

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18699
of Althea L. DuBois to Appropriate
from an Unnamed Spring Tributary
to Cold Creek in Mendocino County

Decision D 1198

ADOPTED DEC 22 1964

DECISION DENYING APPLICATION

Althea L. DuBois having filed Application 18699 to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board in Ukiah, California, on March 29, 1960, Ralph J. McGill, Member, presiding; the applicant and the protestants having appeared and presented evidence; all evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 18699 is for a permit to appropriate 0.13 cubic foot per second (cfs) by direct diversion from March 1 to October 1 of each year for irrigation and stockwatering purposes from an unnamed spring tributary to an unnamed creek (hereinafter referred to as a canyon) and thence Cold Creek in Mendocino County. The point of diversion designated by the application is within the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20, T16N, R11W, MDB&M.
2. On December 16, 1960, a petition to change the character of use under Application 18699 to include domestic

purposes was filed, and on March 11, 1963, a petition for correction of the description of the point of diversion to a point located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 20, T16N, R11W, MDB&M, was filed.

3. The applicant has constructed a pocket diversion dam across a portion of the unnamed canyon 227 feet downstream from the unnamed spring at the point where flow from said spring reaches the canyon, from which point water is conveyed by gravity approximately 2,800 feet for domestic and stockwatering purposes and for the irrigation of eight acres.

4. Protestants, Edith N. Saxon, et al., divert from the unnamed canyon at a point located 1,131 feet downstream from the applicant's dam under claim of riparian and prescriptive rights for domestic, stockwatering, and irrigation purposes.

5. On March 24, 1960, the protestants filed an action against applicant in the Superior Court of Mendocino County (Saxon v. DuBois, Civil No. 20301) to reform a deed conveying the right to water from the unnamed spring, to quiet title to such water, and to obtain a declaratory judgment. This action was tried subsequent to the Board's hearing. The court reformed the deed and determined that the protestants are the owners of the entire flow of the spring and that the flow in the unnamed canyon above protestants' point of diversion is the flow of the unnamed spring from May 15 to December 1 of each year. It further found that there is surplus water in the canyon from December 1 of each year to May 15 of the succeeding year which applicant is entitled to divert to the extent of her existing diversion works and no

more, and that applicant does not have the right to divert spring water without allowing it to enter the main stream course. The decision of the trial court was affirmed by the District Court of Appeal, First District (26 Cal. Rptr. 196), and has become final and binding upon the parties.

6. The evidence before the Board is consistent with the court's findings and judgment with respect to water supply except that the time of year during which there is water in the canyon surplus to protestants' requirements was not clearly established.

7. There is no unappropriated water available to supply the applicant from May 15 to October 1. On September 4, 1963, a letter was sent to the applicant asking her if a permit for the remainder of the requested diversion season would be of any value to her. No answer has been received to this letter. On July 31, 1964, a letter was sent to the applicant's counsel which contained a request for the same information. No answer has been received to this letter.

From the foregoing findings, the Board concludes that Application 18699 should be denied.

In view of the above conclusion, no action is necessary on the applicant's pending petitions.

ORDER

IT IS HEREBY ORDERED that Application 18699 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 1964.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

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

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