STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 85 (Application 1104)

Daniel L. Ives

ORDER REVOKING LICENSE

SOURCE: Birch Creek

COUNTY: Inyo

WHEREAS:

1. The Licensee requested on February 21, 2008 that the License be revoked by the State Water Resources Control Board (State Water Board), Division of Water Rights (Division).

2. The Division interprets the Licensee's request for revocation as a waiver of the notice and hearing requirements set forth in Water Code sections 1675 through 1675.1.

Therefore, it is ordered that License 85 is hereby revoked by the State Water Board, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

John O'Hagan, For

Victoria A. Whitney, Chief
Division of Water Rights

Dated: SEP 17 2008

30052—4-21-17—2M

FILE IN DUPLICATE

For full information regarding the filling out and filing of this form send for Rules and Regulations of the Commission governing appropriation of water

Application No. 1104

APPLICATION FOR A PERMIT

To Appropriate Unappropriated Waters of the State of California

FOR POWER PURPOSES

We, Joseph Mears and Mary Dunlop Mears his wife (Name of Applicant)

of Big Pine (Post office) County of Inyo

State of California, do hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, SUBJECT TO EXISTING RIGHTS:

If the applicant is a corporation, give date and place of incorporation (Not a Corporation)

1. *The source of the proposed appropriation is* Birch Creek (Name of stream, lake, or other source)

located in Inyo *County, tributary of*

2. *The amount of water which the applicant intends to apply to beneficial use is* Twenty-Five (25) (One cubic foot per second equals 40 miner's inches) *cubic feet per second.*

3. *The use to which the water is to be applied is* Power Purposes

4. *The point of diversion is located* 2400 ft. from the N. W. Cor. of Sec. 20, and 4088 ft. from the N. E. Cor. of Sec. 20, and 1800 ft. from the N. E. Cor. of the (Give distance and bearing to section corner) Buckeye Ranch, *being within the* S. E. 1/4 of the N. W. 1/4 of Sec. 20 and the S. W. 1/4 of the N. E. 1/4 (Give smallest legal subdivision not to exceed 40 acres) *of Sec.* 20 *Tp.* 10 S. *R.* 34 E. *M. D. M., in the county of* Inyo

5. *The* Main Ditch (Main ditch, canal or pipe line) *to be* 2350 feet ~~miles~~ *in length, terminating in the* Flume and Pipe Line on the S. W. 1/4 of the N. E. 1/4 (Smallest legal subdivision) *of Sec.* 20 *Tp.* 10 S. *R.* 34 E. *M. D. M., the proposed location being shown throughout on the accompanying map.*

6. *The name of the ditch, canal or other works is* the "Cleveland" Water Ditch for use on the "Cleveland" Millsite, for the use of the "Cleveland", "Golden" and "Abandoned" Mining Claims, situated on Fish Springs Hill, about one and one-half miles North of the "Cleveland" Millsite

DESCRIPTION OF WORKS

Diversion Works—

7. (a) *Height of dam* ____ *feet; length on top* ____ *feet; length at bottom* ____ *feet; material to be used and character of construction* ____ (Loose rock, concrete, masonry, rock and brush, timber crib, etc., wasteway over or around dam)

(b) *Description of headgate* 8 ft. Long, 2 ft. wide and 2 ft. high, of timber (Timber, concrete, etc., number and size of openings)

NOTE.—In case of insufficient space for answers in form attach extra sheets.

Canal System—

8. *Give dimensions at each point of canal where materially changed in size, stating miles from headgate:*

(a) *At headgate: Width on top (at water line)* 2 *feet; width on bottom* 2 *feet; depth of water* 1 *feet; grade* 6 *feet fall per one thousand feet.*

(b) *At* 2350 feet ~~miles~~ *from headgate: Width on top (at water line)* At Flume 18 in ~~feet~~; *width on bottom* 2 *feet; depth of water* 1 *feet; grade* 1 in to 1 ft *feet fall per one thousand feet.* (*Attach sheet covering other changes.*)

(An old ditch and 25 inches of water have been used for this millsite since the millsite was originally located, April 18th, 1892, by John Escallon.)

Storage Reservoir—

10. *The location of the proposed reservoir will be in* _____ (Give 40-acre subdivisions)

11. *The dam will be located in* _____ (40-acre subdivisions)

Sec. _____ *Tp.* _____ *R.* _____, *M. It will be* _____ *feet in height; length on top* _____ *feet; length on bottom* _____ *feet; width on top* _____ *feet; slope of front or water face* _____ (Feet horizontal to 1 vertical); *slope on back* _____ (Feet horizontal to 1 vertical) *height of dam above water line when full* _____ *feet.*

12. *Character of construction of dam and the materials of which it is to be built* _____

13. *Estimated cost of proposed works,* $600-

14. *Construction work* ~~will begin~~ began *on* ~~or before~~ August 19th, 1918.

15. *Construction work will be completed on or before* October first 1918.

16. *The water will be completely applied to the proposed use on or before* October 1st, 1918.

17. *The nature of the works by means of which the power is to be developed* through the "Cleveland" Water Ditch, Flume and Pipe Line to Water Wheel on "Cleveland" Millsite on Birch Creek where Mill is located.

18. *Total fall to be utilized* 250 (Head) *feet.*

19. *The use to which power is to be applied is* Operation of Mill, Lighting Mill and House, and for Domestic purposes.

