



WATER-RIGHT DOCKET

Redwood National and State Parks

Docket No: 9

WILSON CREEK UNDERFLOW

Preliminary Docket Information

00-00-0000: water right/source docket information: application 22723, 22723; permit 15723, 15642

DOCKET (FILE) TITLE		DATE: July 9, 1979
REGION	Western	AREA Redwood National Park
SITE	Wilson Creek - Kelly Claims	
STATE	California	COUNTY Del Norte DOCKET NO. WR #9
LOCATION	SE 1/4 NE 1/4 Sec. 18 T14N R1E/SW 1/4 SW 1/4 Sec. 29 T14N R1E	
REGIONAL BASIN	LOCAL BASIN	
ACQUIRED BY	Appropriation	
APPLICATION	22723/22771	PERMIT 15723/15642 CERTIFICATE
ACTION DUE	PRIORITY 3/10/67 - 4/13/67	RESERVATION
QUANTITY	1.75 cfs/0.69 cfs	USE Municipal & Recreation/Fish and Wildlife Propagation
STATUS	Active	SOURCE Well/Stream
REMARKS	Hydrologic Unit #18010209	
NARRATIVE:		
In 1967 W.W. Kelly filed two water right applications with the state to appropriate water on property he owned. When Redwood NP was established in 1968, part of Kelly's land was included within the boundaries of the park. The NPS took over Application 22771 (Permit 15642) completely, changing the use on the permit to "fish and wildlife propagation" in 1978. No other action has been taken on this permit. The other application (#22723, Permit 15723) is still a live issue. The NPS took over only part of the land mentioned in Kelly's application. Out of a total of 328 acres of land mentioned as the place of beneficial use, the Park Service acquired about 128 acres. Kelly had been planning to build a subdivision on the land and a dispute arose over how much of this water right permit attached to the land purchased by the NPS. The deed from Kelly to the U.S. left the water right issue unresolved after both sides failed to come to an agreement on the projected use of Wilson Creek (Kelly's request for 200,000 gpd was not agreed upon by the Service due to the fact that the Service felt it had no power to affect any water right appurtenant to land still owned by Kelly). An NPS suggestion that it be determined how much of the subdivision was to be located on the land the U.S. acquired, and the water involved in the application apportioned accordingly, never made it out of the Division. Currently the Kelly diversion is up for review by the State Water Resources Control Board; a field check will be made in September to determine if the amount of water applied for is a realistic estimate of the water to be put to use. At that time, if Kelly's application and permit are allowed to continue, an alien water right docket should be established for the development. On June 25, 1980, we received a notice of proposed revocation of water right application #22771. Having filed a Petition for Change of Use in 1977 (see docket) and stated our position on these water rights in our letter to SWRCB of May 20, 1977, there is little more that can be accomplished by further actions on our part. GSW concurs that further correspondence explaining our needs and intentions would be superfluous. No action will be taken on this Notice of Proposed Revocation. James H. Hershey, June 27, 1980 On September 2, 1980, we received a notice of rejection of our petition for change of use for application #22723 from domestic to "Fish and Wildlife Propagation". This situation may be distinguished from the Death Valley water rights that were successfully changed by petition in that the latter had been physically developed - these have not been and without physical control (usually by diversion) of the water, the SWRCB will not grant a permit. James H. Hershey, September 4, 1980 On March 19, 1981, we received a notice of revocation of application 22771 by the SWRCB. Revocation was based on failure to commence, prosecute and complete the work as required by this permit. This basically closes the file on ~~both~~ applications #22723/22771.		
Compiled by	T. Kern	James H. Hershey, March 19, 1981
Approved by		

W A T E R D O C K E T I N F O R M A T I O N

A R E A REDWOOD NATIONAL PARK

DOCKET NO. 9

APPLICATION NO. 22723

PERMIT NO. 15723

CERTIFICATE NO.

TITLE OF DOCKET WILSON CREEK

PRIORITY MARCH 10, 1967

REMARKS:

STATE OF CALIFORNIA - RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 924-2462

EDMUND G. BROWN JR., Governor



In Reply Refer
to: 342:RJM:22723

MAR 12 1981

W. W. Kelly
733 - 47th Street South
Great Falls, MT 59405

Dear Mr. Kelly:

PERMIT 15723 (APPLICATION 22723) WILSON CREEK IN DEL NORTE COUNTY

Thank you for bringing to our attention the incorrect concepts we had of your project, during your visit to our office on February 10, 1981.

It is our understanding that the point of diversion will still be located on the property that will be retained by your daughter, after settling with the U. S. National Park Service. It is also our understanding that the delay in construction of your project is being caused by negotiations with the Federal Government concerning the amount of land they will acquire for the park protection zone. Therefore, a petition for an extension of time would be appropriate to keep the permit active. We will process a petition for an extension of time received on December 8, 1972 and no additional petitions will be necessary from you at this time.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in cursive script, reading 'Jim Pankratz'.

Jim Pankratz, Chief
Extension, Change and
Compliance Unit

cc: U. S. National Park Service
Western Resources
c/o Gerard S. Witucki
450 Golden Gate Avenue
San Francisco, CA 94102

STATE OF CALIFORNIA - RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 924-2462

EDMUND G. BROWN JR., Governor



In Reply Refer
to: 342:RJM:22723

AUG 29 1980

Gerard S. Witucki
U. S. National Park Service,
Western Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Witucki:

PERMIT 15723 (APPLICATION 22723) WILSON CREEK IN DEL NORTE COUNTY

We have received and examined your Petition for Change in Purpose of Use. The petition is unacceptable for the following reasons and your \$10.00 filing fee will be returned by separate letter.

1. U. S. National Park Service has not demonstrated that they have an existing or proposed project that would take physical possession of the appropriated water.
2. The petition submitted on July 11, 1980 was unsigned.

We are enclosing "Request for Revocation Forms" for your convenience. If the signed forms are not received within 30 days from the date of this letter we will proceed with revocation of your permit under the provisions of Administrative Code 1410 (copy enclosed). Should you have any questions, please contact Rick Miner at (916) 924-2462 between 7:30 a.m. and 4:00 p.m., weekdays.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Glenn K. Mork'.

Glenn K. Mork
Acting Program Manager
License Section

Enclosures

NOTE: This notice was received after we attempted to petition for a change of use on the above water rights. However, because the Service has not and does not plan to take physical control of the water by some diversion project, our request has been rejected. This situation may be distinguished from the Death Valley water rights that were successfully changed by petition from domestic to "Fish and Wildlife propagation" in that those latter water rights were already developed physically.

RECEIVED - WATER RESOURCES
DATE SEP 02 1980

A handwritten signature in cursive script, appearing to read 'James H. Hershey'.

James H. Hershey, Legal Clerk
September 4, 1980

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

REVOCATION REQUEST

The undersigned hereby requests revocation

License _____, Permit 15723, issued
on water right Application 22723.

(Signature)

(Signature)

Dated:

SWRCB 26 (1/78)

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

REVOCATION REQUEST

The undersigned hereby requests revocation

License _____, Permit 15723, issued
on water right Application 22723.

(Signature)

(Signature)

Dated:



IN REPLY REFER TO:

L54 (492)

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

JUL 23 1980

RECEIVED
Western Regional Office
JUL 28 '80

Regional Director	
Dep. Regional Dir.	
Operations Eval.	
Administration	
Operations	
Res. Mgmt. Plan	
X NITCKI	
EEO	
Public Affairs	
Action Taken	

Memorandum

To: Regional Director, Western Region

From: **ASSOCIATE** Director

Subject: Permit 15723 (Application 22723) - Redwood National Park

We have received a copy of your July 10, 1980 letter, to the California State Water Resources Control Board petitioning change of use from municipal, irrigation and recreation to fish and wildlife propagation.

We would appreciate receiving a copy of the petition for our water right docket file and advice on the quantity of water the Service is claiming.

*We have responded to this by xerox copies
of the material to Vic Rente via
blue envelope.*

N.W. Aug, 1980

**Year of
the
Visitor**

STATE OF CALIFORNIA — RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 920-6151

EDMUND G. BROWN JR., Governor



JUL 2 1980

In Reply Refer
to:342:RB:22771

Mr. J. Hershey
U. S. Redwood National Park
National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Hershey:

PERMIT 15642 (APPLICATION 22771) AND PERMIT 15723 (APPLICATION 22723) UNNAMED
STREAM AND WILSON CREEK IN DEL NORTE COUNTY

This letter is to verify the comments made to you by Ronald Bachman of my staff during your June 27, 1980 telephone conversation regarding the requirements of California law that an appropriative right be based upon taking actual physical possession of the water. In the context of this conversation the best definition of an appropriation of water is that expressed in McDonald v. Bear River and Auburn Water and Mining Co. 13 Cal. 220, where the court said that an appropriation of water is "the intent to take, accompanied by some open, physical demonstration of the intent, and for some valuable use". (Emphasis added.) (See also E. C. Fullerton v. California State Water Resources Control Board 153 Cal. Rptr. 518 and California Trout, Inc. v. State Water Resources Control Board 153 Cal. Rptr. 672.) This open, physical demonstration of intent would have to be determined by the Board during a hearing process. Absent a hearing, and based upon the information in our files, this Division will have to proceed with appropriate revocation proceedings.

However, since this watercourse flows through land owned by the U. S. National Park Service, you may have a riparian right. In this regard, I am enclosing an information packet explaining water rights, including riparian rights, and a Statement of Water Diversion and Use form to be completed and submitted to this office by riparian users.

Also, I am enclosing "Petition for Change in Purpose of Use" forms which you requested for Application 22723. These forms are to be submitted with the \$10 required filing fee.

If you have any questions, please contact Ronald Bachman.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Glenn K. Mork'.

Glenn K. Mork
Acting Program Manager
License Section

Enclosures



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36061
SAN FRANCISCO, CALIFORNIA 94102

L54
REDW/WR #9
(WR)RW

July 10, 1980

LINDA:
Please file
in
REDWOOD
Federal Water
Right Docket #9.
Vic

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325

Reference: 332:AAC:22723
342:RJM:22723

Gentlemen:

This responds to your letters of December 24, 1979 and June 18, 1980, wherein you advised us of the change in your records to indicate ownership of a portion of Application Number 22723 by the National Park Service. Enclosed is a petition for change of use regarding this permit from municipal, irrigation and recreation to fish and wildlife propagation.

Payment in the amount of \$10.00 will be forwarded to your Office by the U.S. Treasury Department under separate cover for the filing fee of the application.

We thank you for your continued assistance.

Sincerely yours,

(Sgd) Gerard S. Witucki

Gerard S. Witucki
Chief, Division of Water Resources

Enclosure

cc:
Superintendent, Redwood w/inc.
WASO (492) Attn: Vic Berte' w/inc.
(WR)AFP, Accounts Payable w/inc. and S.F 1034

Year of
the
Visitor

STATE OF CALIFORNIA - RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 920-6151

RECEIVED - WATER RESOURCES
DATE JUN 20 1980

EDMUND G. BROWN JR., Governor



In Reply Refer
to: 342:RJM:22723

JUN 18 1980

U. S. Redwood National Park
National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Gentlemen:

PERMIT 15723 (APPLICATION 22723) WILSON CREEK TRIBUTARY TO PACIFIC
OCEAN IN DEL NORTE COUNTY

Please refer to our letter of December 24, 1979. To date we have not received a reply to our letter which discusses Mr. W. W. Kelly's Permit 15723 (Application 22723). As you know the U. S. Redwood National Park has acquired about 435 acres of the original 640 acres covered under Permit 15723. According to Section 769, Chapter 3, Title 23, of the California Administrative Code, water rights are transferred with the real property. Therefore, U. S. Redwood National Park would be entitled to a portion of the water right under Permit 15723.

Unless you have a plan for a project that would take possession of and make beneficial use of the water, we suggest that you request the Water Quality Control Board to revoke your portion of Permit 15723. Enclosed are the necessary forms. If you will please sign and return these forms to this office, it will greatly simplify the matter. Otherwise, we will have to start the process of revocation under the provision of Section 1410 of the California Water Code.

Your response will be appreciated at your earliest convenience. If you have any questions, please contact Rick Miner of this office at 920-6151 between 7:30 a.m. and 4:00 p.m., weekdays.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Ronald Bachman'.

Ronald Bachman, Chief
Extension, Change and
Compliance Unit

Enclosures

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

REVOCATION REQUEST

The undersigned hereby requests revocation
License _____, Permit 15723, issued
on water right Application 22723.

(Signature)

(Signature)

Dated:

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

REVOCATION REQUEST

The undersigned hereby requests revocation
License _____, Permit 15723, issued
on water right Application 22723.

(Signature)

(Signature)

Dated:

STATE OF CALIFORNIA - RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825



(916) 920-6151

DEC 24 1979

In Reply Refer
to:332:AAC:22723

U. S. Redwood National Park
National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Gentlemen:

PERMIT 15723 (APPLICATION 22723) WILSON CREEK TRIBUTARY TO PACIFIC OCEAN IN
DEL NORTE COUNTY

On November 16, 1979 Mr. W. W. Kelly visited this office and requested that his interest in Permit 15723 be designated as 0.31 cubic foot per second (200,000 gpd), total annual diversion not to exceed 129 acre-feet. A copy of his request is enclosed.

Mr. Kelly said that the limits and conditions of a buffer zone, between the boundary of the Redwood National Park and that property which he retained, have not yet been determined.

Mr. Kelly has transferred title of that portion of his property not acquired by the Park to his three daughters as shown on his request. The address remains at 733 - 47th Street, Great Falls, Montana 59405. He indicated that he will shortly forward a document to this office authorizing him to act as agent for his three daughters. Since Redwood National Park acquired about 435 of the 640 acres originally covered by Permit 15723, our records will be changed to show U. S. Redwood National Park as owner of an interest in an unspecified portion of Permit 15723. This will conform to the letter of May 20, 1977, a copy of which is enclosed for your reference.

Permit 15723 originally provided that construction work should commence on or before June 1, 1969; that construction work should be completed on or before December 1, 1971; and that use of water should be completed on or before December 1, 1972. Action on this order has been withheld because of the litigation regarding your Park project. We now propose to proceed with consideration of Mr. Kelly's petition for an extension of time.

You should now show cause why an extension of time is justified for that portion of the permit held by the U. S. Redwood National Park. As you know, the original storage portion of the permit and the point of direct diversion are located entirely on the retained Kelly land. Therefore, in addition, please specify whether the 20 acre-foot storage proposed in the permit should be deleted, and if not, the particulars of location, access and proposed use regarding this storage. The use proposed, if any, for the direct diversion on the Park portion of the place of use and access to points of diversion should also be set forth in detail.

U. S. Redwood National Park

-2-

DEC 24 1979

Please give this matter your earliest consideration so that we may proceed with the matter of extensions under this permit.

