State of California, State Water Resources Control Board
Division of Water Rights, P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

S010092%S%2003

2001, 2002, 2003

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

If the information below is inaccurate, please line it out in red and provide current information.
Notify this office if ownership or address changes occur during the coming year.

Please Complete and Return This Form by August 1, 2004.

***If the mail recipient's name, address or phone No. is wrong or missing, please correct.**

Owner of Record: GERALD BRUCE TROXELL;

STATEMENT NO.: S010092
CONTACT PHONE NO.: (916)337-6613

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:

GERALD BRUCE TROXELL
PO BOX 177
MONTGOMERY CREEK, CA 96065

Source Name: JOHNSON CREEK
Tributary To: MONTGOMERY CREEK
County: Shasta
Diversion Within: NW1/4 of SW1/4 Section 32, T35N, R01E, MB&M
Year of First Use: 1883
Parcel Number: 027-370-05

A. Water is used under: Riparian claim ✓ Pre 1914 right ✓ Other (explain); _____

B. Year of first use (Please provide if missing above) 1883

C. Amount of Use – Enter the amount (or the approximate amount) of water used each month.

Amounts below are: Gallons ✓ Acre-feet ____ Other ____

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total Annual
2001	✓	✓	✓	2720000	2720000	2800000	2800000	2800000	2800000	2750000	✓	✓	19940000
2002	✓	✓	✓	2720000	2720000	2800000	2800000	2800000	2800000	2720000	✓	✓	19940000
2003	✓	✓	✓	2720000	2720000	2800000	2800000	2800000	2800000	2720000	✓	✓	19940000

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 17 APPLES acres; Stockwatering 1 SPASTURE; Domestic 2 ACRE;

Other (specify) _____

E. Changes in Method of Diversion – Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

_____

F. Please answer only those questions below which are applicable to your project.

1. Conservation of water
   a. Are you now employing water conservation efforts? YES ✓ NO ___
   Describe any water conservation efforts you have initiated: DRIP LINE ON FRUIT TREES

   b. If credit toward beneficial use of water under claimed pre 1914 appropriative water right for water not used due to a conservation effort is claimed under section 1011 of the Water Code, please show the amounts of water conserved:

   Reductions in Diversions:

   yr____ _____ (af/mg) yr____ _____ (af/mg) yr____ _____ (af/mg)

   Reductions in consumptive use:

   yr____ _____ (af/mg) yr____ _____ (af/mg) yr____ _____ (af/mg)

   I have data to support the above surface water use reductions due to conservation efforts. YES ___ NO ___

5 2004

ST-SUPPL (6-03)

2. Water quality and wastewater reclamation

   a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES _____ NO ✓.

   b. If credit toward use under a claimed pre 1914 appropriative water right through substitution of reclaimed water, desalinated water or polluted water in lieu of appropriated water is claimed under section 1010 of the Water Code, please show amounts of reduced diversions and amounts of reclaimed water used:

   yr_____ _____ (af/mg) yr_____ _____ (af/mg) yr_____ _____ (af/mg)
   I have data to support the above surface water use reductions due to wastewater reclamation. YES ___ NO ___

3. Conjunctive use of surface water and groundwater

   a. Are you now using groundwater in lieu of surface water? YES _____ NO ✓.

   b. If credit toward use under a claimed pre 1914 appropriative right through substitution of groundwater in lieu of appropriated water is claimed under section 1011.5 of the Water Code, please show the amounts of groundwater used:

   yr_____ _____ (af/mg) yr_____ _____ (af/mg) yr_____ _____ (af/mg)
   I have data to support the above surface water use reductions due to conjunctive use efforts. YES ___ NO ___

I understand that it may be necessary to document the water savings claimed in "F." above if credit under Water Code sections 1010 and 1011 is sought in the future.

I declare that the information in this report is true to the best of my knowledge and belief.

DATE: July 20.01, 20 04 at Montgomery Creek, California

SIGNATURE: Gerald B Troxell

PRINTED NAME: GERALD TROXELL B
(first name) (middle init.) (last name)

COMPANY NAME: BIG RED ORCHARD

If there is insufficient space for your answers, please use the space provided below.

