

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

1169

In the Matter of Application 20787  
of Lawrence R. and Louise S. Tong  
to Appropriate from an Unnamed Stream  
Tributary to Empire Creek in  
El Dorado County

Decision D 1169

**ADOPTED FEB 17 1964**

DECISION APPROVING APPLICATION

Lawrence R. and Louise S. Tong having filed Application 20787 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 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 20787 is for a permit to appropriate 0.12 cubic foot per second (cfs) by direct diversion, year-round, for irrigation and domestic purposes from an unnamed stream in El Dorado County. The point of diversion is to be located within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 11, T12N, R10E, MDB&M.

2. The applicants have constructed a small dam and regulatory reservoir on the unnamed stream approximately  $1\frac{1}{4}$  miles upstream from its confluence with Empire Creek from which water will be pumped for use on approximately 16 acres of pasture and orchard and at a house and garden.

3. Protestants Alton W. and Myrle J. Rumpel, successors in interest to J. L. and O. C. Ricard, claim riparian rights to Empire Creek and hold Permit 13426 for 0.025 cfs by direct diversion from October 1 of each year to July 1 of the succeeding year, and 4 acre-feet per annum by off-stream storage from about November 1 of each year to about May 1 of the succeeding year. They divert approximately two miles below the unnamed stream-Empire Creek confluence for the irrigation of two acres, stockwatering, and for use at a home and garden. Their protest is based upon lack of water in Empire Creek during the summer months to meet their domestic and stockwatering needs.

4. In normal years the unnamed stream is dry by July 1 at its Empire Creek junction and during the summer months its flows do not reach the protestants' point of diversion. During the remainder of the year there is sufficient water in the unnamed stream and sources to which it contributes to satisfy the applicants and other users of water holding prior rights.

5. There is unappropriated water available to supply the applicants, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

6. The intended uses are beneficial.

7. Applicants' land is contiguous to the source, and they claim a riparian right to the use of the water therefrom, but said claimed right has not been established by court decree. The permit should provide that upon a judicial determination that the land or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under the permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

From the foregoing findings, the Board concludes that Application 20787 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 20787 and all relevant information on file therewith, particularly the report of the field investigation made February 27, 1963, the files of Application 20325 (Permit 13426), and United States Geological Survey 7.5-minute quadrangles "Garden Valley" and "Georgetown."

ORDER

IT IS HEREBY ORDERED that Application 20787 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.12 cubic foot per second by direct diversion to be diverted year-round.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Construction work shall be completed on or before December 1, 1966.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

7. Permittee shall allow representatives of the State Water Rights 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.

8. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

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 \_\_\_\_\_, 1964.

\_\_\_\_\_  
Kent Silverthorne, Chairman

\_\_\_\_\_  
Ralph J. McGill, Member

\_\_\_\_\_  
W. A. Alexander, Member