Sincerely,



Ronald Bachman, Unit Chief
Extension, Change and
Compliance Unit

Enclosure

cc: W. W. Kelly, as agent for
Sharon M. Kelly Morris,
Nancy A. Kelly Simonsen,
and Carol J. Kelly
733 - 47th Street South
Great Falls, MT 59405



IN REPLY REFER TO:

L54
REDW/WR #9
(WR)RW

United States Department of the Interior

NATIONAL PARK SERVICE

WESTERN REGION

450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

May 20, 1977

State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, CA 95818

Reference: 333:SCA:22723

Gentlemen:

This responds to your letter of February 28, 1977, regarding Permits 15642 and 15723 (Applications 22723 and 22771) Unnamed Stream and Wilson Creek in Del Norte County, California.

In that the Service has acquired those properties associated with Permit 15642 (Unnamed Stream), it is appropriate that this permit be placed in the name of the United States Government, National Park Service.

Regarding Permit 15723 (Wilson Creek), the Service has purchased a substantial portion of the property listed in the Application of April 13, 1967. These properties were enhanced in value due to the water right and it would therefore be appropriate that a fair apportionment of the right be placed in the name of the United States Government, National Park Service.

We continue to appreciate your assistance in these matters.

Sincerely yours,

Howard H. Chapman
Regional Director,
Western Region

RECEIVED
MAY 22 10 30 AM '77

cc aac

State of California - Resources Agency
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
Room 1015, 1416 Ninth Street
Sacramento, California 95814

^{Permit}
REQUEST FOR AMENDMENT OF LICENSE

Application 22723

License Permit 15723

Subject to approval by the State Water Resources Control Board

W. W. Kelly as agent for Sharon M. Kelly Morris, Nancy A. Kelly Simonsen, and Carol J. Kelly

hereby request that ^{Permit 15723} ~~license~~ be amended to show amount, season, point of diversion, and place of use as indicated below.

Source: Wilson Creek tributary to Pacific Ocean

To the best of the knowledge and belief of the undersigned, a right has been maintained to the use of water of

in Del Norte County

for the purpose of Irrigation, Municipal and recreation uses under ~~license~~ Permit 15723

by beneficial use, without a continuous three-year period of nonuse, in the amount of Amount: Reduced to 2,000,000 gallons per day with the total annual diversion not to exceed ~~650~~ 129.0 acre-feet per annum.

The point of diversion of such water located: South 2150 feet and West 100 feet from NE corner of Section 18, T14N, R1E, H26M. being within SE 1/4 of NE 1/4 of said Section 18. storage diversion and point of diversion for storage is deleted.

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

subdivision in sections 17, 18, 19 and 20, T14N, R1E, H26M and irrigation of 18 acres in sections 17 and 18 of said Township and Range, all as shown west east of Redwoods National Park (Green line shown on map) on map on file with State Water Resources Control Board.

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

Dated: 11/16/79, 19, at Sacramento, California.

Inspected by _____
(Signature)

W. W. Kelly
Signature of Licensee
Authorized Agent For M/L Above Three Digits

WRCB
16F (9/73)

DIVISION OF WATER RIGHTS
2125 19th Street, Sacramento, California 95811

PROGRESS REPORT BY PERMITTEE FOR 1975

OWNER OF RECORD:

APPLICATION 21723

W W KELLY
733 - 47TH STREET SOUTH,
GREAT FALLS, MONTANA 59405

(406)452-2165

Telephone Number (Include Area Code)

If the owner or address shown above is wrong, please correct

SOURCE: (1) WILSON CREEK UNDERFLOW, (2) WILSON CREEK

AMOUNT: 1.75 CU FT/SEC 20 AC-FT/ANN
PURPOSE: IRRIGATION, MUNICIPAL & RECREATIONAL

PERMIT: 15723
18 ACRES

12-01-72

IMPORTANT! EVERY permit is issued subject to the conditions therein expressed. I have currently reviewed my permit: YES ☒ NO ☐. I am complying with the conditions under which my permit has been issued: YES ☐ NO ☒. Identify any non-compliance by permit term number under "remarks" on reverse side. This report is important in providing the record of use needed in establishing your water right. It should be filled out carefully and returned promptly to the

() STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS
2125 Nineteenth Street, Sacramento, California 95811

THE PROJECT HAS BEEN ABANDONED AND I REQUEST REVOCATION OF THIS PERMIT: YES ☐ NO ☒.

CONSTRUCTION WORK

- Has construction work commenced? YES ☐ NO ☒. If YES, is construction completed? YES ☐ NO ☐.
- If incomplete, describe briefly the work done, including cost. Construction work intended has of necessity been delayed due to pending litigation resulting from October 21, 1968, establishment of the Redwood National Park initial boundaries, which severed 205 acres within development.
- If not completed, give estimated date of completion: within 24 months after litigation is finalized.
- What percent of construction work remains to be done? 90% Explain: 435 acres included within said Park boundaries requires re-plat approval within 205 acres remaining after resolving litigation, and thereupon filing for an amended application for subject Permit #15723. (See/ under "Remarks")

USE OF WATER

5. Has use of water commenced? YES ☐ NO ☒ (except for stockwatering) / Check appropriate box(es) below and explain how water was used.

- (a) ☐ Irrigation Total acres irrigated cows and calves Name of crops served and acreage of each
- (b) ☒ Stockwatering 80 to 100 animal units / (f) ☐ Recreational Boating, fishing, water contact sports
- (c) ☐ Industrial Nature of Use (g) ☐ Power generation Installed horsepower capacity
- (d) ☐ Domestic Number of persons, area of garden, lawn, etc. (h) ☐ Other
- (e) ☐ Municipal Approximate population

6. Amount of water used each month under this permit in gallons or acre-feet. (If not known, check months water was used.)

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
x	x	x	x	x	x	x	x	x	x	x	x	not known

7. Use of water, both amount and season, been as great as you expect in any future year under this permit? YES ☐ NO ☒. If "No", explain on reverse side under "remarks".
8. Has location of the intake, place of use, or type of use been changed? YES ☐ NO ☒. Explain on reverse side under "remarks".
9. Did the source go dry? YES ☐ NO ☒. If so, during what months?

STORAGE PROJECTS ONLY (Anticipated reservoir to be omitted within amended permit request)

10. Did your reservoir spill this year? YES ☐ NO ☐. If not, how many feet below spillway vertically was the water level at maximum storage? Have you emptied the reservoir? YES ☐ NO ☐. If not, how many feet below spillway vertically was it drawn down at end of season?

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

Dated: August 6, 1976 at Great Falls, Montana 59405

Sign here: W. W. Kelly (Signature) (State)

1875

PERMITTEE

- MUNICIPAL, COMMUNITY, OR SUBDIVISION PROJECTS ONLY ing finalization of litigation).
11. How many service connections to none Total population served by th. r system (to be amended follow-)
12. Estimated number of service connections under full use: none
13. Are the connections individually metered? YES ☐ NO ☐
14. Do you plan to meter the connections? YES ☒ NO ☐ When? (indefinite until litigation finalized)
15. Sewage generated by those to whom you deliver water is disposed of by: Septic tanks and leach lines ☒; Seepage pits ☐; Central treatment plan ☐ operated by _____; Other ☐ (specify under "remarks") _____

PURVEYORS OF WATER ONLY

16. Water service is provided to an area or subdivision including a recreational reservoir: YES ☒ NO ☒ (when amended) _____
17. Name of area or subdivision so served: Redwoods By The Sea (amended plat within reduced 205 acres/)
18. State surface area of recreational reservoir(s) at maximum water level referred to in 16 and 17. Identify surface area(s) by name of dam or reservoir: _____

NOTE: The following questions relate to the Board's continuing responsibility to insure that appropriate water is best developed, conserved, and utilized in the public interest as required by the Water Code.

CONSERVATION OF WATER

19. What measures are you using or planning to reduce water losses in conveyance systems? (1) Seepage or leak detection program ☐; (2) Lining canals ☐; (3) Phreatophyte and aquatic vegetation control ☐ by two test wells, when amended; (4) Other (describe in remarks) ☒ (elevated storage tanks supplying water thru water mains supplied).
20. What measures are planned to be used to encourage consumers to conserve water in agricultural use? (1) Program to encourage more efficient irrigation systems (sprinkler, drip, etc.), where applicable ☐; (2) Return flow systems on individual farms ☐; (3) Return flow system areawide ☐; (4) Water pricing to encourage reduced use ☒; (5) Charges for drainage of irrigated lands ☐; (6) Other (describe in remarks) ☐ (To be administered by existing mutual water company/ presently inactive).
21. What measures are used to encourage municipal and industrial consumers to conserve water? (1) Regulations to control wasteful use ☐; (2) Public education program on water conservation ☐; (3) Pricing to encourage reduced use ☒; (4) Assistance to industry in design of recycle systems ☐; (5) Other (describe in remarks) ☐.
22. What records are maintained on water use and conservation? (1) Loss rate from conveyance system ☐; (2) Water use for major crops by each farm ☐; (3) Other (described in remarks) ☐. (To be administered by mutual water co.)

WATER QUALITY AND WASTEWATER RECLAMATION

23. Describe methods you are using to minimize erosion and to prevent the entry of silt into surface waters: _____
24. After use, the water is (1) retained in reservoir ☐; (2) discharged into a stream or lake ☐; (3) discharged into settling ponds ☐; (4) Other ☐. Describe: _____
25. Does or will water being discharged contain waste materials? ☒ Yes ☐ No. (via septic tanks)
(1) Domestic ☒; (2) Municipal ☐; (3) Industrial ☐; (4) Agricultural ☐; (5) Other ☐. Describe: _____
26. Does or will water being discharged contain any specific material which is deleterious to fish and wildlife or which would impair the water for beneficial uses? ☐ Yes ☒ No. Describe: _____
27. Describe what steps you are, have been, or can take to reclaim or indirectly reuse the water sought being appropriated: (none planned to be reclaimed)

REMARKS

Please designate by number the question you are answering:

#2 & #4: Our case was appealed in January, 1976, with only some of the basic issues decided. However the granting of public access to the severed 205 acres remaining in our ownership, and the agreement for a reduced water right on Wilson Creek are still being processed. I'm now advised, if the related U.S. government agencies do not drag their feet, this litigation should be finally resolved by the end of this year. Following final disposition, as I've recently advised Mr. Earnest Miller of your office, we desire to file for an amendment to subject Permit #15723, for a reduced allocation, and thereby exclude the planned reservoir therein. Accordingly, the originally intended construction work has of necessity been altered and delayed during this prolonged litigation process, and has been under extenuating circumstances of which we've had no control over. Thank you for your demonstrated patience and understanding on this matter.

2125 - 19th Street, Sacramento, California 95818

PROGRESS REPORT BY PERMITTEE FOR 1975

OWNER OF RECORD:

APPLICATION 15642

W W & ALICE V KELLY
733 - 47TH STREET SOUTH,
GREAT FALLS, MONTANA 59405

(402) 452-2165
Telephone Number (include Area Code)

If the owner or address shown above is wrong, please correct

SOURCE: UNNAMED STREAM

AMOUNT: 0.69 CU FT/SEC
PURPOSE: DOMESTIC

PERMIT: 15642

IMPORTANT! EVERY permit is issued subject to the conditions therein expressed. I have currently reviewed my permit. YES ☒ NO ☐ I am complying with the conditions under which my permit has been issued: YES ☐ NO ☒ Identify any non-compliance by permit term number under "remarks" on reverse side. This report is important in providing the record of use needed in establishing your water right. It should be filled out carefully and returned promptly to the

STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS
2125 Nineteenth Street, Sacramento, California 95818

THE PROJECT HAS BEEN ABANDONED AND I REQUEST REVOCATION OF THIS PERMIT YES ☒ NO ☐ within final Park boundr
CONSTRUCTION WORK (This 117.9 acres served by said above unnamed stream has been taken/

1. Has construction work commenced? YES ☐ NO ☐. If YES, is construction completed? YES ☐ NO ☐.
2. If incomplete, describe briefly the work done, including cost:

3. If not completed, give estimated date of completion:

4. What percent of construction work remains to be done? Explain:

USE OF WATER

5. Has use of water commenced? YES ☐ NO ☐ Check appropriate box(es) below and explain how water was used.

- (a) ☐ Irrigation _____ Total acres irrigated _____ Name of crops served and acreage of each _____
(b) ☐ Stockwatering _____ Number of animals _____ (f) ☐ Recreational _____ Boating, fishing, water contact sports _____
(c) ☐ Industrial _____ Nature of Use _____ (g) ☐ Power generation _____ Installed horsepower capacity _____
(d) ☐ Domestic _____ Number of persons, area of garden, lawn, etc. _____ (h) ☐ Other _____
(e) ☐ Municipal _____ Approximate population _____

6. Amount of water used each month under this permit in gallons or acre-feet. (If not known, check months water was used.)

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

7. Has use of water, both amount and season, been as great as you expect in any future year under this permit? YES ☐ NO ☐ If "No", explain on reverse side under "remarks".8. Has location of the intake, place of use, or type of use been changed? YES ☐ NO ☐. Explain on reverse side under "remarks".9. Did the source go dry? YES ☐ NO ☐. If so, during what months?

STORAGE PROJECTS ONLY

10. Did your reservoir spill this year? YES ☐ NO ☐. If not, how many feet below spillway vertically was the water level at maximum storage? _____ Have you emptied the reservoir? YES ☐ NO ☐. If not, how many feet below spillway vertically was it drawn down at end of season? _____

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

Dated: August 6, 1976 at Great Falls, Montana 59405 (Location) (State)

Sign here:

W. W. Kelly
W. W. Kelly

PERMITTEE

REPORT CONTINUES ON REVERSE SIDE

CWR-15 (7-75)

1975

STATE WATER RESOURCES
CONTROL BOARD
DIV. OF WATER RIGHTS
SACRAMENTO
AUG 9 10 27 AM '76

COPY

- ## PURVEYORS OF WATER ONLY

- NOTE: The following questions relate to the Board's continuing responsibility to insure that appropriate water is best developed, conserved, and utilized in the public interest as required by the Water Code.

WATER QUALITY AND WASTEWATER RECLAMATION

- Please designate by number the question you are answering:

[illegible]

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT NO. 15723

Application 22723 of W. W. Kelly

c/o Ilmars Lagzdins, Civil Engineer, 212 J Street, Eureka, California 95501

filed on March 10, 1967, has been approved by the State Water Resources Control Board
SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Wilson Creek

Pacific Ocean

2. Location of point of diversion:

	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
Reservoir S 2,050' and W 150' from NE corner of Section 18	SE 1/4 of NE 1/4	18	14N	1E	H
Wells-underflow S 2,150' and W 100' from NE corner of Section 18	SE 1/4 of NE 1/4	18	14N	1E	H
	1/4 of 1/4				
	1/4 of 1/4				
	1/4 of 1/4				
	1/4 of 1/4				

County of Del Norte

3. Place of use: Subdivision in Sections 2, 17, 18, 19, and 20; reservoir in Section
18; and irrigation of 18 acres with 12 acre golf course in Section 18 and 6 acre
trailer park in Section 20, T14N, R1E, HB&M, as shown on map on file with the State
Water Resources Control Board.

4. Purpose of use: Municipal, irrigation, and recreational.



RECEIVED FOR INFORMATION AND USE OF AVALON

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or any other purpose.