ITEM	CONTINUATION

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or divert water which originates in a different watershed, water previously stored by others, return flows from use of groundwater, or other "foreign" water to the natural stream system.

An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914, new appropriators have been required to obtain a permit and license from the State. Appropriate rights can be granted to waters "foreign" to the natural stream system.

Statements of Water Diversion and Use must be filed by riparian and pre 1914 appropriative water users as set forth in Water Code section 5100 with specific exceptions. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversions, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Rights in California, and (3) Appropriation of Water in California.

"The energy challenge facing California is real. Every California needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at http://www.swrcb.ca.gov"

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95810
901 P ST. SACRAMENTO, CA
(916) 322-4503

(916) 324-5676

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

DIVERTER OF RECORD: STATEMENT NO: 010092

GERALD BRUCE TROXELL
P O BOX 177
MONTGOMERY CREEK, CA 96065

TELEPHONE NUMBER:
(916) 337-[redacted]9

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: JOHNSON CREEK

TRIBUTARY TO: MONTGOMERY CREEK

COUNTY: SHASTA

DIVERSION
WITHIN: NW1/4 OF SW1/4 SECTION 32, T35N, R01E, MDB&M.

INSTRUCTIONS: Please complete Items A. B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1992. (Additional information on reverse side of this form.)

A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.

Amounts below are: ☑ Gallons ☐ Acre-feet ☐ _____ (other)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1989					2728000 each month checked	✓	✓	✓	✓	✓			
1990													
1991													

B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation: Thirty Seven acres at 400 gal per min
Stockwatering: Pump, plus gravity flow.
Domestic:
Other (specify):

C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: June 28-9, 1992, at Montgomery creek ca, California

Signature: Gerald B Troxell

WR 40-1 (11/85)
0939

1991

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

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An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

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"Statements of Water Diversion and Use"
"Information Pertaining to Water Rights in California"
"Water Rights for Stockponds Constructed Prior to 1969"
"Appropriation of Water in California"

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95810
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STATE WATER RESOURCES CONTROL BOARD
1990 APR 23 PM 2:22
DIV. OF WATER RIGHTS
SACRAMENTO

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

STATEMENT NO. 018092
10092

DIVERTER OF RECORD:

GERALD BRUCE TROXELL
P O BOX 177
MONTGOMERY CREEK, CA 96065

TELEPHONE NUMBER:
(916) 337-6613

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: JOHNSON CREEK

TRIBUTARY TO: MONTGOMERY CREEK

COUNTY: SHASTA

DIVERSION
WITHIN: NW1/4 OF SW1/4 SECTION 32, T35N, R01E, MDB&M.

INSTRUCTIONS: Please complete Items A. B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1989. (Additional information on reverse side of this form.)

A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.

Amounts below are: ☑ Gallons ☐ Acre-feet ☐ 360000.00 (other)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1986						360000	✓	✓	✓				
1987													
1988													

B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation Fifteen (~~25~~) orchard 10 Pasture Ten

Stockwatering

Domestic

Other (specify)

C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: June 1, 19 89, at Montgomery Ck Shasta co, California

Signature: Gerald B Troxell

APR 26 1990

WR 40-I (11/85)
0870

1988

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

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An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

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Stmt 10092

State of California

Memorandum

To : Statement Files 10052, 10073, 10077, 10092
10101, 10104, 10123, 10924
and 10960

Date: JUL 16 1992

Katherine Mrowka

Katherine Mrowka
Associate WRC Engineer
Hearings Unit

From : **DIVISION OF WATER RIGHTS**
STATE WATER RESOURCES CONTROL BOARD

Subject: INFORMATION REGARDING THE BASIS OF RIGHT FOR STATEMENTS OF WATER DIVERSION AND USE LISTED ABOVE

During April, 1992, the Division of Water Rights circulated a Staff Analysis of Minor Protested Application 26015. No acceptable hearing requests were filed. Therefore, the Staff Analysis is now considered final. The analysis discusses the basis of right for the Statements of Water Diversion and Use listed above. Therefore, the pertinent pages of the analysis should be included in these files.