20. *Total amount of power to be developed* Thirty-five (35) *theoretical horsepower*

21. *Such works to be located in* S.W. 1/4 of the N.E. 1/4 (40-acre subdivision) *of Sec.* 20 *Tp.* 10 S. *R.* 34 E. M.D. *M.*

22. *Is water to be returned to any stream?* Yes (Yes or no)

23. *If so, name stream and locate point of return* Birch Creek S.W. 1/4 of N.E. 1/4 of (Locate within 40-acre subdivision) *Sec.* 20 *Tp.* 10 S. *R.* 34 E. M.D. *M.*

24. *It is understood and agreed that this application and the permit and license which may be granted hereunder shall be subject to all the conditions set forth in Section 20 of the Water Commission Act (Statutes 1913, Chapter 586), which is as follows:*

Applicant Josephine Mears and Mary Dunlop Mears Rempe

Application No. 1104

Permit No. 515.

APPLICATION

POWER

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF CALIFORNIA

This application was first received in the office of the State Water Commission the 2 *day of* Oct *19*18 *at* 11 *o'clock* A *M.*

Returned to Applicant for Correction October 3, 1918.

Corrected Application Received Oct. 14/18

Approved: November 27, 1918.

Recorded in Book No. ..... *of Permits, on Page* .....

PERMIT No. 515.

STATE OF CALIFORNIA,
City & *County of* San Francisco. } *ss.*

This is to certify that we have examined the application of which the foregoing is a true and correct copy and do hereby grant the same, subject to VESTED RIGHTS and the following limitations and conditions, in addition to those enumerated in Section 20 (Statutes 1913, Chapter 586) set forth above .....

Actual construction work shall begin on or before March 1, 1919. *and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.*

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and shall not exceed twenty-five/fortieths (25/40) *cubic feet per second, or its equivalent in case of rotation.*

Said construction work shall be completed on or before June 1, 1919.

...plication of the water to the proposed use shall be made on or before July 1, 1919.

...s this 27th *day of* November *19*18.

A. E. Chandler

Irving Martin

State Water Commission

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accept such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivison of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; *and providing, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional water granted in its said application it may so do upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Joseph Mears
(Name of Applicant)

Mary Dunlop Mears

Signed in the presence of us as witnesses:

1. Richard Brooks (Name) — Big Pine, California (Address)
2. James Green (Name) — Big Pine, California (Address)

For the use of the Water Commission in sending notices as provided in Rule 8, Page 8 of Rules and Regulations, the applicant should answer the following questions:

1. *What is the name of the post office most used by those living near the proposed point of diversion?* Big Pine, Inyo County, California

2. *What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion?* D. F. Connor
James Hill (Indian)
Mrs. Osborne & Sons
Henry Porter
James Dowd
E. F. Ahrens
Ralph Ahrens

APPLICATION No. 1104 PERMIT No. 515 LICENSE No. 85

CALIFORNIA STATE WATER COMMISSION

Notice of Assignment (Over)

THIS IS TO CERTIFY, That ~~Joseph and Mary D. Mears~~

of Big Pine, State of California, has made proof to the satisfaction of the STATE WATER COMMISSION of California of a right to the use of the waters of Birch Creek, a tributary of

for the purpose of generating power under Permit No. 515 of the State Water Commission; and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the State Water Commission and the terms of said permit, and duly confirmed by order of the STATE WATER COMMISSION of California, made and entered of record in the minutes of said Commission, at San Francisco, in Volume_____, at page_____, on the_____day of_____;

that the priority of the right hereby confirmed dates from October 2, 1918; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes, and shall not exceed 25/40 cubic feet per second, to be used from about January 1st to about December 31st of each year.

A description of the lands or the place where such water is put to beneficial use is as follows:

Water To be used for power purposes at the "Cleveland" Millsite located in SW¼ of NE¼ Section 20. T. 10 S. R. 34 E. M.D.M.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of the Water Commission Act which is as follows:

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that any time after the expiration of twenty years after the granting of a license, the state or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee, or licensee, or the heirs, successors, or assigns, of said permittee or licensee, has not put the water granted under said permit or license to the useful and beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. The findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; *and provided, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

WITNESS the seal and signature of the STATE WATER COMMISSION, affixed this 1st day of May, 1920.

STATE WATER COMMISSION.

By CHARLES H. LEE

Executive Member.

(Seal)

APPLICATION No. 1104 PERMIT No. 515 LICENSE No. 85

CALIFORNIA STATE WATER COMMISSION

THIS IS TO CERTIFY, That Joseph and Mary D. Meaze of Big Pine, State of California, has made proof to the satisfaction of the STATE WATER COMMISSION of California of a right to the use of the waters of Birch Creek, a tributary of _____, for the purpose of Generating Power under Permit No. 515 of the State Water Commission; and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the State Water Commission and the terms of said permit, and duly confirmed by order of the STATE WATER COMMISSION of California, made and entered of record in the minutes of said Commission, at San Francisco, in Volume _____, at page _____, on the _____ day of _____; that the priority of the right hereby confirmed dates from Oct 2, 1918; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes, and shall not exceed 25/40 cubic feet per second, to be used from about Jan 1 to about Dec 31 of each year.

A description of the lands or the place where such water is put to beneficial use is as follows:

Water to be used for power purposes at the "Cleveland" millsite located in SW¼ of NE¼ sec. 20 T 10S, R 34 E. MDBM.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of the Water Commission Act which is as follows:

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that at any time after the expiration of twenty years after the granting of a license, the state or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee, or licensee, or the heirs, successors, or assigns, of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. The findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; *and providing, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

WITNESS the seal and signature of the STATE WATER COMMISSION, affixed this 1st day of May 1920, ~~191~~

STATE WATER COMMISSION.

By _____

_____

_____

Recorded in State Record of Water Licenses,

Volume _____, Page _____.

32312. 8-9-17—500