6. The maximum quantity herein stated may be reduced in the license if investigation warrants.
7. Actual construction work shall begin on or before June 1, 1969, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.
8. Said construction work shall be completed on or before December 1, 1971.
9. Complete application of the water to the proposed use shall be made on or before December 1, 1972.
10. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.
11. 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 Resources Control 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.
12. Permittee shall allow representatives of the State Water Resources Control 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.
13. 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.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so 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 granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), 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 by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) 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 the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: OCT 29 1968

STATE WATER RESOURCES CONTROL BOARD

K. L. Woodward
Chief, Division of Water Rights

Received
Division of Water Resources
MAR 2 1976

MAR 8 1976
 Name Age Race Sex Unit

Other Supporting Information

Hershey

~~Werrell~~ 7/1

~~Witucki~~ 8/1

L54
REDW/WR #9
(WR)RW

July 10, 1980

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325

Reference: 332:AAC:22723
342:RJM:22723

Gentlemen:

This responds to your letters of December 24, 1979 and June 18, 1980, wherein you advised us of the change in your records to indicate ownership of a portion of Application Number 22723 by the National Park Service. Enclosed is a petition for change of use regarding this permit from municipal, irrigation and recreation to fish and wildlife propagation.

Payment in the amount of \$10.00 will be forwarded to your Office by the U.S. Treasury Department under separate cover for the filing fee of the application.

We thank you for your continued assistance.

Sincerely yours,

(Sgd) Gerard S. Witucki

Gerard S. Witucki
Chief, Division of Water Resources

Enclosure

cc:
Superintendent, Redwood w/inc.
WASO (492) Attn: Vic Berte' w/inc.
(WR)AFP, Accounts Payable w/inc. and S.F 1034

(WR)RW:Werrell:Witucki:ms 7/10/80

Standard Form 1034 September 1973 4 Treasury Form 2000 1034-116		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				VOUCHER NO.	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION U.S. Department of the Interior National Park Service, Western Region Attn: Water Resources 450 Golden Gate Ave; Box 36063 San Francisco, CA 94102				DATE VOUCHER PREPARED		SCHEDULE NO.	
				CONTRACT NUMBER AND DATE		PAID BY	
				REQUISITION NUMBER AND DATE			
PAYEE'S NAME AND ADDRESS State of California - Resource Agency State Water Resources Control Board Division of Water Rights 77 Cadillac Drive Sacramento, CA 94825				DATE INVOICE RECEIVED			
				DISCOUNT TERMS			
				PAYEE'S ACCOUNT NUMBER			
				GOVERNMENT B/L NUMBER			
SHIPPED FROM				TO		WEIGHT	
NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)		QUANTITY	UNIT PRICE COST PER		AMOUNT (1)
		Filing Fee for Petition for Change in purpose of use, Application #22723, Permit #15723, Redwood National Park, CA, Wilson Tributary to Pacific Ocean in Del Norte County		1	10.00 ea		\$10.00
(Use continuation sheet(s) if necessary) (Payee must NOT use the space below) TOTAL \$10.00							
PAYMENT:		APPROVED FOR		EXCHANGE RATE		DIFFERENCES	
☐ COMPLETE		= \$		= \$1.00			
☐ PARTIAL		BY ?					
☐ FINAL		TITLE					
☐ PROGRESS							
☐ ADVANCE							
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment. (Date) July 11, 1980 (Signature) (Sgd) Gerard S. Witucki (Authorized Certifying Officer) Chief, Division of Water Resources (Title)							
ACCOUNTING CLASSIFICATION							
1401036-8094-1080-414							
PAID BY	CHECK NUMBER	ON TREASURER OF THE UNITED STATES		CHECK NUMBER	ON (Name of bank)		
	CASH	DATE		PAYEE'S			
\$				PER		TITLE	

¹ When stated in foreign currency, insert name of currency.
² If the ability to certify and authority to approve are combined in one person, one signature only is necessary, other use the approving officer will sign in the space provided, over his official title.
³ When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: John Doe Company, per John Smith Secretary or Treasurer, as the case may be.

PETITION FOR CHANGE IN PURPOSE OF USE

Application #22723 Permit #15723 License ---

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

I request permission to change the purpose of use described in this permit or license as follows:

Fish and Wildlife Propagation

(State all purposes for which water is to be used)

Give reason for proposed change: Change in ownership of Permit, from
private party to Redwoods National Park, National Park Service.

Does this change involve any place of use not described in the permit or license? No. If answer is yes, give legal description:
(yes or no)

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.

Give names and addresses of persons known to you who may be affected by the proposed change:

-None-

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.
Dated: July 11, 1980, at San Francisco, California.

Gerard S. Witucki
Chief, Division of Water Resources
National Park Service, Western Region
450 Golden Gate Ave., S.F., CA 94102

Section 1547 of the Water Code requires a \$10 filing fee with petitions for changes.

SWRCB 22e (4/75)

NATIONAL PARK SERVICE
Western Regional OfficeWR-8
(3/75)Subject: REOW
WR#9- #22723
#22771

MESSAGE RECORD

Date June 27, 1980Routed for: ☒ Information
☐ Central File
☐ Action☐ Incoming Call☒ Outgoing Call

To: _____

Name and Title

Ronald Bachman, Chief, Extension Change, & Compliance Unit

Representing

State Water Resource Control BoardTelephone No. 920-6151

Address

77 Cadillac Drive, Saeb - 95825 [FIS-448-2000]

NPS Personnel in on Call

Hershey / Witucki

Conversation:

Appl. 22723 — need a letter to explain
our intensions — not a ~~contamination~~
revocation process — yet!

Appl. 22771 — ^{sewage}
State law must be taken under control
for WR permit to apply.

Follow-up Action to be Taken:

Will send petitions for change of use on
application for #22723 —

Follow-up Action Taken:

Submit Petition for Change of Use on #22723

NATIONAL PARK SERVICE
Western Regional Office

WR-8
(3/75)

Subject: REDW

WR# 9 - #22723
#22771

MESSAGE RECORD

Date June 26, 1980

Routed for: ☐ Information
☐ Central File
☐ Action

☐ Incoming Call

To: _____

☒ Outgoing Call

Name and Title

Mr. Rowlands

Representing

State Water Resource Control Bd.

(916)
Telephone No. 920-6151

Address

77 Cadillac Dr. Sacto, CA 95825

FTS #
[8-448-2000]

NPS Personnel in on Call

Hershey

Conversation:

Called and explained concerns
- re revocation - Mr. Rowlands took
application #s 22771 + 22723 and would
check on them and call back - 1300.

Called Again (1400) Mr. Anderson answered - Mr. Backman,
Chief, Extension, Change: Complained unit will return
the call as soon as possible.

Never returned call -

Follow-up Action to be Taken:

Follow-up Action Taken:

NATIONAL PARK SERVICE
Western Regional OfficeWR-8
(3/75)

MESSAGE RECORD

Subject: REDW
WR #9, 22771
app #Date May 23Routed for ☒ Information
☐ Central File
☐ ActionTo: File☐ Incoming Call☒ Outgoing CallName and Title Rick MinerRepresenting State Water Rights Board Telephone No. _____

Address _____

NPS Personnel in on Call Wm

Conversation: Returned Mr. Miner's call. the driver
after some confusion between app 22771 and 22723
we established that WW Kelley was not involved
with 22771. We then reviewed their letter of
March 15, 1978 and our letter of April 14, 1978.

He then stated that Fish and Wildlife was
not acceptable as a user. He suggested we revoke.
I told him we could not and wanted to keep it
as it is.

He said he would check with his supervisor.

~~Follow-up Action to be Taken:~~

I gently reminded him we had paid \$10.00
for the application we have on file.

~~Follow-up Action Taken:~~Wm

NATIONAL PARK SERVICE
Western Regional OfficeWR-8
(3/75)

Subject:

REDW UR # 9

MESSAGE RECORD

Date

Jan 30, 80

Routed for: ☐ Information
☐ Central File
☐ Action

To:

File

☐ Incoming Call☐ Outgoing Call

Name and Title

Ernie Miller

Representing

State Water Resources Control Board

Telephone No.

Address

NPS Personnel in on Call

W. W. Werrill

Conversation:

Called to discuss their letter of Dec 24.
He will forward the form to allow
change of usage - the 10²⁰ is still
required.

As we discussed, we will write
back asking for the change in usage.

Follow-up Action to be Taken:

Follow-up Action Taken:

STATE OF CALIFORNIA — RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825

EDMUND G. BROWN JR., Governor



(916) 920-6151

DEC 24 1979

In Reply Refer
to:332:AAC:22723

U. S. Redwood National Park
National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Gentlemen:

PERMIT 15723 (APPLICATION 22723) WILSON CREEK TRIBUTARY TO PACIFIC OCEAN IN
DEL NORTE COUNTY

On November 16, 1979 Mr. W. W. Kelly visited this office and requested that his interest in Permit 15723 be designated as 0.31 cubic foot per second (200,000 gpd), total annual diversion not to exceed 129 acre-feet. A copy of his request is enclosed.

Mr. Kelly said that the limits and conditions of a buffer zone, between the boundary of the Redwood National Park and that property which he retained, have not yet been determined.

Mr. Kelly has transferred title of that portion of his property not acquired by the Park to his three daughters as shown on his request. The address remains at 733 - 47th Street, Great Falls, Montana 59405. He indicated that he will shortly forward a document to this office authorizing him to act as agent for his three daughters. Since Redwood National Park acquired about 435 of the 640 acres originally covered by Permit 15723, our records will be changed to show U. S. Redwood National Park as owner of an interest in an unspecified portion of Permit 15723. This will conform to the letter of May 20, 1977, a copy of which is enclosed for your reference.

Permit 15723 originally provided that construction work should commence on or before June 1, 1969; that construction work should be completed on or before December 1, 1971; and that use of water should be completed on or before December 1, 1972. Action on this order has been withheld because of the litigation regarding your Park project. We now propose to proceed with consideration of Mr. Kelly's petition for an extension of time.

You should now show cause why an extension of time is justified for that portion of the permit held by the U. S. Redwood National Park. As you know, the original storage portion of the permit and the point of direct diversion are located entirely on the retained Kelly land. Therefore, in addition, please specify whether the 20 acre-foot storage proposed in the permit should be deleted, and if not, the particulars of location, access and proposed use regarding this storage. The use proposed, if any, for the direct diversion on the Park portion of the place of use and access to points of diversion should also be set forth in detail.

U. S. Redwood National Park

-2-

DEC 24 1979

Please give this matter your earliest consideration so that we may proceed with the matter of extensions under this permit.

Sincerely,



Ronald Bachman, Unit Chief
Extension, Change and
Compliance Unit

Enclosure

cc: W. W. Kelly, as agent for
Sharon M. Kelly Morris,
Nancy A. Kelly Simonsen,
and Carol J. Kelly
733 - 47th Street South
Great Falls, MT 59405



IN REPLY REFER TO:

L54
REDW/WR #9
(WR)RW

United States Department of the Interior

NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

May 20, 1977

State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, CA 95818

Reference: 333:SCA:22723

Gentlemen:

This responds to your letter of February 28, 1977, regarding Permits 15642 and 15723 (Applications 22723 and 22771) Unnamed Stream and Wilson Creek in Del Norte County, California.

In that the Service has acquired those properties associated with Permit 15642 (Unnamed Stream), it is appropriate that this permit be placed in the name of the United States Government, National Park Service.

Regarding Permit 15723 (Wilson Creek), the Service has purchased a substantial portion of the property listed in the Application of April 13, 1967. These properties were enhanced in value due to the water right and it would therefore be appropriate that a fair apportionment of the right be placed in the name of the United States Government, National Park Service.

We continue to appreciate your assistance in these matters.

Sincerely yours,

Howard H. Chapman
Regional Director,
Western Region

RECEIVED
MAY 22 10 34 AM '77
FBI - SAN FRANCISCO

6

State of California - Resources Agency
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
Room 1015, 1416 Ninth Street
Sacramento, California 95814

Permit
REQUEST FOR AMENDMENT OF LICENSE

Application 22723

License Permit 15723

Subject to approval by the State Water Resources Control Board

W. M. Kelly as agent for Sharon M. Kelly Morris, Nancy A. Kelly Simonsen, and Carol J. Kelly

hereby request that *Permit 15723* be amended
to show amount, season, point of diversion, and place of use as indicated below.

Source: *Wilson Creek tributary to Pacific Ocean*

~~To the best of the knowledge and belief of the undersigned, a right has been maintained to the use of water of~~

in *Del Norte* County

for the purpose of *Irrigation, Municipal and recreation uses*
under *License Permit 15723*

by beneficial use, without a continuous three-year period of nonuse, in the amount of
Amount: *Reduced to 200,000 gallons per day with the total annual diversion not to exceed 129.0 acre-feet per annum.*

The point of diversion of such water located:
South 2150 feet and West 100 feet from NE corner of Section 18, T14N, R1E, H3&M. being within SE 1/4 of NE 1/4 of said Section 18. Storage diversion and point of diversion for storage is deleted.

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

subdivision in Sections 17, 18, 19 and 20, T14N, R1E, H3&M and irrigation of 18 acres in Sections 17 and 18 of said Township and Range, all as shown west of Redwoods National Park (Green line shown on map) on map on file with State Water Resources Control Board.

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

Dated: *11/16/79*, 19__, at *SACRAMENTO*, California.

Inspected by _____
(Signature)

W. M. Kelly
Signature of Licensee

AUTHORIZED AGENT FOR MY ABOVE THREE DIVERSIONS

WRCB
16F (9/73)

STATE OF CALIFORNIA—THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

2125 19TH STREET
SACRAMENTO, CALIFORNIA 95818

(916) 445-2055



In Reply Refer
to: 333 SCA 22723
Your file: VREDW/WR#9:
(WR)RW L54

JULY 20 1977

Redwoods National Park
U. S. National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

PERMITS 15642 AND 15723 (APPLICATIONS 22771 AND 22723)
WILSON CREEK AND UNNAMED STREAM IN DEL NORTE COUNTY

We are enclosing a copy of our July 11, 1977 letter on
which certain corrections are shown in red.

Please note corrections on your original.

Ernest M. Miller, for

J. M. Page
Supervising Engineer

Enclosure



Received
Division of Water Resources

JUL 22 1977

Name	Act	Info	Date	Init.

RECEIVED

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE

Handwritten signature

STATE OF TEXAS

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE
WASHINGTON, D.C. 20250
OFFICE OF THE DIRECTOR

NOVA 30 1911

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE
WASHINGTON, D.C. 20250

WATER RESOURCES DIVISION
U.S. DEPT. OF AGRICULTURE

DIVISION OF WATER RIGHTS

1916 WATER RIGHTS COMMISSION

1917 WATER RIGHTS COMMISSION



Division of Water Rights

(916) 445-2055

In Reply Refer
to: 333:SCA:22723

Letter WR#9

JULY 11 1977

Redwoods National Park
U.S. National Park Service,
Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

PERMITS 15642 AND 15723 (APPLICATIONS ⁷¹22723 AND ²³22771), WILSON
CREEK AND UNNAMED STREAM IN DEL NORTE COUNTY

This will acknowledge receipt of your letter dated May 20,
1977 in connection with the Permits 15642 and 15723.