Attachments

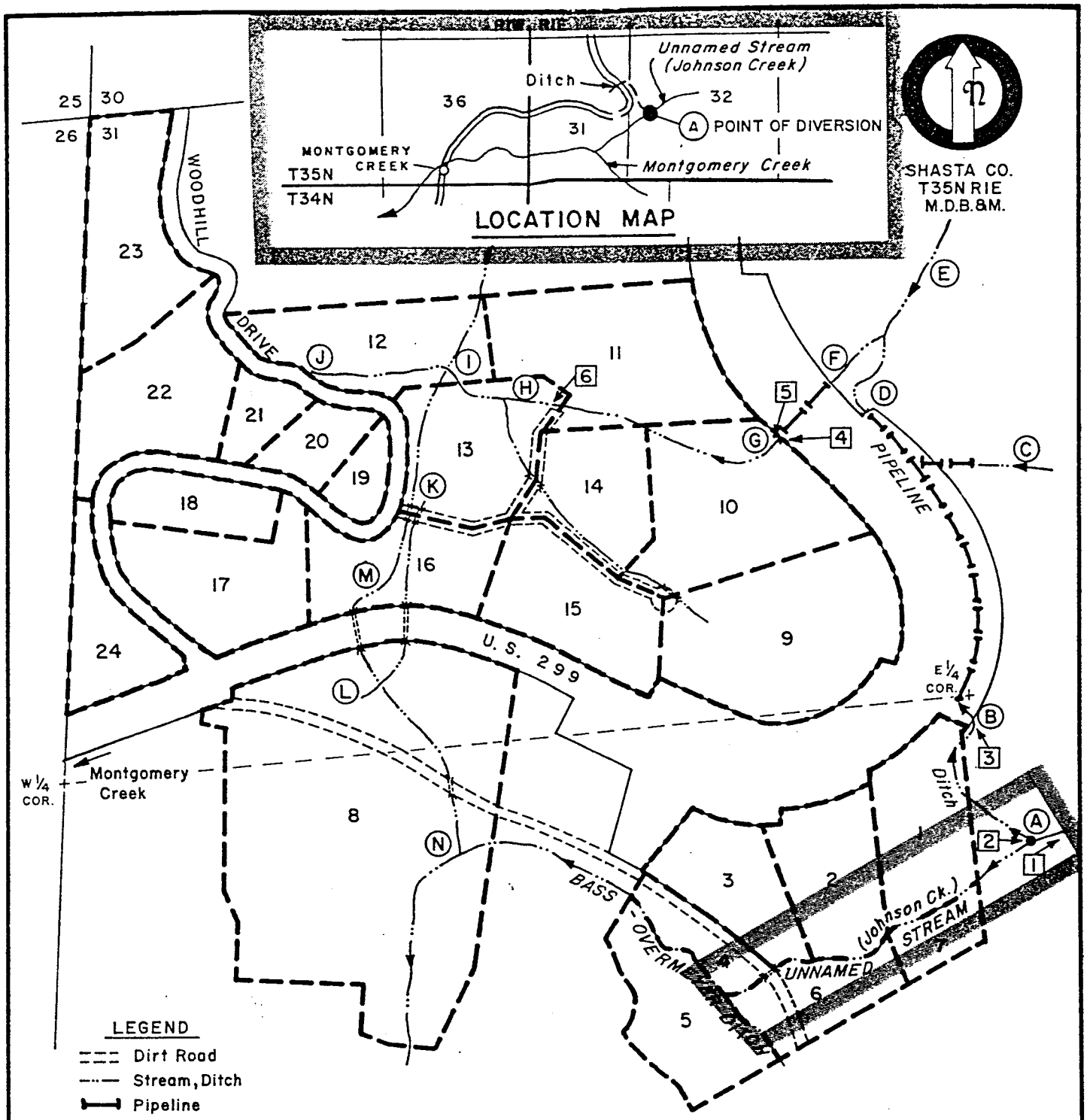
STAFF ANALYSIS
MINOR PROTESTED APPLICATION

APPLICATION 26015
WILLIAM L. and GEORGENE E. RIECK

Unnamed stream (aka Johnson Creek) tributary
to Montgomery Creek in Shasta County

