

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24419 )  
of FRANK D. and AUDREY K. PATE to )  
Appropriate Water from an Unnamed ) Decision 1479  
Stream in Inyo County. )  
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DECISION APPROVING APPLICATION

BY THE BOARD:

Frank D. and Audrey K. Pate having filed Application 24419 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 Section 737, Title 23, California Administrative Code; 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 this Application

1. Application 24419 is for a permit to appropriate 2,500 gallons per day (gpd) from January 1 to December 31 of each year for domestic use for six people, including irrigation of shrubs, garden, fruit trees and lawn, from an unnamed spring tributary to an unnamed stream tributary to the Owens River. The point of diversion is to be located within the SW 1/4 of NE 1/4, Section 7, T8S, R33E, MDB&M in the County of Inyo.

## Applicant's Project

2. An existing pipeline appropriates water from the spring to serve Jim Jacobs under License 8900 (Application 21997). Applicants propose to connect a 1/2-inch pipe into this existing pipeline. Applicants' 1/2-inch line has been connected since 1975 and no new construction will be necessary to implement the proposed use. The theoretical capacity of Jacobs' 1-inch pipeline is 14 gallons per minute (gpm) or 20,160 gpd. Jacobs' diversion right under this license is 19,750 gpd; applicants propose to divert 2,500 gpd. Since the sum of the two diversions would exceed the theoretical capacity of the pipeline, it is assumed that in practice informal rotation of use will occur between Jacobs and applicants.

The junction of the 1/2-inch pipe and the 1-inch pipe is on land under the jurisdiction of the U. S. Bureau of Land Management (BLM). Jacobs and BLM have consented to the applicants' project.

## Protests

3. Protests on Application 24419 were filed by several parties. Protestants Elliott (Application 22520, License 9948), Gonzales (Application 23463, Permit 16138), Dye (Application 23860), Keleman (Application 25519, Permit 9949) and Shelley (Application 22783 (Stamper), Permit 10089) all allege that there is insufficient unappropriated water available in the source and that

the proposed diversion will interfere with the exercise of their prior rights. Several others who divert from the source did not protest.

#### Availability of Unappropriated Water

4. The source spring is located at an elevation of about 4,700 feet in an unnamed drainage about 1,000 feet west of Gerkin Road. Water from the spring which is not diverted by the Jacobs diversion flows down this unnamed drainage and crosses Gerkin Road through a culvert at an elevation of slightly more than 4,400 feet. From this point it is piped through a 4-inch plastic pipe to a 10" x 10" concrete channel. From the concrete channel, the flow continues in the natural channel and crosses Cottonwood Road through a culvert. It is about one-quarter mile from the Gerkin Road culvert to the Cottonwood Road culvert. The water disappears in the alluvium below Cottonwood Road before reaching U. S. Highway 395 approximately one-half mile east. All other diversions, including protestants', are made at various points between Gerkin Road and Cottonwood Road.

5. During the investigation on September 4, 1975, the flow in the source just above Gerkin Road was found to be 60 gallons per minute (gpm). On the same day, the flow just above Cottonwood Road was found to be 24 gpm. Past flows in the source are found to have been as follows:

<u>Date</u>	<u>At Spring</u>	<u>FLOW (gpm) Above Gerkin Rd.</u>	<u>Other</u>	<u>Location of Other Measurements</u>
9/4/75		60	24	below all diverter
8/6/74			50-60	estimated flow at last diversion point above Cottonwood Road
2/23/72	84	67	65.5	above last diverter
2/23/72			65 est.	above Cottonwood Road culvert below all diverters
8/26/71			58	below 5 diverters and above 2 diverters
10/9/68			50	below Gerkin Road and not including diversions under A 23783
9/26/68	104			
6/24/68	74	60		
5/7/68	90	50		

6. The flow of the spring is about 120,000 gpd and is fairly uniform throughout the year, with slight increases following rains.

7. The total quantity of water that would be lawfully diverted by all persons, including applicant, from the source would be approximately 52,000 gpd. Unappropriated water is available to satisfy the 2,500 gpd sought by applicants, since the 120,000 gpd flow of the spring is well above the amount already appropriated and since the flow appears fairly constant throughout the year.

8. Applicants intended use of water is beneficial and unappropriated water is available for diversion for the period sought, subject to appropriate conditions, without causing harm to other lawful users of water.

Environmental Considerations

9. The State Water Resources Control Board has completed an initial study, and circulated a negative declaration, on subject project; there were no comments on the environmental document.

10. The records, documents, and other data relied upon in determining this matter include the following: the official file on Application 24419 maintained in the offices of the Division of Water Rights, State Water Resources Control Board; the Engineering Staff Analysis of Record on Application 24419; and the official files on Applications 21997, 22519, 22520, 22783, 23463, 23755, and 23860.

ORDER

IT IS HEREBY ORDERED that Application 24419 be approved and that a permit be issued the applicants 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 2,500 gpd to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 1.6 acre-feet per year.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1979.

4. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

5. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements

for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

6. 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.

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

8. 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.

9. Permittee shall not exercise any other existing right to the use of water named herein so long as this permit or any license issued pursuant thereto remains in effect.

10. The total quantity of water diverted under this permit, together with that diverted under permit issued pursuant to Application 21997 (License 8900) shall not exceed 20,160 gallons per day.

11. 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 in water quality control plans 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.

Dated: January 19, 1978

/s/ JOHN E. BRYSON  
John E. Bryson, Chairman

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

/s/ W. W. ADAMS  
W. W. Adams, Member