We are changing our records, as requested, to show owner-
ship of water right covered by Permit 15642 (Application
~~22723~~) as follows unless notified otherwise within 30 days:
22771

U. S. National Park Service, Western Region

We understand that a substantial portion of the place of use
under Permit 15723 has been acquired by U.S. National Park
Service. Mr. Kelly has petitioned this office for a change in
the place of use and a reduction in the permitted amount of
water to 0.31 cfs to serve only that land which he has retained.

Please advise us as to what portion of the place of use and
amount of water covered by Permit 15723 was acquired by the
U.S. National Park Service.

Jmm, for

J. M. Page
Supervising Engineer

cc: Mr. W. W. Kelly
733 - 47th Street South
Great Falls, Montana 59405

SCAgarwal:mvincent
7/7/77

SURNAME

1 2 3 4

[illegible]

Gentlemen:

This responds to your letter of July 11, 1977, regarding Permit 15723 (Application 22723) Wilson Creek in Del Norte County, California.

The National Park Service acquired a substantial portion of the property listed in the Application of March 10, 1967, and it is appropriate that the amount of water to be used under Permit 15723 be allocated proportionally.

Before transferring this property to the Service, Mr. William W. Kelly filed a plat of a subdivision he was planning to build to benefit from the water covered by the permit. The number of homes that were to be located on what is now Park property could be compared to the number of homes in the projected subdivision as a whole, yielding a reasonable percentage of the water the Service could expect to receive. The value of the property the Service acquired was enhanced due to this water right, and this way the Service would get the rights appurtenant to the land as Mr. Kelly intended when he applied for the permit.

There is some question as to how much water is actually available in Wilson Creek on a year-round basis. This should be determined to give a fair and realistic apportionment to all parties involved.

We continue to appreciate your assistance in this matter.

Kelly Problem - Response to Water Resources Control Board letter of July 11, 1977.

Problem: Water covered by Permit 15723 must be apportioned. Land (Place of Use) was partly acquired by NPS, and SNRCB wants to know what amount of H₂O covered by Per. 15723 should be transferred to NPS ownership.

My Idea: Kelly originally had a certain amount of H₂O requested under the Permit, well in excess of that actually available in the stream. We first have to find out how much H₂O is really available on a year round basis, as the base figure from which to determine ownership. Then we have to get the Subdivision plat Kelly filed, to find out where the homes were to be located, and see how many of those were on the portion acquired by the NPS. General Rule: Conveyance of Place of Use conveys the water right appurtenant thereto. The H₂O here was never used, so we'll pretend the H₂O was used on the homes on the subdivision. Then take the % of lots acquired by the NPS vs. the amount of H₂O Kelly really would have used on the whole subdivision. That's the amount of H₂O the NPS will claim.

REDW/WR #9

RW

STATE OF CALIFORNIA—THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

2125 19TH STREET
SACRAMENTO, CALIFORNIA 95818



(916) 445-2055

In Reply Refer
to: 333:SCA:22723

JULY 11 1977

Redwoods National Park
U.S. National Park Service,
Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

PERMITS 15642 AND 15723 (APPLICATIONS ⁷¹227²³~~23~~ AND ²³227²¹~~21~~), WILSON
CREEK AND UNNAMED STREAM IN DEL NORTE COUNTY

This will acknowledge receipt of your letter dated May 20,
1977 in connection with the Permits 15642 and 15723.

We are changing our records, as requested, to show owner-
ship of water right covered by Permit 15642 (Application
227²³~~23~~) as follows unless notified otherwise within 30 days:

⁷¹U. S. National Park Service, Western Region

We understand that a substantial portion of the place of use
under Permit 15723 has been acquired by U.S. National Park
Service. Mr. Kelly has petitioned this office for a change in
the place of use and a reduction in the permitted amount of
water to 0.31 cfs to serve only that land which he has retained.

Please advise us as to what portion of the place of use and
amount of water covered by Permit 15723 was acquired by the
U.S. National Park Service.

Ernest M. Miller, for

J. M. Page
Supervising Engineer

cc: Mr. W. W. Kelly
733 - 47th Street South
Great Falls, Montana 59405

State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, CA 95818



Redwoods National Park
U. S. National Park Service,
Western Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

15642
REDW/NR #9
(NR)RW

May 20, 1977

W
Werrell
Witucki
O.E.
Kilgore
Reg. Director
5/23

State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, CA 95818

Reference: 333:SCA:22723

Gentlemen:

This responds to your letter of February 28, 1977, regarding Permits 15642 and 15723 (Applications 22723 and 22771) Unnamed Stream and Wilson Creek in Del Norte County, California.

In that the Service has acquired those properties associated with Permit 15642 (Unnamed Stream), it is appropriate that this permit be placed in the name of the United States Government, National Park Service.

Regarding Permit 15723 (Wilson Creek), the Service has purchased a substantial portion of the property listed in the Application of April 13, 1967. These properties were enhanced in value due to the water right and it would therefore be appropriate that a fair apportionment of the right be placed in the name of the United States Government, National Park Service.

We continue to appreciate your assistance in these matters.

Sincerely yours,

(Sgd) Howard H. Chapman

Howard H. Chapman
Regional Director,
Western Region

cc:
Superintendent, Redwood NP, w/inc.

(WR)RW:Witucki:Werrell:mpm 5/20/77

TP

STATE OF CALIFORNIA—THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

2125 19TH STREET
SACRAMENTO, CALIFORNIA 95818
(916) 445-2055



In Reply Refer
to: 333:SCA:22723

FEB 28 1977

Redwoods National Park
U.S. National Park Service, Western
Region
Division of Water Resources
450 Golden Gate Avenue
San Francisco, CA 94102

PERMITS 15642 AND 15723 (APPLICATIONS 22723 AND 22771), WILSON
CREEK AND UNNAMED STREAM IN DEL NORTE COUNTY

Permit 15642 (Wilson Creek) and Permit 15723 (unnamed stream) in
Del Norte county were issued to Mr. W. W. Kelly. Copies of these
permits are enclosed for your information.

Mr. Kelly informed this Board that all the place of use under
Permit 15642 and that portions of the place of use under
Permit 15723 have been acquired by U.S. Redwoods National Park.

Mr. Kelly, in his letters of August 5, 1976 and September 17, 1976,
requested revocation of Permit 15642 and reduction of the amount
of water covered under Permit 15723. Also that the place of use
under Permit 15723 be reduced to his remaining property not acquired
by Redwoods National Park. Copies of his letters dated August 5,
1976 and September 17, 1976 petitioning these changes are enclosed
for your reference.

Since a water right is generally considered appurtenant to the
property served (unless specially withheld in any deed of transfer)
it appears that the Redwoods National Park may have acquired
(1) the entire right covered by Permit 15642 and (2) a portion of
the right covered by Permit 15723. Please advise us as to whether you
have acquired all of Permit 15642 and what portion, if any of Permit
15723 you have acquired.

Although we have received a request for revocation of Permit 15642
from Mr. Kelly, it may be that ownership of the permit should now be
shown in the name of the Redwoods National Park. Mr. Kelly states in
the 3rd paragraph of his September 17, 1976 letter that Mr. Howard O.
Sigmond, Assistant Attorney General, indicated the U. S. Government
did not want Mr. Kelly's Wilson Creek Permit. If Redwoods National

Received
Division of Labor Resources
MAR 2 1976

Name	DATE	RECEIVED	BY

THE FIRST PART OF THE REPORT IS A SUMMARY OF THE
RESEARCH CONDUCTED BY THE DIVISION OF LABOR RESOURCES
DURING THE YEAR 1975. THE SECOND PART OF THE REPORT
IS A SUMMARY OF THE RESEARCH CONDUCTED BY THE
DIVISION OF LABOR RESOURCES DURING THE YEAR 1976.

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DURING THE YEAR 1975. THE SECOND PART OF THE REPORT
IS A SUMMARY OF THE RESEARCH CONDUCTED BY THE
DIVISION OF LABOR RESOURCES DURING THE YEAR 1976.

FEB 5 9 1976

cc: 333:333:333
in 333:333:333

(1976) 333:333:333
RESEARCH CONDUCTED BY THE
DIVISION OF LABOR RESOURCES
DURING THE YEAR 1975
DIVISION OF LABOR RESOURCES
RESEARCH CONDUCTED BY THE
DIVISION OF LABOR RESOURCES
DURING THE YEAR 1976



RESEARCH CONDUCTED BY THE
DIVISION OF LABOR RESOURCES
DURING THE YEAR 1976

Redwoods National Park

-2-

FEB 28 1977

Park has acquired Permit 15642 and if you concur with Mr. Sigmond's comment, it will simplify the procedure necessary to clear our records, if you will sign the enclosed request for revocation of Permit 15642 and return it to this office.

In the case of Permit 15723 we understand that Redwoods National Park has acquired the portion of the place of use as shown on a map recently received from Mr. Kelly. If such is the case, it appears that possibly Redwoods National Park holds a portion of Permit 15723. Please advise us as to what portion, if any, of the water right covered by Permit 15723 was acquired by Redwoods National Park.

Mr. Kelly has petitioned this office for a change in the place of use. Also, he has requested that the permitted amount be reduced to 0.31 cfs (200,000 gallons per day) to serve the land he has retained.

Please advise us of your positions concerning these two permits.



J. M. Page
Supervising Engineer

Enclosures - 5

cc: Mr. W. W. Kelly
733 - 47th Street South
Great Falls, Montana 59405

70

Received
Division of Human Resources
MAR 2 1979

Name	Id.	Date	File	Init

TO: DIRECTOR, FBI
FROM: SAC, NEW YORK
SUBJECT: [illegible]

RE: [illegible]

DATE: [illegible]

TO: DIRECTOR, FBI (100-441111) (P)

FROM: SAC, NEW YORK (100-12345) (P)
SUBJECT: [illegible]

RE: [illegible]

TO: DIRECTOR, FBI (100-441111) (P)
FROM: SAC, NEW YORK (100-12345) (P)
SUBJECT: [illegible]

DATE: [illegible]

TIME: [illegible]

November 19, 1976

FLF:HOS
90-1-23-1735

Mr. Charles R. Brown
President
Crescent Land Title Company
711 J Street
P. O. Box 1003
Crescent City, California 95531

Dear Mr. Brown:

Re: William W. Kelly, et al. v. United States,
No. 183-72 in the United States Court of
Claims

Judgment was entered in the above-entitled case on February 27, 1976, in which the court directed that the plaintiffs receive \$283,086 together with simple interest as a part of just compensation from October 2, 1968, until the date of payment. The amount of the judgment makes allowance for amounts already advanced to Kelly. The judgment also provide:

It is further provided that plaintiffs may obtain payment of such award allowed by judgment herein only upon tender of a deed to such property as is covered by said judgment in such form as the Attorney General may deem necessary to assure defendant a valid fee simple title to said property.

Since the entry of judgment the parties have discussed the terms of a deed or deeds which would be satisfactory to transfer valid fee simple title. Enclosed are drafts of two proposed deeds which we believe will be satisfactory when executed. We have crossed out a paragraph pertaining to the reservation of water rights upon which no agreement can be reached. It is our understanding that the form of the deed to be signed will omit this paragraph.

90-1-23-1735

- 2 -

We understand that Mr. Gray of the Park Service has requested that you bring the certificate of title for the Kelly property up to date in order that we may be certain that the execution of a deed will pass good title. It is my understanding that your original title certificate covered all the land owned by the Kellys. The Redwood National Park Act acquired only 445 acres, more or less, leaving a remainder of 200 acres lying to the east of the Park boundary in sections 7, 17, and 20 of T. 14 N., R. 1 E. Enclosed is a copy of sheet one of three sheets prepared by Surveyor Clark L. Gum depicting the Park boundary as it was surveyed in T. 14 N. R. 1 E. of the Humboldt Meridian, California. The road at Wilson Creek is omitted from the Park boundary and the procedure adopted by the Secretary in revising the Park boundary to omit the road was approved in a case entitled Miller v. United States. A copy of that decision is enclosed. The deeds from the Kellys property are drafted to follow the Park boundary as surveyed and purport to convey all of the land east of the Park boundary.

I understand that shortly before the establishment of the Park the Kellys undertook to transfer title to lots E, J, and L of Block No. 1 of Del Norte Palesades Unit No. 2 to Safft, Forester and Monroe. It is not known whether these out conveyances have been revested in Kelly. It would seem advisable to secure an immediate answer to this question. Copies of pages 64 to 68 of the transcript of the trial of the Kelly case are enclosed which suggests that the transfers were never consummated. I do not have any quit claim deeds to these lots. I do not recall that Kelly ever furnished copies of those deeds.

In view of the need to calculate interest to a date certain and Mr. Kelly's request that the matter be settled during this calendar year, we propose to draw checks payable to the plaintiffs and calculate interest to December 20, 1976. This plan is contingent on your ability to notify us prior to December 20 that the draft deeds as executed would satisfy your requirements for proof of valid title.

Your prompt attention in complying with Mr. Gray's request to review the title to the Kelly property and determine whether or not the deeds will be satisfactory will be appreciated. I will call you to determine what

90-1-23-12351

DS, W.R.

- 3 -

progress might be anticipated before I request the check for payment.

Sincerely,

GIBBONS

Assistant Attorney General
Land and Natural Resources Division

By: REYNOLDS

MACDONALD

COUSINS

Howard O. Sigmond
Attorney

DONG

MEREDITH

vs. et al. v. United States,
in United States District Court

Enclosures

cc: Woody Gray, Esquire
National Park Service
Department of the Interior
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

In the above-entitled case,
I am directed to inform you that
the United States District Court
for the Northern District of California
has entered its judgment in the
case of Kelly, Inc. vs. et al. v.
United States, No. 183-72, dated
March 11, 1976.

STEWART

GEN. FILES

avoided that plaintiff
be off such award amounts
in only upon receipt of
property as is required
in such form as the
may deem necessary to
a valid fee simple
title.

parties have discussed and
could be satisfactory to
the parties and the
we will be satisfactory

and a paragraph pertaining
to the reservation of water rights upon which no agreement
can be reached. It is our understanding that the form of the
deed to be signed will omit this paragraph.

COMMENTS:

Send _____ copies to _____

September 17, 1976

Mr. J. M. Page, Supervising Engineer
State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, California 95818

RE: 333:AAC:22723 (W. W. Kelly)
Progress Report, and Request for Amending
Permit #15723 (Wilson Creek underflow).

ATTENTION: MR. EARNEST M. MILLER.

Dear Mr. Miller:

The following is a progress report, and a follow-up reminder to forward to me at your earliest convenience your required application for amending above referenced Permit #15723. The following has been accomplished to date, subsequent to my last letter to you of August 5, 1976.

My attorney, Mr. Pat McKittrick, was advised here on September 13, 1976, that our remaining issues are being resolved satisfactorily. This being confirmed by the U.S. government's attorney, Mr. Howard O. Sigmond. He is Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C..