APRIL 1992

STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



PARCEL OWNERS

1. W. L. & G. E. REICK
2. W. L. & G. E. REICK
3. C. L. ROBINSON
4. D. ROBINSON
5. R. BROWN
6. D & J BRYANT
7. ILE & P. ELDRIDGE
8. G.B. TRUXEL
9. H & R KENNEDY
10. N. & R. BERNIE
11. J. & J. M. MERRIL
12. B. L. & L. A. SPARKS
13. J. R. & K. A. CATON
14. D. A. BLAYLOCK
15. R. E. PETERSON
16. L. R. RENWICK
17. L. M. & J. A. STETLER
18. L. M. & J. A. STETLER
19. T. & C. KLEIN
20. D. & M. WATKINS
21. HART FEDERAL SAVINGS
22. MULRENMAN
23. ASHURE
24. LINDSEY

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

APPLICATION
26015

SCALE
0 300 FEET

DATE: 11-4-82	DRAWN: D.L.O.	CHECKED: R.P.A.	DWG. 3278

in 1929 and was eventually sold to the ditch water users. The Notice specifically lists the parcels adjacent to Johnson Creek as the parcels which the claim was intended to serve. Therefore, it does not appear that Mr. Questini intended the claim to establish a basis of right for Parcels 9 through 23.

6.3 Statements of Water Diversions and Use and Listing of Parcel Ownership

Nine of the protestants have filed Statements to describe their claimed water rights. The Statements are listed below:

Statement	Name	Parcel	Amount	Year of First Use
10052	Sparks	12	2,500 gpd	1976
10073	Watkins	20	0.012 cfs	1979 (per protest)
10077	Kennedy	9	0.050 cfs	1976
10092	Troxell	8	0.325 cfs	1883
10101	Caton	13	0.038 cfs	1963 (per protest)
10104	Shuffleton	10	0.095 cfs	1883[1]
10123	Blaylock, et al.	14	0.032 cfs	1883
10924	Klein	19	14,000 gpd	1979 (per protest)
10960	Stetler	17 & 18	0.060 cfs	1929
**	Merrill	11		unknown
**	Petersen	15		1883 (per protest)[2]
**	Renwick	16		1976 (per protest)
**		22, 23 & 24		---[3]

** No Statement on file for these protestants.

6.4 History of Dispute Regarding Water Use

The Division's records indicate that a dispute arose in 1977 between the owners of Parcels No. 1 through 6 and owners of Parcels No. 8 through 21 as to whether the pre-1914 appropriative rights apparently initiated by John Questini at diversion Point A were lost due to forfeiture for a period of non-use of at least five years prior to 1977. Further information about the ditch was obtained from the "Complaint for Determination of Water Rights, Trespass, Nuisance and Injunction" filed on behalf of William and Georgene Rieck in Shasta County Superior Court on November 3, 1983. The complaint alleges that the Upper ditch was out of service for a substantial period of time in the 1960's and 1970's.

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[1] 1982 Field Investigation found that the only water which has been used is for fire control. There is limited development of the parcel, and it had been recently sold. The new owner will likely make beneficial use of water in the future.

[2] 1982 Field Investigation found that no water had been beneficially used for a number of years. The parcel had not been developed.

[3] 1982 Field Investigation found that no water has been used on these parcels for many years.

6.5 Discussion of Pre-1914 Appropriative Right

The 1976 Agreement describes the ditch water right as a riparian right; no reference is made to any pre-1914 appropriative right. However, the Division's Johnson Creek adjudication file indicates that the ditch users have previously claimed a pre-1914 appropriative right on Johnson Creek. Also, the ditch users submitted information regarding a claimed pre-1914 appropriative right to support their protests of Application 26015.
The pre-1914 claims of right are described in Section 6.2 of this Analysis.

In reviewing water use under claimed pre-1914 right, the following is noted. First, once an appropriative right has been acquired, it can be maintained only by continuous beneficial use of water. Second, regardless of the amount claimed in the original notice of appropriation or at the time diversion and use first began, the amount which now can be rightfully claimed under an appropriative right initiated prior to December 19, 1914 has, in general, become fixed by actual beneficial use as to both amount and season of diversion. (see California Water Code Section 1202(b)). Third, the place of use or purpose of use may be modified under a pre-1914 claim of right.

