to add a point of diversion under License 5447A is denied.

Dated: April 19, 1979

/s/ W. DON MAUGHAN
W. Don Maughan, Chairman

/s/ WILLIAM J. MILLER
William J. Miller, Member

/s/ L. L. MITCHELL
L. L. Mitchell, Member