Mr. Sigmond has advised, "the U.S. government is not interested in acquiring any of Kelly's water rights on Wilson Creek". As a result of this decision, such "ancillary agreement" is not being requested, as I previously anticipated, and as I had so advised you within the fifth paragraph of my August 5th letter to you.

Additionally, verification for normal access to our remaining 205 acres has been received, as well as funding to be expended for the 435 acres taken eight years ago.

Our reason for now requesting said application for amending Permit #15723 is in keeping in concert with my understanding, following my phone call to you last spring, that such amendment is required in order to reduce our present allocation thereunder, from 1.1 million g/p/d to 200,000 g/p/d, and which is more fully explained in my preceeding letter to you within the 6th, 7th, and 8th paragraphs.

My attorney also requested me, in addition to advising you of the above, to respectfully ask that 24 months be authorized within such amendment, for completion of our related construction requirements, for serving our 205 acre remainder. This to provide the necessary minimum time, not only for our re-submission of our replatting within said 205 acres to the Del Norte Planning Commission, and which has been taking approximately twelve months to re-process, but also the subsequent time required for construction of our related facilities for supplying water to such re-platted area. Such facilities to include such items as installation of pumping equipment and controls at our two test wells, as marked on the mosaic map submitted in my last letter. Final location of our elevated storage tank and service mains, are desired to be submitted to you at a latter date, following our receipt of the required final approval for such previously approved re-plat, within said 205 acre remainder. With the uncertainties experienced for construction during the rainy season there, a second twelve months period is deemed reasonable, thus totaling 24 months requirment as described above.

Would you kindly also advise how much time is normally required, before we can reasonably expect to receive your office's final approval, after filing such

-2-

September 17, 1976

above requested amendment to Permit #15723?

Thank you for your kind and prompt attention to the above, and if you desire any further information I will be most happy to assist.

Respectfully yours,



W. W. Kelly
733 47th Street South
Great Falls, Montana 59405

cc: P. McKittrick

August 5, 1976

Mr. J. M. Page, Supervising Engineer
State Water Resources Control Board
Division of Water Rights
2125 19th Street
Sacramento, California 95818

JMP
EMM
AAC

22771
22723

RE: 333:AAC:22723 (W. W. Kelly; Del Norte Co.
in Twn. 14 No., Rnge 1 E.);
Permit #15642 (unnamed stream in SW $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 29);
Permit #15723 (Wilson Creek in SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 18).

ATTENTION: Mr. Earnest M. Miller.

Dear Mr. Miller:

Please accept my apologies for not responding sooner to your above referenced inquiry. Inadvertantly, I presumed my attorney had written you, but just discovered, since he had been heavily engaged while running for the U. S. Congress, that he simularly presumed I had written subsequent to my telephoning you in June.

This came to light upon just receiving an inspection notice from Mr. Ben Rinehart of your Water Resources Control Board scheduled for August 18th. Subject to your appoval, I've telephoned advising his son to advise Mr. Rinehart to make a reschedulement after our ongoing litigation has been finalized, for the reasons described herein.

As requested, enclosed is a mosaic area map with legend, deliniating our former and present property lines which has been subject to this litigation effecting our two above referenced permits. The easterly area outlined in red, shows our severed 205 acres remaining, which has not been taken within the Park's boundry. The blue shaded areas, lying westerly from the solid blue line, and which is the easterly line of the Park's boundry, indicates our 435.9 acres taken within the Park.

22771
Included within said 435.9 acres taken, is a 117.9 acre unplatted area which is indicated on the right hand (south) margin of this map. It is this south 117.9 acres, in Section 29, that relates to Permit #15642, and which I can now recomend be cancelled out by your office, as this 117.9 acres is located entirely within the Park's boundry.

A 22723
In reference to subject remaining Permit #15723, this has been involved within our litigation which I'm now advised should be finalized before the end of this year. One of the related issues presently unresolved is we have not received a previously offered ancillary agreement from the U.S. Government, relative to said 205 acres remaining in our ownership, which allows our right to a reduced amount of water thereon. Incorporated therein, they are to agree to waive their right of protest for our pending desire to file with your office an ammended application to Permit #15723, following the finalization of this litigation, whereby our present allocation thereunder be reduced to the amount of water required to service our remaining 205 acres.

Our engineer is recommending this amended reduction to allow approximately 200,000 gallons per day (.31 cubic feet per second), in lieu of the present 1.75 c.f.s. allocation. This to be supplied by direct diversion from wells adjoining the Wilson Creek underflow within our remaining 205 acres. Accordingly, construction of the originally designed reservoir within our 205 acres, which was to serve our original 348 acre developement is to be abandoned, due to the reduction in land remaining.

August 5, 1976

2.

You'll find on the enclosed map this location, relating to Permit #15723, which is marked and lies within our 205 acres remaining, and which contains two of our test wells which are cased and capped. Otherwise, no further construction work was completed within said 205 acres due to the intervening litigation which began in 1969.

After completion of both this litigation process, and the required re-submission of our amended replat to the Del Norte Planning Commission relating solely to this 205 acre remainder, I will forward you a copy of our approved replat which will then provide the exact number of lots you've requested. I trust this meets with your approval, as due to the Map Act of California, resubmission is required after experiencing such a long delay following our last extension in 1973 by them.

By illustration, within our 205 acres, 140.1 acres was part of our originally approved Redwoods By The Sea development prior to establishment of the initial Park boundaries. Four months thereafter, in February, 1969, 115.1 acres, of said 205 acres, that lays to the south of Wilson Creek area, was given amended final approval for re-platting into 141 lots.

However, such approval, and which did not include our area to the north of Wilson Creek within this 205 acres, was conditioned upon our obtaining public access to U.S. 101 through the 500 foot wide intervening corridor which was within the Parks initial boundary. Access via Wilson Creek Road, being the old U.S. 101 highway, was subsequently omitted from being included within said boundary. Thus as you can appreciate, this litigation has resulted in being a long and burdensome process, which as of this coming October has taken eight years. Accordingly, we have been placed in the unique position of not being able to perform, including the construction work intended of which you've inquired.

Thus while this litigation process is being finally resolved, would you be so kind as to send me your application form required to effect the above mentioned amended reduction in allocation under subject Permit #15723?

May I take this opportunity of again thanking you and your Board for demonstrating such fine cooperation and understanding of this matter. I trust the foregoing adequately supplies you with the information requested, and that the necessary extension of time will be forthcoming from your Board, to allow us to perform effectively, once this litigation is finally resolved.

In the meantime, if you desire any further information, I will be most happy to assist you in every way possible.

Sincerely,

W. W. Kelly
W. W. Kelly
733 47th Street South
Great Falls, Montana 59405

encl.-1-
cc: P. McKittrick

2000000000
01/01/76 10:00 AM
FEB 6 10 00 AM '76
COMM-FBI
STATE WATER RESOURCES

[illegible]

LI1425-11L

AUG 5 - 1976

RECEIVED	
Western Regional Office	
AUG 9 - '76	
Regional Director	☒
Asst. Dir.:	☒
Adm. Serv.	☒
Conservation	☒
Education	☒
Ext. Affs.	☒
Gen. Inv.	☒
Ident. & Rec.	☒
Int. Affs.	☒
Lab.	☒
Legal Coun.	☒
Plan. & Insp.	☒
Rec. Mgmt.	☒
Spec. Inv.	☒
Training	☒
Off. Liaison	☒

Memorandum

To: Associate Solicitor, Conservation and Wildlife

Through: Assistant Secretary for Fish and Wildlife and Parks

From: ~~ASSOCIATE~~ Director, National Park Service

Subject: William W. Kelly, et al. v. United States, No. 183-72 in
the United States Court of Claims; Redwood National Park

Miss Redd's memorandum of June 8 sent us a letter of May 25 from Attorney Howard Sigmond of the Department of Justice and a letter of May 14 written by Mr. D. Patrick McKittrick, attorney for the owners of land (whom we will call Kelly for convenience) at Redwood National Park involved in the subject case in the Court of Claims. Miss Redd asked for our comments on the items contained therein.

The first point concerns the location of the park boundary at this point and the desire of Mr. McKittrick to include in the deed to be executed by Kelly a reservation of access across land covered by the Wilson Creek Road. We have no objection to Kelly having a right of access at this point to reach the remainder lands from the State highway. However, the request for a reservation of access raises certain legal issues which we believe will have to be resolved by your office, by the Department of Justice, or by the Court of Claims. The original boundary maps referred to in the authorizing legislation, NPS-RWD-7114-A and NPS-RWD-7114-B, specified in section 2(a) of the Act of October 2, 1968 (82 Stat. 931), the Redwood Act, showed this particular location as being within the boundaries and so legislatively taken under the provisions of the Act. However, the boundary survey subsequently made by the Bureau of Land Management shows this site as outside the boundary of the park.

To reiterate, this Service is willing for Kelly to have access at this location to the remainder lands. During negotiations prior to the filing of the suit we had discussed with Kelly the possibility of providing access at this point by giving him an access right or other interest in exchange for lands of equal value under the general exchange

2

authority of the National Park Service in section 5 (b) of the Act of July 15, 1968 (82 Stat. 354). Although Mr. Kelly for a while showed some interest in this proposition, he never agreed to it and so nothing ever came of the proposal.

Our memorandum of May 21, 1974 to you (copy enclosed) covered this and other points. You will note that our 1974 memorandum stated our view that the legislative taking of Tract 02-119 deprived the backlands of access to the public highway system. This is still our opinion unless it can be held that the subsequent Clark Gumm boundary survey revested the land in the former owners. We have, as you are undoubtedly aware, always doubted that the changes made by the detailed boundary survey were effective to revest title to legislatively-taken land in the former owners. This same doubt has been expressed in other quarters.

Our Western Region in its memorandum of July 21 (copy enclosed) correctly points out the impropriety of Kelly reserving the Wilson Creek Road if it is not within the boundaries of the park.

If, as we believe, the road is owned by the United States by legislative taking, then we know of no way this road can be reserved by Kelly as one can hardly reserve something one does not own.

Miss Redd asks if the description proposed by Mr. McKittrick is satisfactory. Considering the description from a purely technical viewpoint and not intending to recommend either for or against its use in any particular way, we believe the description would be satisfactory to describe the area desired for access if the following were added at the end thereof:

"thence, North 41° 04' West to the point of beginning; all as shown on Sheet 1 of 3 of Township 14 North, Range 1 East, of the Humboldt Meridian, California, Dependent Resurvey, subdivision of Sections, and boundary survey, prepared by Clark L. Gumm, dated June 24, 1971, on file with the Bureau of Land Management."

The second point, which is inextricably related to the first, is Mr. McKittrick's request that Kelly be furnished with a quitclaim deed executed by the Secretary covering this area. Mr. McKittrick states that there is precedent for this. We wish that he would inform us as to such precedent as we are aware of none. Suffice it to say that although we are not opposed as a policy matter to this being done, we are completely unaware of under what authority it could be done.

3

The third point concerns Mr. McKittrick's request that the proposed deed reserve to Kelly 200,000 gallons of water per day from Wilson Creek for use on the remainder lands. Let us say, first, that we are unaware of Kelly having established any water rights of this nature under State law at the time of the legislative taking. Then let us state our view that whatever water rights pertained to the lands legislatively taken were acquired by the United States as a part of the legislative taking and are not susceptible of alienation from Government ownership by deed reservation or any other method of which we could conceive. We would presume, however, that whatever water rights pertained to the remainder lands were not affected by the legislative taking and so remain in Kelly unless otherwise divested under State law. In addition, as the park Superintendent points out in his memorandum of July 1 (copy enclosed), there is no way at present to tell what the park's needs in this regard may be. We cannot, therefore, agree to Mr. McKittrick's request.

The fourth point is that Mr. McKittrick wants Kelly's deed to the United States to be subject to easements of record and rights-of-way. This is standard procedure and is not objectionable to us. Language to accomplish this might, perhaps, be taken or adapted from that shown at the top of page 40 of the Department of Justice's publication entitled A Procedural Guide for the Acquisition of Real Property by Governmental Agencies, as follows:

"The fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines."

Easements and other rights pertaining to the former Kelly property are shown on the title policies, a copy of each of which is enclosed herewith. The Division of Land Acquisition in our Western Region and its title contractor should be called upon for assistance in the closing and to assist in seeing that proper disbursement of funds is made to clear up any substantive title defects.

We hope these comments will be helpful. Our Western Region's memorandum of July 21 is enclosed in order that you may have the benefit of all of the information and helpful comments contained therein. Wherever the Region's views differ from those expressed in this memorandum, the latter, of course, must be taken as expressing the official position of the National Park Service.

Sgd. John E. Cook

Enclosures

cc: Western Region, w/cy of encl. (except title policies) (2)

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

154
REDW/WK#9

TO : Chief, Division of Water Resources *gsw*

DATE: July 26, 1976

FROM : Legal Clerk, Division of Water Resources

SUBJECT: Comments on the water right aspects of the Kelly case.

In accordance with your request that I review the attached memorandum particularly in regards to water rights aspects, the following is presented.

There seem to be two aspects of the water rights situation involved in the Kelly case that require comment. First, as the Superintendent at Redwoods noted, the actual flow of Wilson Creek is not at present reliably known. This would make an agreement allowing Kelly to appropriate 200,000 gallons per day somewhat risky in light of the fact that the Park Service does not know its future plans for this area. The 1973 USGS study of Wilson Creek indicated contrary findings. It said that, according to residents of the area, Wilson Creek goes dry during the summer. However, it also noted that on June 5, 1973, the creek was flowing at 3 cfs. Using conversion factors, this works out to be about 1,900,000 gallons per day, well in excess of the 1,100,000 gallons per day that Kelly apparently claims under permit. Further, both the USGS study and the July 1, 1976 memo from the Superintendent say there is a good possibility of ground water development in the alluvium near the creek. Thus, it seems that the amount of water in question, 200,000 gallons per day, could be claimed by Kelly without threatening water availability to the Park Service.

The second aspect of the water rights question, mentioned in the June 10, 1976 memorandum from the Regional Director, is the legal right to the Wilson Creek water claimed by Kelly. It is noted in a letter from McKittrick dated May 14, 1976, that Kelly had a right to water under a permit from the State of California. However, a letter in our file (dated April 5, 1972) from the California Water Resources Control Board states that Kelly's period in which to place his appropriated water to beneficial use expired on December 1, 1972. With this in mind, I called the Board on July 22, 1976, to ascertain the present status of the permit. They said that Kelly had filed for a time extension in which to perfect his water right, but that it had not been granted as of this time. This was due to his inability to give all the information required in the extension form. There thus exists the possibility that Kelly has no valid water right at all for Wilson Creek, as a failure to apply appropriated water to beneficial use within the allotted time period and any extensions thereof is grounds for revocation of the permit. This determination apparently awaits a decision by the Board at some time in the future.

As you indicated, we would wait to see if WASO had further questions regarding this problem. If they did, we would respond more thoroughly at that time.