The Department of Water Resources (DWR) investigated existing water use in this area of Shasta County (see attached Application 26015 Location Map) and reported this use in "DWR Bulletin 22 - Shasta County Investigation, July, 1964". The report summarizes the lands upon which water was utilized during 1955 and 1956 (see page 66). The irrigated lands are shown on DWR Plate 15 map, dated 1960. Bulletin 22 indicates that less land was irrigated in 1960 than is presently irrigated. The DWR maps indicate that only Parcels 8, 15, 16, 17 and 18 were irrigated in 1960. The map indicated that Parcel 12 is within the boundaries of irrigable lands. The remaining parcels were not included within the presently irrigated or irrigable areas. Finally, the 1956 U.S.G.S. Montgomery Creek quadrangle map shows no houses on Parcels 9 through 24. The only residence which existed at that time was located on Parcel 8.

Many of the protestants have indicated that water use began on their parcels prior to 1960, though their personal domestic use was initiated at a later date. The DWR map provides useful information on the limits of the actual irrigated area in 1960. The Division's 1982 investigation found that no water use was occurring on Parcel 15. Thus, it appears that irrigation of this parcel had ceased by 1982. Irrigation of Parcels 19, 20 and 21 was apparently initiated after 1960. Based upon this information, Division staff concludes that total water use for irrigation purposes has increased beyond historic levels after 1960.

Water use for domestic purposes also appears to have increased after 1914. A summary of annual water development by the ditch users was obtained by adding together the annual use listed in the Statements (see Section 6.3) or obtained by investigation (see Section 7.0 for this data). The first column represents data obtained from the Statements, unless otherwise noted.

Quantity	Date Use Began	Parcel Numbers
0.357 cfs	1883	8, 14 (DWR Bulletin 22 indicates that Parcel 14 was not irrigated in 1960 and the 1956 U.S.G.S. map shows no house on this parcel. Therefore, it does not appear that there is a valid pre-1914 claim of right to 0.007 cfs (per 1982 field investigation). Also, an 1883 priority is claimed for Parcels 10 and 15, but the 1982 investigation found that no water was being used on these parcels.)
0.060 cfs	1929	17, 18 (0.072 cfs per investigation)
0.038 cfs	1963	13 (per Statement, 0.0093 cfs per investigation) (Domestic use on Parcels 17 and 18 is said to have begun in 1963--irrigation use on these parcels began in 1929. All water used on these two parcels is listed above under year 1929.)
0.073 cfs	1976	9, 12, 16
0.034 cfs	1979	19, 20 (0.026 cfs per investigation)
Total 0.562 cfs		(Investigation concluded use is 0.33 cfs, whereas the use listed in the Statements is 0.56 cfs.)

Seven of the ten protestants have indicated that their use was initiated after 1963. Further, protestant Shuffleton (Parcel 10) has indicated that his use began in 1883. However, the 1982 field investigation found that water use on the Shuffleton parcel was limited to fire protection. Based upon the information summarized above, it appears that use of roughly 0.35 cfs was initiated prior to 1914. Use of about 0.21 cfs (balance of column 1) was apparently initiated after 1914.

The 0.35 cfs noted above (Statement 10092 lists 0.325 cfs) is used on Parcel 8, which also obtains water from the Bass-Overmeyer Ditch under pre-1914 claim of right. Division staff estimates that only part of the 0.325 cfs pre-1914 claimed right for Parcel 8 was obtained from Johnson Creek because Parcel 8 is better situated to obtain water from the Bass-Overmeyer Ditch. Parcel 8 may also obtain water from the unnamed stream which originates on the north side of Highway 299.

Prior to the 1975 settlement of the Estate of Alice May Lattin, the Upper ditch was mainly used to provide water for irrigation purposes. As noted above, the 1960 DWR map indicates that total irrigation use increased after 1960. Thus, Division staff concludes that the increase in domestic use has not been offset by a reduction in irrigation use and total water use has increased.

