

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

|                                      |   |                  |
|--------------------------------------|---|------------------|
| In The Matter of Permit 17679        | ) |                  |
|                                      | ) | ORDER: WR 83-13  |
| Issued Pursuant to Application 25089 | ) |                  |
|                                      | ) | SOURCE: Cromberg |
| HAROLD L. and JEAN E. WALTERS,       | ) | Spring           |
|                                      | ) | COUNTY: Plumas   |
| Permittee                            | ) |                  |
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ORDER DECIDING NOT TO ISSUE PRELIMINARY CEASE AND DESIST  
ORDER AND ORDERING DELETION OF A PERMIT CONDITION

BY VICE-CHAIRMAN NOTEWARE:

A hearing having been held on January 12, 1983 by the State Water Resources Control Board (Board) pursuant to Section 1834(b) of the Water Code for the purpose of allowing Harold L. and Jean E. Walters (applicant and permittee) to show cause why a Preliminary Cease and Desist Order should not be issued; permittee and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

Substance of Permit

1. Permit 17679 authorizes diversion of 1700 gallons per day for domestic purposes--irrigation of lawns and garden, year round. The place of use is within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 13, T23N, R11E, MDB&M.

## Background

2. Application 25089, for a permit to appropriate 4810 gallons per day by direct diversion from Cromberg Spring from January 1 to December 31 of each year for domestic purposes, was filed on June 30, 1976.

3. The application was protested by the Cromberg Spring Water Association, Inc. (CSWA), representing holder of water rights from Cromberg Spring, and by Robert and Kathryn Elfen, Leland Thorne, James and Marie Ward, and Henry Magill. All the aforementioned parties protested Application 25089 on the bases that said proposed appropriation would injure prior vested rights, that there was insufficient water in Cromberg Spring, and that the proposed appropriation would interrupt local residents and passersby use of the overflow of the collecting basin. (Decision 1513, p. 3.)

4. The Board made findings in Decision 1513 substantially as follows:

1) Approximately 1,700 gallons per day of unappropriated water should generally be available. (Decision 1513, p.4.)

2) Applicant's request for 4,810 gallons per day was excessive in light of the fact that the 300 gallons per day permitted under Application 24048 was sufficient to satisfy applicant's indoor and watering needs. Further, Application 25089 would only be used by the applicant to provide water for lawn and garden areas. (Decision 1513, p.4.)

3) Prior vested rights were to be protected by permitting the applicant to water lawn and garden areas only when an overflow from the spring collecting basin existed. (Decision 1513, p.5.)

4) Even with the additional appropriation granted, the spring would continue to overflow most of the time thus allowing local residents to continue to use water. (Decision 1513, p.5.)

5. Order paragraph 6 of Decision 1513 required that the following term be included in the permit to give assurance to CSWA that the applicant would not exceed the appropriative right of 1,700 gallons per day.

"No water shall be diverted under this permit until permittee has installed a device satisfactory to the State Water Resources Control Board which is capable of measuring the total cumulative flows diverted by the permittee from Cromberg Spring under this Permit (17679) and Permit 16589 (Application 24048). Said measuring device shall be located so as to be easily accessible to an appropriate representative of the Cromberg Spring Water Association and shall be properly maintained." (Permit Condition 15)

6. On October 30, 1979, after permit issuance, an inspection by a Board engineer disclosed that the measuring device required by Condition 15 was installed under permittee's trailer house. Protestants informed permittee that this location was unsatisfactory. Subsequently, the permittee removed the measuring device.

7. In June, 1981, the Board received a complaint from protestants that the permittee was not in compliance with Condition 15. This allegation was confirmed by an engineering inspection on August 28, 1981.

8. On July 7, 1982 a Notice of Violation of Permit 17679 and the Intent to Issue Preliminary Cease and Desist Order was sent to the permittee.

9. On July 17, 1982 permittee responded to the above notice by requesting a hearing in the matter on the grounds that a meter was an unnecessary expense and that in permittee's 20 years residency on the property the spring had never stopped overflowing.

#### Discussion

10. The permittee has failed to comply with Condition 15 of the subject permit requiring installation of a measuring device. However, the permittee has attempted to comply with the aforementioned permit term by initially installing the measuring device, a meter, under permittee's house. (R.T., p.10.) A representative of protestant CSWA found the location of the meter not to be easily accessible and therefore unsatisfactory. The CSWA requested that a representative of the East Quincy Water and Sewer District find a more suitable location for installing the meter. (R.T., p.10.) The representative did not find a suitable place to install the meter. (R.T., p.10.) Permittee testified at the hearing that permittee's attempts to find other suitable locations to install a meter were unsuccessful; (R.T., p.10, 12, 13.) Finally, permittee's offer to place the meter in permittee's front yard was met with opposition from CSWA. (R.T., pl2-13.)

11. Although permittee is in violation of condition 15 of the subject permit it is apparent that enforcement of a cease and desist order requiring meter installation would not solve the problem. (R.T., p.15.) Permittee's attempts to comply with condition 15 have consistently met with resistance from CSWA. Given the nature of the relationship between permittee and CSWA issuance of a cease and desist order would not be constructive.

12. An alternate solution exists. A court order issued from the Superior Court of the State of California, Plumas County in Ward vs. Walters (Number 8250,) <sup>1</sup> provides CSWA with adequate protection of prior rights. The order allows CSWA to employ an agent to install a water meter at a site they select, with permittee to bear the costs of said installation.

13. Permittee recognizes this court order is a possible solution to the problem of installation of the meter.

14. A further source of protection for CSWA is Condition 14 of the subject permit. Condition 14 reads as follows:

"Permittee shall not commence outdoor watering of any lawn, garden, or other area authorized under this permit if water is not freely discharging from the steel overflow pipe at

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<sup>1</sup> Pursuant to California Administrative Code, Title 23, Section 733(e), the Board takes official notice of the court order. Reference was made to the existence of the court order at the hearing, (R.T., p. 10.)

Cromberg Spring. During any one day, if the discharge from the steel overflow pipe at Cromberg Spring ceases to flow after commencement of said outdoor watering, such watering shall be terminated within three hours after the cessation of the spring overflow."

Said permit term prohibits permittee from using water when the spring is not overflowing.

15. Finally, nothing in the hearing record indicates that CSWA has been harmed by permittee's failure to install a meter. (R.T., p. 43-45.)

16. Given the existence of the aforementioned court order and permit term 14 we conclude that condition 15 is neither necessary nor useful to insure that the prior rights of CSWA are not infringed. Therefore Condition 15 should be deleted from the subject permit.

#### Conclusion

17. A Preliminary Cease and Desist Order should not be issued to Mr. and Mrs. Harold E. Walters.

18. Condition 15 should be deleted from Permit 17679 (Application 25089).

ORDER

NOW, THEREFORE, IT IS ORDERED

1. That a Preliminary Cease and Desist Order not be issued  
and
2. That Condition 15 be deleted from Permit 17679

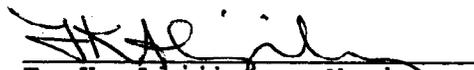
(Application 25089.)

We Concur:

Dated: JUL 21 1983

  
Carole A. Onorato, Chairwoman

  
Warren D. Noteware, Vice Chairman

  
F. K. Aljibury, Member

  
Kenneth W. Willis, Member