Kevin Kidd



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

for ~~Witt~~
Gray
Ritchie(1a
McDowe, 11
~~Davis~~
Chapman

REDW
Kelly

July 21, 1976

Trs. 02-119, 03-103,
04-104, 08-114, 08-115
Ct. of Claims 183-72

(Stewart==later)

Memorandum

To: Associate Director, Park System Management,
National Park Service
Attention: Chief, Division of Land Acquisition

From: Regional Director, Western Region

Subject: William W. Kelly v. United States, Court of Claims
No. 183-72, Tracts 02-119, 03-103, 03-104, 08-114,
08-115, Redwood

Enclosed is a copy of Mr. Howard Sigmond's letter to the Office of the Solicitor dated May 25, 1976, with enclosures thereto. Our comments at this time are set out below.

It appears that four main points have been presented for solution, they being (1) the legal description of the Wilson Creek road to Kelly's remainder land; (2) a proposed Quit Claim Deed from the Secretary of the Interior; (3) water rights; and (4) making the conveyance subject to easements and rights of way of record.

Regarding item (1), it appears to be the intention of Mr. Kelly's attorney that the deed to the Service should reserve the Wilson Creek road. We believe this to be improper. The Wilson Creek road is not within the boundaries of the Redwood National Park and a reservation would be improper conveyancing. It may be possible, however, to add a paragraph to the effect that the parties agree that the legal description of the land taken by the United States does not include the road.

Concerning item (2), we would have no objection to such a Quit Claim deed if the Solicitor's Office approves. It would appear that a legal description of the property taken from Mr. Kelly which clearly does not cover the Wilson Creek road, and such a quit claim deed would preclude any necessity of a "reservation" within the deed from Kelly. The ownership of this road

DATE: JUL 20 1976
DIVISION OF LANDS, WR

area prior to October 2, 1968, is unknown; therefore, the Grantees of such a deed are unknown.

In the matter of the propriety of the Secretary issuing a quit claim deed, we do not know of the precedent alleged by Mr. Kelly's lawyer in the enclosed letter from him. However, it would appear to us that in specific instances where title to the land was at one time vested in the United States, and subsequently deleted from the park area by a change in the boundary, there should be some way of clearing the public records of any possible claim by the United States. Inasmuch as the Redwood Act (P.L. 82 Stat. 931, dated October 2, 1968) gives the Secretary the authority to change the boundary, it would seem that the authority to clear the title to lands deleted thereby would be implied, even in the absence of a specific authorization to do so. We mention, for consideration, the possibility that the method to be used in such a case may be the same as for lands outside the boundary that were acquired to prevent payment of excess severance damages such parcels are to be used for exchange or declared to be "excess" and reported to GSA for disposal.

We believe these legal questions should be determined by the Office of the Solicitor.

Concerning item (3), water rights, we enclose a copy of our inquiry of Superintendent Von der Lippe and his answer thereto stating his position.

Concerning item (4), rights of way of record, we believe the conveyance from Mr. Kelly would not be objectionable if such a provision were made therein. While the Redwood Act "took" all rights except for those of the State of California or a political subdivision thereof, we believe this was beyond the control of Mr. Kelly and he should not be asked to execute a Grant Deed for interests not owned by him.

The rights of way of record appear in the Schedule B of the respective title insurance policies for each tract, copies of which are attached for ready reference.

Enclosures

FNP:AWGray:els 7/20/76

July 16, 1976

FLF:HOS
90-1-23-1735

H. Gregory Austin, Esquire
Solicitor
Department of the Interior
Washington, D. C. 20240

Attention: Miss Michele B. Metrinko
Associate Solicitor
Division of Conservation and Wildlife

Dear Mr. Austin:

Re: William W. Kelly, et al. v. United States,
No. 183-72 in the United States Court of
Claims

There is enclosed a copy of a letter dated July 7, 1976, from D. Patrick McKittrick requesting to be advised of the status of his recommendation relative to furnishing a deed in compliance with the court order entered in this case. Your prompt attention in responding to Mr. McKittrick's suggestions contained in his letter dated May 14, 1976 or in advising of the status of this matter will be appreciated.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Howard O. Sigmond
Attorney

Enclosure

cc: Mr. John E. Ritchie
National Park Service
Western Region
Department of the Interior
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102
(w/encl.)

McKITTRICK & DUFFY

Attorneys at Law

J. PATRICK MCKITTRICK
JOSEPH W. DUFFY
CARROLL C. BLEND

SUITE 315
DAVIDSON BUILDING
GREAT FALLS, MONTANA 59401
TELEPHONE (406) 727-4041

RECEIVED July 7, 1976
Western Regional Office

Regional Director	
Asst. Dir.:	
Adm. Serv.	
Ident. & Insp.	
Intell.	
Lab.	
Legal Coun.	
Off. Cong. & Public Aff.	
Rec. Mgmt.	
Tech. Serv.	
Training	
Off. Liaison	

Jul 14 9 40 AM '76

Howard O. Sigmond, Esq.
The Honorable Wallace J. Johnson
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

Re: W. W. Kelly, et al vs
The United States

Dear Sir:

I am in receipt of your May 25, 1976 letter relative to the above captioned matter wherein you indicated that a copy of my May 14, 1976 letter had been forwarded to the Solicitor of the Department of the Interior for his recommendation relative to the items discussed therein.

Would you kindly advise me as to the status of this matter at this time.

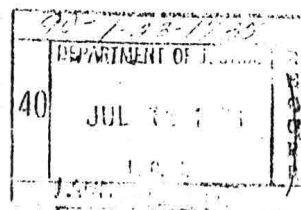
Thank you.

Sincerely yours,

McKittrick & Duffy

By *W. Patrick McKittrick*

DPM:jlj





IN REPLY REFER TO:

L1425 - Kelly
(WRO) OL

United States Department of the Interior

NATIONAL PARK SERVICE
REDWOOD NATIONAL PARK
DRAWER N - 1111 SECOND STREET
CRESCENT CITY, CALIFORNIA 95531

July 1, 1976

Memorandum

To: Regional Director, Western Region

From: Superintendent, Redwood

Subject: William W. Kelly v. United States, Court of Claims No. 183-72,
Tracts 02-119, 03-103, 03-104, 08-114 and 08-115, Redwood

We have reviewed your memo of June 10 regarding Mr. Kelly's request for 200,000 gallons of water per day from Wilson Creek. We have also reviewed the U. S. Geological Survey study of the water supply potential for the Kelly properties, completed in 1973 at the request of the National Park Service.

We have two problems. First, a General Management Plan has not been completed for Redwood to identify the future needs for water at Wilson Creek. Second, it is not clear what the actual availability or total flow is at Wilson Creek, other than it goes dry in summer and there is a good potential for ground water development. A stated interest by Kelly in 1,100,000 gallons per day does not indicate to us it is actually available.

If the 1,100,000 gallons per day is there on a year around basis we see no objection to the 200,000 gallons per day use by Kelly. Possibly some additional communication with U.S.G.S. could clarify this point. We would not be in favor of transfer of a major portion of the available water at Wilson Creek if significantly less than the 1,100,000 gallons per day is actually available.

George Von der Lippe

RECEIVED
Western Regional Office

JUL 2 '76

Regional Director	
Dep. Regional Dir.	
Exec. Assistant	
Administration	
Operations	
Res. Mgmt. Plan.	
Prog. & Budget	
EEO	
Public Affairs	
Mgmt. Appraisal	
Action Taken	



L1425 (WR) OL

REDW

Kelly

Ct. of Claims 183-72

Trs. 02-119, 03-103,

03-104, 08-114

08-115

June 10, 1976

Memorandum

To: Superintendent, Redwood

From: Regional Director, Western Region

Subject: William W. Kelly v. United States, Court of Claims No. 183-72,
Tracts 02-119, 03-103, 03-104, 08-114 and 08-115, Redwood

Enclosed is a copy of Mr. Howard Sigmond's letter to the Office of the Solicitor dated May 25, 1976, with enclosures thereto, requesting advice about certain aspects of the subject case.

We believe we can prepare an answer concerning the appropriate legal descriptions, etc., but we request your comments relative to the water rights situation.

It would appear that basically what Mr. Kelly wants is an agreement that the National Park Service will not, in the future, interpose any objection to his application to the State of California for a right to utilize some 200,000 gallons of water per day from Wilson Creek. We are unsure just what legal rights Mr. Kelly presently has in the so-called appropriation of 1,100,000 gallons of water per day; however, if they desire to convey their rights to the United States for all except 200,000 gallons per day, we see no reason to object.

Inasmuch as the settlement of this case is pending our decisions on this matter, we would appreciate your early reply.

Enclosures

(Sgd) Howard H. Chapman

May 25, 1976

FLF:HOS
90-1-23-1735

H. Gregory Austin, Esquire
Solicitor
Department of the Interior
Washington, D. C. 20240

Attention: Miss Michele B. Metrinko
Associate Solicitor
Division of Conservation and Wildlife

Dear Mr. Austin:

Re: William W. Kelly, et al. v. United States,
No. 183-72 in the United States Court of
Claims

There is enclosed a copy of a letter dated May 14, 1976, from Mr. McKittrick relative to furnishing a deed in respect to the above-entitled case. The attachments referred to in Mr. McKittrick's letter are also enclosed. It is understood that Mr. Kelly is interested in protecting his remaining property so that he may develop it for its highest and best use.

Mr. McKittrick suggest that the right-of-way at Wilson Creek be described by metes and bounds so that there will be no confusion as to where the Park boundaries are located. Please advise if the description proposed is satisfactory to you.

Mr. McKittrick asks that he be furnished with a quitclaim deed from the Secretary to the area omitted from the Park at Wilson Creek. Mr. McKittrick states that there is a precedent for such a deed. Your recommendation with relation to this suggestion will be appreciated.

The third item Mr. McKittrick refers to concerns water rights and he suggests that the proposed deed specifically reserve 200,000 gallons per day from Wilson Creek. Please comment on this item in your recommendation.

90-1-23-1735

- 2 -

Finally, Mr. McKittrick suggests that there is a necessity to make the conveyance subject to easements and rights-of-way of record. We are not aware of the rights-of-way referred to and therefore need your recommendation in relation to this item.

Please consider these items and furnish us your recommendations promptly. The judgment may not be paid until a satisfactory deed is secured. Any delay in agreeing on the form of deed will, of course, increase the cost of interest. A copy of this letter is being sent to Mr. Ritchie in San Francisco in hopes that he will give primary consideration to the factual items included and help you in your consideration of the problems involved.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Howard O. Sigmond
Attorney

Enclosures

cc (w/encl.): Mr. John E. Ritchie
National Park Service
Western Region
Department of the Interior
450 Golden Gate Avenue, Box 36963
San Francisco, California 94102

KITTRICK

OFFY

BLEND

MAY 14 1976

May 14, 1976

SUITE 315
DAVIDSON BUILDING
GREAT FALLS, MONTANA 59401
TELEPHONE (406) 727-4041

Howard O. Sigmond, Esq.
The Honorable Wallace J. Johnson
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

Re: W. W. Kelly, et al vs The United States

Dear Sir:

We are in possession of the Order handed down by the Court of Claims in the above captioned case. The Order reads that prior to payment as allowed pursuant to Judgment, a Deed shall be tendered to the Government in such form as the Attorney General deems necessary.

We are currently investigating with Del Norte County to ascertain whether the existing survey (and the attendant property descriptions) will be acceptable for filing or whether a new survey will be required. It is extremely important that all conveyances by Mr. Kelly and the concurrent reservations (see below) by him be in the correct legal descriptions. Upon receipt of this information we will advise you immediately so that drafting of the conveyance and reservation documents can be expedited.

There are several items which we desire to have clarified so that Mr. Kelly will not be further subjected to litigation or to having his limited rights further jeopardized. The second item is Mr. Kelly's access to the limited areas south of and adjoining the Wilson Creek area via Wilson Creek Road. This access is clearly excluded from the Park boundaries as indicated by the Exhibits in the Court record. Therefore, it is our intention that this access be reserved by a Deed Reservation. The description of the access must be identical with the parcel described in the National Park Service Boundary as it appears on your Defendant's Exhibit 3 and 3A. The actual physical description is contained in that document captioned "Partial Boundaries of the Redwood National Park" (Interrogatory No. 12) which is attached to the Answers to Interrogatories filed by you on May 16, 1974. It is obviously in the best interests of both parties to use the descriptions which are contained in the record. That description, therefore, is as follows:

Beginning at Point "APS-A", thence South 42° 43' 23" East 2.87 chains (189.42 feet) to Point "APS-B"; thence, South 28° 58' West 3.14 chains (207.24 feet) to a Point "APS-C"; thence, South 12° 42' West 1.83 chains (120.78 feet) to Point "APS-D"; thence South 73° 58' 30" East, 0.91 chains (60.06 feet) to Point "APS-E"; thence North 12° 46' East 1.89 chains (124.74 feet) to Point "APS-F"; thence, North 29° 42' East to Point 87 chains (189.42 feet) to Point "APS-G"; thence, North 43° 09' East 2.56 chains (168.96 feet) to Point "APS-H".

LANDS - GEN. LITG. SEC.
General Trial Unit

Page Two
May 14, 1976

In addition, both to facilitate future title searches and in consideration for the deed conveyance to the United States, we would, of course require that the Government execute a Quit Claim Deed to that same property. There is precedent for using this approach; the documents of title filed in connection with the Rellin Timber Company (and executed by the Bureau of Outdoor Recreation, Department of Interior) used this same approach. This Quit Claim Deed is on file with the Del Norte Clerk and Recorder (filed December 20, 1971 in Book 160, Page 188). We believe similar treatment should be utilized in this case, but in addition that the Deed from Mr. Kelly to the Government should reserve the same property therein. Moreover, California law is quite clear that without a dedicated, recorded public access to Mr. Kelly's property there would be an effective bar against any type of conveyance of that property, including mortgaging thereof. Wilson Creek Road is, naturally, Mr. Kelly's sole access to the remainder of Segment C.

The third concern centers likewise on the water rights as they pertain to the 205 acres of Segment C remaining in Mr. Kelly. Prior to the litigation and during the negotiations between the Government and Mr. Kelly, the Proposed Settlement Agreement contained this clause:

"The undersigned, /s/ Kelly agrees to assign by ancillary instrument their interest in 700,000 gallons of water per day which interest is part of 1,100,000 gallons per day of appropriated water rights the undersigned has under permit from the State of California."

As you know, there is no mention of water rights in the Judge's Opinion. Similarly, the Order of the Court of Claims is silent on this point, although we asked repeatedly that it be considered. Further, in one of our earlier conversations with you on the matter you informed us that the Government no longer intended to assert claim to the water rights above-mentioned, although it had attempted to include the water rights in the 1969 Settlement Agreement, a copy of which is enclosed.

The original application with California Department of Water Rights was based upon the projected needs of the Kelly property in its entirety. The figure was based upon sound engineering data which showed the 1,100,000 gallon allocation was well within the capacity supplied by Wilson's Creek.

Since the water rights which are appurtenant to the land conveyed are of significant value to that land, any conveyance must contain recitations with regard to those rights. Moreover, resolution of these rights today will preclude future litigation over water rights and provide protection for both the severed portion of Segment C and Kelly's remainder. In short, it will settle the issue finally and be in keeping, as well, with the intent of the decisions of the Trial Judge and the Court of Claims.