The pre-1914 claim of right filed by John Questini states that it was filed to initiate a right for Parcels 2, 3, 5, 6 and 8. Mr. Questini indicated that "I intend to divert it by flume and ditch in size adequate to carry the ...

amount appropriated." It does not appear that Mr. Questini intended to initiate a right for Parcels 9 through 23. Even if a right was established for these parcels, the right would have become fixed by actual beneficial use. It cannot be enlarged at this late date to accommodate the water users who have recently initiated use. Water use has increased since 1914 and it does not appear that the new uses can be classified as maintenance of any pre-existing appropriative right that may have existed. Thus, it appears that the claimed pre-1914 appropriative right is inadequate to cover present uses and the protests filed by the owners of Parcels 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23 and 24 cannot be maintained. The protest filed by the owner of Parcel 14 can only be maintained if domestic use has been ongoing since December 19, 1914, because Division records indicate that the property was not historically irrigated. However, the 1956 U.S.G.S. Montgomery Creek quadrangle map indicates that there was no house on Parcel 14 in 1956. Thus, the protest filed by Blaylock, et al. (Parcel 14) should be dismissed. Only the protest filed by Troxell (Parcel 8) based upon a pre-1914 claim of right should be maintained. Division staff notes that Merrill, the owner of Parcels 11 and 21 did not protest Application 26015.

6.6 Riparian Claim of Right

The recorded water supply agreement (see Section 6.1) states that the basis of right is riparian. A riparian right is limited to the amount which is naturally tributary to the property, exists by reason of ownership of land abutting upon a stream or body of water and affords no basis of right to use water upon nonriparian land. (Rancho Santa Margarita v. Vail, 11 Cal. 2d 501, 80 P. 2d 533) The shaded area on the Location Map indicates the approximate boundary of the land within the watershed of Johnson Creek, which is the extent of the lands riparian to this source. The riparian right for use of Johnson Creek water does not appear to extend to Parcels 9 through 23 because the lands are not within the watershed of the source. The property owners (of Parcels 9 through 23) may be served under riparian claim of right from the other three sources shown on the Location Map (at locations C, E, and I) if the ditch was established prior to subdivision of the ranch and the riparian right was preserved.

Parcel 8 is within the watershed of Johnson Creek. In order to divert water under claim of riparian right, the diverter must use the water on riparian land but need not own the land at the point of diversion. That is, such diverter may divert at a point upstream from his land so long as permission is granted to use that point of diversion, and intervening land owners between the point of diversion and the place of use are not adversely affected by such practices. (Turner v. James Canal Co., 155 Cal. 82, 99 P. 520 (1909)) To use the point of diversion on BLM land, the water must pass through the Rieck property in the ditch (he appears to be riparian on the portion of his land which is within the watershed of Johnson Creek). The Riecks object to the claimed riparian diversion by the ditch water users and filed a Complaint for Determination of Water Rights, Trespass, Nuisance and Injunction in the Shasta County Superior Court on November 3, 1983. Due to the expense of pursuing this matter in Court, Mr. Rieck has expressed his desire for the Division to proceed with a determination of whether Application 26015 should be permitted.

6.6.1 Conclusions Regarding Riparian Rights of Protestants

It does not appear that water from Johnson Creek which is conveyed by the Upper ditch can be used on Parcels 9 through 23 under a riparian claim of right because these parcels are located outside of the watershed of Johnson Creek. Further, it appears that Parcel 8 cannot be served under riparian claim of right because the landowner at the point of diversion, the Riecks, have denied access to the point of diversion and the Riecks claim that the present diversion is adverse to their riparian right. It appears that this element of the protest based on injury to vested rights should be dismissed because the protestants do not appear to have a valid basis of riparian right for Johnson Creek.

7.0 AVAILABILITY OF UNAPPROPRIATED WATER

As described in the protest filed by the Bureau, the proposed diversion season is inconsistent with the times when unappropriated water is available as determined by the State Water Board in Decision 1045. The applicant may be entitled to water pursuant to an area of origin principle. However, this analysis is silent on this issue because of other State Water Board decisions which affect water availability in this watershed (see discussion of Decision 1594 below). The previous applicant, Paul Rideout, agreed to the following permit term to address the water availability issue:

> "During the period between June 15 and September 1, if in the absence of permittee's diversion, hydraulic continuity would exist between permittee's diversion point and Montgomery Creek, permittee shall not divert water, but shall open his diversion works and allow the water to flow undiminished downstream."

