see D-1569

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of APPLICATION 24815	
RICHARD L. GATES	ORDER: WR 80-24
Applicant	
WENDELL AND HAZEL RUMLEY	Source: Unnamed Springs
Protestants	County: Plumas

ORDER GRANTING RECONSIDERATION,
AMENDING AND AFFIRMING AS AMENDED, DECISION 1569

BY THE BOARD:

1. On November 20, 1980 the State Water Resources Control Board adopted Decision 1569 conditionally approving Application 24815. The petition for reconsideration of Decision 1569 postmarked December 5, 1980 was filed by protestants Wendell and Hazel Rumley.

Background:

2. A major controversy between Applicant Gates and Protestants Rumley has been the location of Spring #1. The Rumleys claim it is on their property and that they will not grant right of access for diversion of more than the 158 gallons per day allowed to Gates under licensed Application 18002. Applicant Gates claims the spring is not on Rumleys' property.

3. Decision 1569 approved Application 24815 insofar as it relates to diversion from Spring #2. In order to settle the controversy regarding the location of Spring #1, Decision 1569 ordered the following action:

> "IT IS FURTHER ORDERED that action is withheld on the portion of Application 24815 seeking to appropriate water from Spring #1. Action on this portion of the application will not be taken until: 1) the applicant submits a survey made by a licensed surveyor or a registered Civil Engineer verifying the location of Spring #1 or otherwise resolves the issue of its location to the Board's satisfaction, and

2) the applicant submits legal evidence of right of access to Spring #1 for diversion of water in excess of the 158 gpd authorized by licensed Application 18002 ...."

Petition

4. The Petition for Reconsideration claims the protestants are prejudiced because the decision does not indicate when the survey will be conducted and whether the protestants will have the opportunity to be heard concerning the result of the survey. The protestants state that if the reconsideration is granted they will "... within five days thereafter cause to be prepared and filed with the Board a record of survey prepared by a licensed surveyor showing the location of Spring #1 with respect to property lines in the area".

Finding:

5. The Board does not agree that Decision 1569 prejudices the protestants in any way. Nor does it agree that there was any "irregularity" in the proceedings or that the protestants were prevented from having a "fair hearing" as claimed in the petition.

6. However, the purpose of the special term in Decision 1569 was to settle the matter of the location of Spring #1. The method proposed by the protestants will accomplish the same result. The five-day time limit proposed in the petition appears unnecessarily restrictive and for that reason a period of 30 days will be allowed.

7. The Board finds that the remaining uncertainty in this matter can be resolved without further Board action.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration of Decision 1569 is accepted and that the decision be amended as follows:

1. The protestants shall, within 30 days from the date of this order, submit to the Board a survey made by a licensed surveyor or a registered civil engineer verifying the location of Spring #1.

2. If the survey shows that Spring #1 is located on the petitioners' property, Application 24815 will be approved and a permit issued for diversion from only Spring #2 with appropriate terms set forth in Decision 1569.

3. If the survey shows that Spring #1 is not located on the petitioners' property, a permit will be issued in accordance with Decision 1569.

4. If the survey is not performed and submitted as ordered above, Decision 1569 will be implemented as adopted.

5. Nothing in this order is to be construed as having any effect on the rights granted to Applicant Gates under licensed Application 18002.

6. Decision 1569 is affirmed as amended.

Dated: December 18, 1980

/s/ CARLA M. BARD
Carla M. Bard, Chairwoman

/s/ WILLIAM J. MILLER
William J. Miller, Vice-Chairman

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

/s/ JILL B. DUNLAP
Jill B. Dunlap, Member

/s/ F. K. ALJIBURY
F. K. Aljibury, Member