Page Three
May 14, 1976

We would, therefore, propose that the original allocation (as stated in 1969 Settlement Agreement) be cut in half. Thus, Kelly would reserve only 200,000 gallons per day allocation from Wilson Creek. The United States and Kelly would agree on this allocation (by ancillary agreement) and both parties would agree not to protest any filings for permits in accordance with that reservation.

It is to be understood that this proposal does not envision reservation of water rights on the portion of Segment C conveyed to the United States, but rather serves to protect filing of water rights which are part and parcel of the remainder.

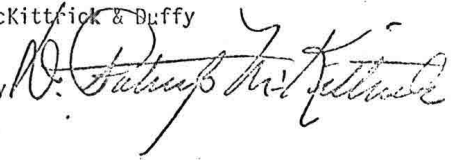
If this is agreeable to you, I will submit to you a draft copy of the agreement reserving these rights to Mr. Kelly.

Finally, as you are well aware, there are certain easements of record and rights of way that were conveyed by the owners over the years. It is axiomatic that any conveyance by Mr. Kelly is subject to those easements and rights of way of record. I do not see this as any major problem, but I am sure you agree that since Kelly cannot convey more than he has, the conveyance to the United States must be subject to the easements and rights of way recorded. If it is agreeable with you, I would suggest that we simply include language in the deed making the conveyance "nevertheless subject to all easements and rights of way of record."

Also, I note that in your Answer to Interrogatory #1, the government made reference to certain claims by third parties that were on file with the National Park Service. We have a mutual release of the claims which I have enclosed which relates to the aforementioned matter. I would appreciate it if you would advise us of any other such claims, if any have been asserted.

Sincerely yours,

McKittick & Duffy

By 

Enclosures

~~4/14/75~~ Kelly

MR. DON KITE, STATE WATER RESOURCES
(916) 445-2055 7³⁰/₄ TO 4:15
REQUESTS "REPORT OF LICENSEE"
EVERY 3 YRS.

AREA EAST OF HWY 101, NORTH
OF FALSE KLAMATH COVE
SEC. 7, TOWNSHIP 14N,
RANGE 1 EAST

Q. - DOES DEPT. OF INTERIOR
RETAIN WATER RIGHTS
UNDER OWNERSHIP AGREEMENT
FOR DEL NORTE PALISADES
SUB-DIVISION?

Called Witucki in WRO 4/8/75 11:40 am
he will handle entire. N.L.

4/11/71 Witucki called back

Will approach State that water is
needed for wildlife. Will not ask for
revocation of application but let State
decide if it wants to cancel it.

Serry will send a note on this to add
to the Docket. H.L.

(916) 445-2055

MAR 26 1976

In Reply Refer
to:333:AAC:22723W. W. and Alice V. Kelly
733 - 47th Street
Great Falls, Montana 59405PERMITS 15642 AND 15733
(APPLICATIONS 22723 AND 22771)
WILSON CREEK AND UNNAMED STREAM
IN DEL NORTE COUNTY

This Board has considered your requests for extension of time and requires more information before acting on your extension request. Please supply the following data:

- (1) A map clearly delineating the areas of your property, under these permits, which (a) have been acquired by the National Park Service, (b) are in the process of possibly being acquired by the National Park Service but which are under litigation, and (c) were retained by you outside of any proceedings for acquisition by the National Park Service. This area map should show the lots and their designation. In addition, which lands, if any, lie outside the places of use covered by the permits.
- (2) How much water will be required if (a) the decision in the litigation is decided in your favor, or (b) if the decision is decided against your favor?
- (3) What is the current status of the litigation in court?
- (4) Was any construction work underway before the lawsuit was filed?

Please give this matter your prompt attention.

Jmm, for
J. M. Page
Supervising Engineer

cc: McKittrick and Duffy
315 Davidson Building
8 - 3rd Street No.
Great Falls, Montana 59401

AACHesler:lpbrew

SURNAME

1 Chesler

2 Miller

3

4

FITZGERALD and JOHNSON

ATTORNEYS AT LAW

100 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 421-3606

HERMAN H. FITZGERALD
JAMES T. JOHNSON
JAMES M. BERG

October 8, 1973

Mr. J. M. Page
Supervising Engineer
State Water RESources Control Board
Division of Water Rights
Room 1015, Resources Building
1416 Ninth Street
Sacramento, California 95814

Re: Permits 15723 and 15642
(Applications 22723 and 22771)
Wilson Creek and Unnamed Stream
in Del Norte County

Dear Mr. Page:

In accordance with your letter of October 5, 1973, I am enclosing herewith a \$5.00 fee for extension of time under the above permits.

Basically, I am attempting to reserve the maximum amount possible under the permits. As your file will reflect, the initial limitation was for an amount in excess of the proposal set forth in your June 15 letter. As you know, we have had extreme difficulty in this matter due to the pending Federal litigation. I do, however, hope to resolve these questions in the near future and will advise you immediately of our findings.

I do, however, wish to request that our original limitation on both permits be restored. Basically, according to our calculations, under Permit No. 15723 an amount of 1,130,000 gallons per day was granted, with the proposed amended limitation reducing this figure approximately 41% to 665,000 gallons per day. In the case of Permit No. 15642, our original limitation was 445,000 gallons per day, with the amended limitation reducing to 260,000 gallons per day. Consequently, we would respectfully request that the original limitations

*fee ok
ok to file JRG 10-10-73*

Mr. J. M. Page
October 8, 1973
Page 2

as set forth above be granted. The basis of this request is that Mr. Kelly intends to proceed with the original subdivision once the Federal Government's lawsuit is dismissed on the grounds of lack of public use and necessity to acquire his property. Needless to say, it will be some time before we could hope for a decision. In the interim, I would hope that our original status may be reserved.

Thank you.

Very truly yours,

FITZGERALD AND JOHNSON



HERMAN H. FITZGERALD

HHF:g
Encl.

cc: Mr. W. W. Kelly
733 - 47th Street South
Great Falls, Montana 59405



UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
District Office
Water Resources Division
855 Oak Grove Avenue
Menlo Park, California 94025

Director	
Assoc. Dir. Mgt.	
Coop. Programs	
Fin. & Adm. Cont.	
Assoc. Dir. (P.O.)	
Reg. Scientist	
E. P. & D.	
Operations Engr.	
Proc. & Distrib.	
Org. & Manpower	

LANDS

July 6, 1973
Water Resources

Mr. John E. Cook
Acting Director, Western Region
National Park Service
450 Golden Gate Avenue
Box 36063
San Francisco, California 94102

Dear Mr. Cook:

Following, in accord with the request in your letter dated May 29, 1973, is a summary of existing and potential water-supply sources on five land tracts owned by Mr. W. W. Kelly, Redwood National Park, California. These tracts were visited by J. P. Akers, a hydrologist on our staff, during June of this year.

Two of the tracts, 02-119 and 03-103, have good potential for the development of substantial quantities of water from wells and/or from springs and streams. The other tracts, 03-104, 08-114, and 08-115, have little potential for developing within the tracts more than enough water for a few homes. However, water for considerable development could be piped to these tracts from sources within about half a mile.

In regard to Item 4 in your letter of May 29, Wilson Creek at the site indicated on your map as a point of diversion would not be a dependable source of water. Local residents state that in most years Wilson Creek goes dry in its lower 1- to 1½-mile reach. It is perennial above this reach. There is a good potential to develop ground water from shallow wells in the alluvium along the lower 1- to 1½-mile reach of Wilson Creek. Such wells would be sustained by underflow from upstream perennial reaches of the creek. The wells and surface water, coupled with sizable storage facilities, probably would sustain a sizable development.

In addition to the detailed summary, a table summarizing these findings is included for your ready reference.

Very truly yours,

J. W. Wark

John W. Wark
Acting District Chief

Enclosures

02-119

This tract is a long, thin area bordering the east side of Highway 101 in the vicinity of the mouth of Wilson Creek. Most of the tract is steep terrain underlain by rock of the Franciscan Formation which has little potential to yield enough water to wells for even single-dwelling residences. This formation is present throughout most of the Central and Northern California Coast Ranges and most wells drilled into it are either dry or yield less than 5 gpm (gallons per minute). The chance of obtaining enough water for a single-residence dwelling from this formation is about 50 percent. Water from this formation commonly contains a high iron concentration.

Two springs occur in this tract. One, not visited because permission was not granted by the present occupant (Mrs. De Martin), is reported to be adequate for two families and 80 cows which it used to serve. The spring is located on a hillside about two hundred yards generally south from the De Martin residence, which is the only occupied residence on this tract. The spring is reported by Mrs. De Martin to flow all year, and in her memory (60± years) has not failed. However, she reports that in July and August of some years it was necessary to conserve water to maintain a dairy operation. The approximate location of this spring (S1) is shown on the accompanying map. The other spring (S2 on map) is undeveloped and is little more than a seep at present. However, three residences, no longer in existence but which were occupied in 1966, are reported to have obtained their water supply from this spring. The seep area probably could be developed as a domestic supply for one or two residences.

That part of Tract 02-119 in secs. 19 and 20 of 14 N., R. 1 E. probably could be supplied with water from a well or wells drilled in alluvium as near Highway 101 as is practicable. This alluvium occupies the valley bottom along Highway 101 between False Klamath Cove and the Klamath River. This alluviated valley probably is an abandoned reach of the Klamath River. This alluvium is the main source of water in a well (W1 on map) that is used in conjunction with spring water to supply water for the Trees of Mystery. This well is 200 feet in depth and reportedly yields about 60 gpm. The water contains a high iron concentration, but after treatment, is used in the dry season to augment the spring water for a domestic supply. The chance of obtaining a similar well in the southern part of Tract 02-119 is good.

Water for domestic use also could be obtained from alluvium along Wilson Creek within Tract 02-119. The creek, according to local residents, goes dry each year; but the alluvium should contain water throughout the year. On June 5, 1973, Wilson Creek, about 100 yards above the Highway 101 bridge, was flowing an estimated 3 cubic feet per second. The water from alluvial wells along the creek should be of good quality for domestic use. A potential site for an alluvial well is shown as PS1 on the accompanying map.

That part of Tract 02-119 north of Wilson Creek has little potential for the development of ground water from either springs or wells. However, it could be supplied with water piped from either surface flow of Wilson Creek or from alluvial wells in the alluvium along Wilson Creek. The maximum distance that water would have to be piped would be about 0.6 mile.

The appendage of Tract 02-119 in Sec. 19 T. 14 N., R. 1 E., which contains the Yurok Trail, has a shallow well (W2 on map) in the parking-lot area. This well, drilled by Del Norte County in 1968, supplies water of adequate quality and quantity to supply drinking water and sanitary facilities for the roadside rest area. A similar well might be developed on the west side of Mill Pond near the north end of the Yurok Trail loop near site PS4 indicated on the map. The rest of this appendage is underlain by rock of the Franciscan Formation which has little potential for development of water.

03-103

This tract straddles Highway 101 and lies just west of the Trees Motel. It is transected by the alluvium associated with the abandoned reach of the Klamath River that was described above. No developed water supply was found in this tract.

Water having a high iron concentration, but which could be treated and used as a domestic supply, probably could be developed from a deep well similar to that which supplies water for the Trees of Mystery. The well could be drilled on either side of, and near, Highway 101. Also, a small creek that drains the mountainous area on the southern boundary of this tract could be used as a water supply. This creek is perennial in its lower reach for a distance of about one-fourth mile above its mouth. A large-diameter shallow well, if drilled in alluvium along this creek at a site (PS2 on map) several hundred feet above Mill Pond, should yield water of better quality than would a deep well similar to the one at Trees of Mystery. The yield of such a well probably would be 10 to 20 gpm.

03-104

This tract, about 0.3 mile from the ocean and about 1 mile northwest of the Klamath Air Force Station, is underlain entirely by rock of the Franciscan Formation which has little potential for the development of ground water. There is no water-supply development on the tract at the present time. At the time this tract was visited, June 4, 1973, none of the creeks within the tract were flowing.

The potential for developing more than small domestic supplies within this tract is poor. A deep well drilled into the Franciscan Formation along the creek in the southern part of the area approximately at site PS3 on the map, would have about a 50-percent chance of yielding from 1 to 5 gpm of water having a high iron content. This creek is reported by local residents to be perennial about one-fourth mile downstream from the tract. Water might be piped a distance of one-fourth to one-half mile into the tract from this perennial reach of the creek. Another possible source of water for this tract would be from Tract 03-103. This also would require piping a distance of one-fourth to one-half mile.

08-114

This small tract is in steep terrain which is underlain by the Franciscan Formation. There are no developed water supplies on the tract.

The potential for developing water supplies on this tract is not good. However, there is about a 50-percent chance that a deep well drilled into the Franciscan Formation at any convenient location in the tract would yield enough water for one or two residences.

The nearest existing source of water that might be used for this tract is a small well (W3 on map) that serves a California State Park Service residence just downslope and across Highway 101 from the tract. The well obtains water from alluvium along a small drainage, and is reported to be a reliable source of water. However, the quantity of water yielded by this well is unknown and may not be sufficient to sustain more than the one residence it now serves. Water might also be piped to this tract from a well drilled in alluvium (potential site PS1 on map) along Wilson Creek, or from surface water diverted from this creek. This would require a pipeline about one-fourth to one-half mile in length. A third potential source would be the supply (described below) that now serves residences in Tract 08-115. About 500 to 600 feet of pipeline would be required to connect to the existing distribution system in and bordering Tract 08-115.

08-115

This tract is underlain by rock of the Franciscan Formation which has little potential for development of ground water. Six or seven residences, some within and some outside and south of the tract, are supplied with water from springs (S3 and S4 on map). Spring S3 is within the tract, but spring S4 is outside the tract. The combined discharge of these springs on June 5, 1973, was 12 gpm. The local residents, who maintain the water-supply system, report that spring S3 practically goes dry in the autumn months and the remaining quantity of water, from spring S4, is barely adequate to sustain their minimal needs. During the dry season the quantity of water is not sufficient to permit watering of lawns and shrubbery.

Spring S4 is actually the discharge of a small spring-fed stream.

The water is impounded behind a small dirt dam and is siphoned through a screen into the 1½-inch pipe. On the date that this installation was visited all of the water in the stream was being diverted. The discharge of the stream at this time was estimated at 5 or 6 gpm.

The water from these springs is delivered via a 1½-inch plastic pipe to an underground metal storage tank of unknown capacity near spring 3, and thence to a redwood tank of about 4,000-gallon capacity for distribution to individual residences.

Additional water for this tract could be piped about three-fourths mile from wells or surface supplies at Wilson Creek.