Division staff does not recommend inclusion of the proposed permit term. Johnson Creek is a perennial stream. The proposed term would require continual flow bypass during the summer months and the Riecks would not be able to divert water under riparian claim of right in these circumstances. Alternatives to inclusion of this term exist and appear to be feasible. In Decision 1594, the State Water Board found that there is no unappropriated water available from June 15 through August 31 to approve diversions of less than one cfs from any tributary of the San Francisco Bay-San Joaquin Delta above Collinsville. Roughly one-half of the Riecks property is located within the Johnson Creek watershed (see Location Map) and may be served under riparian claim of right. However, the application does not indicate which part of the parcel will be served and the Division's records do not indicate whether only the riparian portion of the Rieck property will be served. Thus, it appears that the options for issuance of a permit authorizing year-round appropriation of water should be investigated.

One option is to authorize continual diversion (January 1 through December 31) if a water exchange contract is entered into with the Shasta County Water Agency (this is one of the alternatives suggested by the Bureau to resolve it's protest) and is consistent with State Water Board Decision 1045. If a water exchange contract is obtained to cover summer diversion, then any permit

Reply 311-CC:26015 NC

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

AUG 1 4 04 PM '80

SACRAMENTO

S10092

STATEMENT OF WATER DIVERSION AND USE

(This is not a Water Right)

This statement should be typewritten or legibly written in ink.

A. Name of person diverting water GERALD BRUCE TROXELL

Address PO BOX 177 MONTGOMERY CH CA 96065 Telephone 916 337-6613

B. Name of body of water at point of diversion JOHNSON CREEK

Tributary to MONTGOMERY CREEK

C. Place of diversion NW ¼ SW ¼ Section 32, Township 35, Range EAST, MD B&M, SHASTA County, or locate it on sketch of section grid on reverse side with regard to section lines or prominent local landmarks.

D. Name of works JOHNSON CREEK DITCH & DIVERSION

E. Capacity of diversion works SIX HUNDRED GAL PER MINUTE (cubic feet per second / gallons per minute / gallons / acre-feet)

Capacity of storage reservoir CEMENT BOX 450 (gallons / acre-feet)

State quantity of water used each month in gallons or acre-feet

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
				✓	✓	✓	✓	✓	✓	✓			

If monthly and annual use are not known, check months in which water was used. State extent of use in units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc.

12 ACRE APPLES ORCHARD 15 ACRE PASTURE 4 TO 30 PERONS 4 TO 10 LIVE STOCK

Maximum annual water use in recent years ONE HUNDRED (gallons / acre-feet)

Minimum annual water use in recent years FIFTY (gallons / acre-feet)

Type of diversion facility: gravity ✓, pump ____

Method of measurement: weir ____, flume ____, electric power meter ____, water meter ____, estimate ✓

F. Purpose of use (what water is being used for) DOMESTIC & IRRIGATION LIVE STOCK

G. General description or location of place of use (use sketch of section grid on reverse side if you desire) ORIGINAL HOUSE, RANCH & ORCHARD TO BE ABOVE WATER 1883 ½ MILE EAST OF MONTGOMERY CH HWY 299E

H. Year of first use as nearly as known 1883

I. Name of person filing statement GERALD BRUCE TROXELL

Position OWNER Organization TROXELL BIG RED ORCHARD

Address PO BOX 177 MONTGOMERY CH Telephone 916 337-6613

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

DATED: JULY 15 - 80, 19 80, at MONTGOMERY CH, California.

Signature: Gerald B. Troxell A 26015

SWRCB 40 (7/77)

See Instructions on Reverse Side

1-C-1-23-0-0-0

STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS
P.O. BOX 2000, SACRAMENTO, CA 95812-2000
(916) 657-2170

STATE WATER RESOURCES
98 AUG 28 AM 10: 19
DIV. OF WATER RIGHTS
SACRAMENTO

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

If the information below is inaccurate, please line it out in red and provide current information.
Notify this office if ownership or address changes occur during the coming year.

PLEASE COMPLETE AND RETURN THIS FORM BY JULY 1, 1998

OWNER OF RECORD: GERALD BRUCE TROXELL

GERALD BRUCE TROXELL
PO BOX 177
MONTGOMERY CREEK, CA 96065

STATEMENT NO: S010092

S 0 1 0 0 9 2

SOURCE: JOHNSON CREEK
TRIBUTARY TO: MONTGOMERY CREEK
COUNTY: SHASTA
DIVERSION WITHIN: NW¼ OF SW¼ SECTION 32, T35N, R1E, MB&M.

