

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the Matter of Application 21874
of Ted E. Sterling to Appropriate
from Unnamed Springs Tributary to
Chimney Creek in Tulare County

Decision D 1244

ADOPTED MAR 2 1966

DECISION DENYING APPLICATION

Ted E. Sterling having filed Application 21874 for a permit to appropriate unappropriated water; protests having been received; the applicant 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises; finds as follows:

1. Application 21874 is for a permit to appropriate 0.12 cubic foot per second (cfs) by direct diversion year-round for domestic and irrigation use from two unnamed springs, tributary to Chimney Creek, thence Canebrake Creek, thence South Fork Kern River, in Tulare County. The points of diversion are to be located within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24, T24S, R36E, MDB&M.

2. Applicant had originally intended to pipe the water half a mile to 160 acres he owns along the easterly side of Chimney Creek at about elevation 5400 feet, where he would use the water year-round for domestic purposes at a home not yet built; he would also water cattle, and would use any surplus on about 40 acres of irrigable mountain meadow. The 0.12 cfs requested was originally estimated to be the total flow of the two springs. The applicant subsequently decided that the total flow of the two springs was so small that it would be required solely for his own domestic use.

3. The two springs are about one-third mile westerly of Chimney Creek on land of the United States Bureau of Land Management (BLM) in an area now set aside for public recreation and closed to homesteading and settlement. Flow at the northerly spring was one-half gallon per minute and at the southerly spring 180 gallons per day, as measured by the Department of Fish and Game in October of 1964. Water from the northerly spring flows on the surface about 25 or 30 feet providing moisture for a small area of green grass and herbs. There is no overflow or leakage from the smaller spring and all water is now diverted through a pipeline to a watering trough for stockwatering the cattle of third parties.

4. The Department of Fish and Game protested appropriation from the northerly spring and was represented at a field investigation held on August 17, 1965. Under normal circumstances, the Department tries to maintain at about

one-mile intervals areas like the upper spring for quail and other upland game that require green grass and herbs in their diet. Even during the driest years, such areas have sufficient grass and herbs to carry over a nucleus of game that can repopulate the area during the wetter years.

5. By letter to the Board dated September 16, 1965, BLM referred to Mr. Ted Sterling's Application 21874, and stated that "any request for a right-of-way to transport water from this spring across public lands would be denied by this Bureau as it would not be in the public interest." The spring referred to in this letter is understood to be the northerly spring.

6. On September 29, 1965, the Board forwarded to the applicant the BLM letter which had denied the request for right of way and inquired whether the application would be withdrawn, inasmuch as the smaller spring produces only 180 gallons per day. The applicant did not reply. At the field investigation he had stated that he needed the water from both springs for his domestic use. The applicant's failure to reply to the Board's letter indicates an intent by him to abandon the application completely.

From the foregoing findings, the Board concludes that it would not be in the public interest within the intent of Water Code Section 1255 to approve this application and that it should be denied.

The records, documents, and other data relied upon in determining the matter are: Application 21874 and all relevant information on file therewith, particularly the report of the field investigation made August 17, 1965.

ORDER

IT IS HEREBY ORDERED that Application 21874 be, and it is, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member