TELEPHONE NUMBER: (916) 337-6613
YEAR OF FIRST USE: 1883
PARCEL NO: 027-370-05

A. Water is used under: Riparian claim ✓; Pre 1914 right ✓; Other (explain): _____

B. Year of first use (Please provide if missing above) SEE ABOVE

C. Amount of Use - Enter the amount of water used each month. If monthly and annual use are not known, check the months in which water was used. 72,500

Amounts below are: ☑ Gallons ☐ Acre-feet ☐ (other) _____

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1995													72,500 Per day
1996													72,500 Per day
1997													72,500 Per day

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.
Irrigation 72,500 acres; Stockwatering _____; Domestic _____
Other (specify) _____

E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)
N/A

F. If part of the water listed in Part C consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.
N/A

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: June 15, 19 98 at Montgomery creek, California

SIGNATURE: Gerald B Troxell

PRINTED NAME: GERALD B TROXELL
(FIRST NAME) (MIDDLE INIT.) (LAST NAME)

COMPANY NAME: BIG RED ORCHARD

See back of page for General Information. If there is insufficient space for your answers, please number them in the space provided on the back of this form.

WR 40-1

S-10092 KSA File

State water Resources control Board
S010092
att Roger Johnson
Regarding to Supplemental statement of water Diversion & use. # S010092
I was advised this date to send a copy of water use WR 40-1, to insure your Department received completed copy that is enclosed

I also use water from Bassovermeyer ditch diversion from Montgomery creek, and Montgomery creek, all Pre 1914 use.
Please check your database information, I need to fill out a statement form for this use

Gerald B Trapell
PO Box 1177
Montgomery creek, ca
96065
530
~~916~~ 337-6699

Parcel # 027-370-05

Forms sent 9-30-98

STATE WATER RESOURCES
CONTROL BOARD

98 AUG 28 AM 10: 19

DIV. OF WATER RIGHTS
SACRAMENTO

STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS
P.O. BOX 2000, SACRAMENTO, CA 95812-2000
(916) 657-2170

STATE WATER RESOURCES
98 AUG 28 AM 10: 19
DIV. OF WATER RIGHTS
SACRAMENTO

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

If the information below is inaccurate, please line it out in red and provide current information.
Notify this office if ownership or address changes occur during the coming year.

PLEASE COMPLETE AND RETURN THIS FORM BY JULY 1, 1998

OWNER OF RECORD: GERALD BRUCE TROXELL

GERALD BRUCE TROXELL
PO BOX 177
MONTGOMERY CREEK, CA 96065

STATEMENT NO: S010092

S 0 1 0 0 9 2

SOURCE: JOHNSON CREEK
TRIBUTARY TO: MONTGOMERY CREEK
COUNTY: SHASTA
DIVERSION
WITHIN: NW¼ OF SW¼ SECTION 32, T35N, R1E, MB&M.

TELEPHONE NUMBER: (916) 337-6613
YEAR OF FIRST USE: 1883
PARCEL NO: 027-370-05

A. Water is used under: Riparian claim ✓; Pre 1914 right ✓; Other (explain): _____

B. Year of first use (Please provide if missing above) SEE ABOVE

C. Amount of Use - Enter the amount of water used each month. If monthly and annual use are not known, check the months in which water was used. 72,500

Amounts below are: ☑ Gallons ☐ Acre-feet ☐ (other) _____

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
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1996													72,500 Per day
1997													72,500 Per day

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.
Irrigation 72,500 acres; Stockwatering _____; Domestic _____
Other (specify) _____

E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)
N/A

F. If part of the water listed in Part C consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.
N/A

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: June 15, 19 98 at Montgomery creek, California

SIGNATURE: Gerald B Troxell

PRINTED NAME: GERALD B TROXELL
(FIRST NAME) (MIDDLE INIT.) (LAST NAME)

COMPANY NAME: BIG RED ORCHARD

See back of page for General Information. If there is insufficient space for your answers, please number them in the space provided on the back of this form.

WR 40-1