Summary of Existing and Potential Water-Supply Sources on
W. W. Kelly Land Tracts, Redwood National Park

Tract no.	Existing developments	Potential for developing well water	Potential for developing spring or surface water	Potential for piping water from outside of tract	Potential use of water	Remarks
02-119	Spring and well. Spring has supplied two families and an 80-cow dairy operation.	Good near Wilson Creek and along Highway 101 in Secs. 19 and 20; poor elsewhere.	Good near south end of tract in Sec. 20.	Can be piped from Wilson Creek or from wells along creek; maximum distance would be 0.6 mile.	Water for several tens of homes could be developed for this tract, especially in area near and south of Wilson Creek.	Existing well 1 at roadside res --may be off Kelly tract. Deep wells drilled for Highway 101 yield water having high iron content.
03-103	None.	Good near Highway 101 and in northwestern corner of tract.	Good in northwestern corner of tract.	No need for piping; water can be developed within tract.	Water could be developed for several tens of homes from within this tract.	Deep wells along Highway 101 would probably have high iron content.
03-104	None.	Poor. 50 percent chance of developing 1-5 gpm from wells 100-300 feet in depth.	Poor.	Water could be piped from supplies in Tract 03-103 or from stream to the east; maximum distance about ½ mile.	Water for 1 or 2 dwellings might be obtained from individual deep wells; water for larger development would have to be piped in.	
08-114	None.	Poor. 50 percent chance of developing 1-5 gpm from wells 100-300 feet in depth.	Poor.	Water could be piped ¼ to ½ mile from sources on Wilson Creek.	Any sizable development would require piping water into tract.	
08-115	Spring.	About 50 percent chance of obtaining 1-5 gpm from	Poor for developing more than already exists	Can be piped from Wilson Creek area --about ¾ mile.		

FITZGERALD and JOHNSON
ATTORNEYS AT LAW

100 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 421-3606

HERMAN H. FITZGERALD
JAMES T. JOHNSON

April 17, 1973

Mr. J. M. Page
Supervising Engineer
State Water Resources Control Board
Division of Water Rights
Room 1015, Resources Building
1416 Ninth Street
Sacramento, California 95814

Re: Permits 15723 and 15642
(Applications 22723 and 22771)
Wilson Creek and Unnamed Stream
in Del Norte County

Dear Mr. Page:

Mr. W. W. Kelly, the owner of the property subject to the above permits, has recently retained this office relative to the pending acquisition of the property within the Redwood National Park.

As the correspondence reflects, Permit 15642 is located in Section 29 and involves a 118 acre parcel incorporated within the National Park System. As a result of the pending litigation on the acquisition of this property for the Redwood National Park, the development of the water system has been, at least temporarily, delayed. Mr. Kelly's letter of March 8, 1973 to you indicates he does not wish an extension of time on the aforesaid Permit 15642. However, after a preliminary review of the file involving the Redwood National Park acquisition, it is my opinion that a serious question of public use and necessity exists in this matter. In addition, the history of negotiations by and between the Federal Government and Mr. Kelly's prior attorney would appear to create substantial questions in this regard. I intend to make a more detailed investigation in the near future with the intention to further discuss this matter with the Federal attorneys in Washington, D.C.

In view of the pending litigation acting as a deterrent and delaying factor in Mr. Kelly's development, I would respectfully request that a reasonable extension of time in the amount of thirty-six (36) months be granted.

EXTERNAL RETURN

Mr. J. M. Page
April 17, 1973
Page 2

In addition, Permit 15723 pertains to 117 acres on a 205 acre parcel adjoining the boundaries of the Redwood National Park. In order to properly develop this parcel public access must be obtained from the Del Norte Planning Commission. Negotiations with the National Park Service has completely delayed the granting of this requested access to the extent that the matter is being held in abeyance until completion of the litigation. Consequently, I would respectfully request on behalf of Mr. Kelly that a like extension of thirty-six (36) months be granted.

The above requests are based upon the guidelines set forth in the California State Water Resources Control Board for extensions of time under Water Right Applications and Permits dated October 1971, Permits Sections A3 and B5, pages 5 and 6.

I believe that an investigation of your file and correspondence indicates the complete frustration in the development of this property through no fault of Mr. Kelly. I understand the necessity to expedite these matters and would hope that the entire thirty-six (36) month extension would not be necessary. Unfortunately, litigation has been unnecessarily delayed and we would hope now to resolve this matter and proceed further with the development.

Very truly yours,

FITZGERALD AND JOHNSON



HERMAN H. FITZGERALD

HHF:g

4-54 (WR)
REDW/WTR DOCKET #9
REDW/WTR DOCKET #10

April 10, 1972

~~CHAVEZ~~
~~WITUCKI~~

Memorandum

To: Superintendent, Redwood National Park, California
From: Chief, Water Resources, Office of the Regional Chief
Scientist, Western Region
Subject: Water Right Dockets:
No. 9, Permit 15723 (Application 22723) Wilson Creek
No. 10, License No. 9017 (Application 21773) White
Diversion (Unnamed Spring)

Enclosed for your files are the subject water right dockets.

As further action is necessary regarding the protection of
these water resources, we shall keep you advised.

(SGD) GERARD S. WITUCKI

Gerard S. Witucki

Enclosures

cc:
FW-WASO, w/encls
(WR) AS, Regional Chief Scientist (Mr. Wallis)
(WR) ASW, Water Resources File, (2 cys--green)
(WR) Chron File

(WR) FNP:DChavez:mpm 4/10/72

STATE OF CALIFORNIA—THE RESOURCES AGENCY

RONALD REAGAN, Governor

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ROOM 1140, RESOURCES BUILDING

1416 NINTH STREET • SACRAMENTO 95814

April 5, 1972

Mr. Gerard S. Witucki, Chief
 Division of Water Resources
 National Park Service, Western Division
 450 Golden Gate Avenue, Box 36063
 San Francisco, CA 94102

Dear Mr. Witucki:

Permit 15723 (Application 22723)
 Wilson Creek and Wilson Creek
 Underflow in Del Norte County

In our March 15th letter regarding the above permit we notified you that we had been informed that the permittee had abandoned this project and that the place of use involved had been acquired by the National Park Service.

The permittee, Mr. W. W. Kelly, has just notified us that our previous information regarding the property was incorrect and that litigation is preventing him from proceeding with development of the portion of the permit he still owns. Mr. Kelly apparently is still the owner of the permit, and our records will remain unchanged. This however, does not relieve Mr. Kelly from the requirements of diligence in establishing his water right. The permit period in which to place the water to beneficial use expires December 1, 1972. It is the obligation of the permittee to obtain an extension of time beyond that period.

Sincerely,

Original Signed by
 D. W. Sabiston

D. W. Sabiston, Supervisor
 Coastal Region

cc: Mr. W. W. Kelly ✓
 Fidelity Savings and Loan Association
 510 First Avenue North
 Great Falls, MT 59401

RECEIVED WATER RESOURCES SECTION APR 7 1972		
ACT. INFO.	INITIALS	DATE
WITUCKI, G.		
BARRETT, J.		
CHAVEZ, D.		
KENNEDY, M.		
GOLD, S.		
FILE		
REMARKS		

STATE OF CALIFORNIA—THE RESOURCES AGENCY

RONALD REAGAN, Governor

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
 ROOM 1140, RESOURCES BUILDING
 1416 NINTH STREET • SACRAMENTO 95814



March 15, 1972

Mr. Gerard S. Witucki, Chief Water Resources
 National Park Service
 Western Region
 Division of Water Resources
 450 Golden Gate Avenue Box 36063
 San Francisco, California 94102

Dear Mr. Witucki:

Permit 15723 (Application 22723)
 Wilson Creek and Wilson Creek
 Underflow in Del Norte County

We have been informed by Mr. Ilmars Lagzdins, consulting engineer, Eureka, California that the property formerly owned by William W. Kelly has been acquired by the Redwood National Park.

Mr. Kelly intended to divert water from a proposed reservoir and wells in accordance with the enclosed water right Permit 15723, see attached map showing locations of the points of diversions. Mr. Lagzdins also informed us that Mr. Kelly's project has not been started and has been abandoned. Will you let us know if the Park intends to develop these sources. If so, we will assign the permit to the Park.

The project under this permit was primarily for subdivision purposes and it is most likely this type of development is not contemplated by the Park. If you confirm this, we can revoke the permit in accordance with State Senate Bill No. 262 enacted in 1971.

Sincerely,

D. W. Sabiston, Supervisor
 Coastal Region

Enclosures

cc: Mr. W. W. Kelly
 510 First Avenue North
 Great Falls, Montana 59401

RECEIVED			
WATER RESOURCES SECTION			
MAY 16 1972			
ACT.	INFO.	INITIALS	DATE
	WITUCKI, G. J.		
	CHAVEZ, D.		
	CHAVEZ, D.	DC	
	KENNEDY, M.		
	GOLD, S.		
REMARKS		FILE	

Memorandum:

To: Chief, Water Resources Division

Through: Hydrologist

From: Legal Clerk

Subject: REDW and the Kelly property in relation to water permit #15723

The pertinent issue today in this protracted and involved conflict is how to respond to the State Water Resources Control Board (hereafter SWRCB) concerning permit #15723. The basis for any decision on this issue should be examined in light of several responsibilities and options.

Responsibilities:

When a portion of the Kelly property was acquired by the National Park Service for inclusion in REDW the Service apparently acquired a portion of the water right associated with permit #15723. This water right may or may not have enhanced, increased or otherwise contributed to the just compensation paid to Mr. Kelly for that land. From a legal point of view the Service would be wise to assume that the water right, or some portion of it, did play a part in the adjudication and, as such, represents a valuable property right acquired by the United States Government. As such the Service is obligated to take whatever steps are reasonably necessary to protect that property right. Only an Act of Congress can dispense with property of the United States.

If this conclusion is valid, then it would preclude the Service from acting affirmatively to relinquish any water right associated with the permit, or from requesting the State to revoke such a permit. There is some question as to the degree, if any, of positive action to protect such a property right that the Service must undertake. Some of the options that might be utilized are discussed below.

Non-Action:

The responsibility of the Service may be satisfied by non-action. That is the Service may do nothing and allow the permit to languish in the State bureaucracy. The SWRCB does have a procedure for initiating unilateral revocation of a permit if the project upon which it was based is not developed, or is not sufficiently definite in nature. Under California Water Code section 1410, a permit revocation will be initiated if the applicant is not able to proceed within a reasonable time, due to the absence of a feasible plan, or lack thereof, or, for some other cause, has not developed the project to which the water permit pertained.

Since the SWRCB now seems to be treating as separate the portions claimed by the National Park Service and Kelly, it seems both must act to justify their individual claims. Kelly has petitioned for an extension of time and to amend the permit for lower water use on his remainder (his new

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request is for 0.31 cfs (200,000 gpd) not to exceed 129 acre-feet per annum for his remaining 205 acre development). The SWRCB has independently requested that the National Park Service justify an extension for its portion of the water right. It seems that Kelly is now in a position to perfect his permit rights with the SWRCB independently of the portion claimed by the Service on permit #15723. If no action is taken it is highly probable that the SWRCB will approve the extension for Kelly as amended.

Because of the above mentioned probability of approval of Kelly's extension and the uncertainty of non-action satisfying the obligations of the Service to protect a Government property right, non-action cannot be viewed as entirely without serious risks. The option is attractive, though, in that it would seem to clear the docket and end this extended stalemate. However, it would seem wise to request an opinion of the Solicitor's Office as to the legal requirements necessary to satisfy the Service's obligations before letting this matter go quietly to its grave.

Actions:

One simple action that would be consistent with our last communication on the issue would be to merely claim the water right as property acquired for valuable consideration and further state that our portion of that right under permit #15723 is "unknown" at this time. (See letter of May 20, 1977, and following petitions in docket.) The statement should be accompanied by a request to petition for a change of use for our portion of the permit from "municipal, irrigation and recreation" to fish and wildlife propagation and/or protection. Such an action would settle nothing, but it would be an attempt to protect the property right which may satisfy the Service's responsibility in such a situation. The recourse of the SWRCB is unpredictable. They may accept this move to petition for a new use and our accompanying claim as sufficient justification for an extension; or they may demand a further missive containing more particulars; or they may reject outright our claim and begin unilateral action to revoke our portion of the water right under permit #15723.

Another action which has been recommended in the past in regards to this case is to try and request a proportionment of the water right under permit #15723. This presents some real problems of how to apportion the water right; how to apply whatever portion of that right we receive to some other use; and, the most difficult prospect, how to reach an agreement on the division with the other parties (Kelly et al) after all these years of controversy. Therefore, such an attempt, except as a delaying tactic, would present substantial difficulties in this case. The result might be further lengthy and costly litigation over the division, or a rejection of the proposal by the SWRCB. However, the option is a viable one in that it would seem to protect some unknown equitable portion of the water right and would probably satisfy the Service's obligation to protect the property of the United States Government.

page 3

A third affirmative action that might be considered is to claim an equal, undivided interest in the property right created under permit #15723. This would amount to viewing our holding as one in co-tenancy or as tenants in common with Kelly et al. Each would own the right to the water under the permit and could appropriate such water to a beneficial use via an application to the SWRCB (as Kelly has already done). The advantage to this approach in our situation is that it would not unduly intervene with Kelly's right to appropriate the water under the permit. This might prevent further litigation. At the same time it protects the property right of the Government. This would seem to satisfy the obligation to so protect such property and yet not necessarily call for further adjudication of proportioning of those rights. One final aspect that may be available under such a claim is that as tenants in common in this property right, either tenant can call for an accounting if it appears that the other is unjustly appropriating more than his fair share of the property. This might be a means of protecting future interests in the water from over-appropriation by Kelly.

Whichever of the above or other options is taken, it is strongly recommended that we request a petition to change the use regarding our share of the permit from "municipal, irrigation and recreation" to fish and wildlife propagation and/or protection. This would be well worth the \$10.00 filing fee.

Summary:

The SWRCB has requested that we show cause why an extension of time is justified for that portion of permit #15723 held by the National Park Service. Non-action on this request will most probably lead to a revocation of our portion of the permit by unilateral action of the State. Such might be a failure to satisfy the obligations of the Service to protect Government property. Actions available range from attempts to maintain the status quo; to delaying tactics which may lead to litigation; to attempting to claim a share of the property right with or without apportionment.

James H. Hershey
January 15, 1980

Back up material for permit 15723, which applies to W.W. Kelly property in Sections 7, 17, 18, 19 and 20, T14N, R1E. Note Kelly also owned 117.87 acres (which NPS bought) in Sec 29 - This pertains to permit 15642.

Kelly property acquired by NPS in Sections 7, 17, 18, 19 and 20

Tract #	Acres	
03-103	57.52	} Pertains to permit 15723
02-119	168.14	
08-114	12.58	
08-115	89.55	
	<u>327.79</u>	
03-104	+ 117.87	- Section 29
	<u>445.66</u>	- Total NPS purchase

(This checks with 445 figure as given in Nov 19, 1976 letter to Mr. Bonn from H.O. Sigmond, U.S. Lands attorney in WASHO)

W. Wernick
May 13, 1997

(over)

Signond's letter states that Kelly retained 200 acres in Sections 7, 17 and 20. Kelly's reapplication with the State on permit 15723, Aug 6, 1976, states that he retains 205 acres.

Utilizing Signond's 200 figure:

$$\frac{328 \text{ acres}}{328 + 200 \text{ acres}} = \frac{X \text{ gpd}}{1,100,000 \text{ gpd}}$$

$$X = 683,333 \text{ gpd}$$

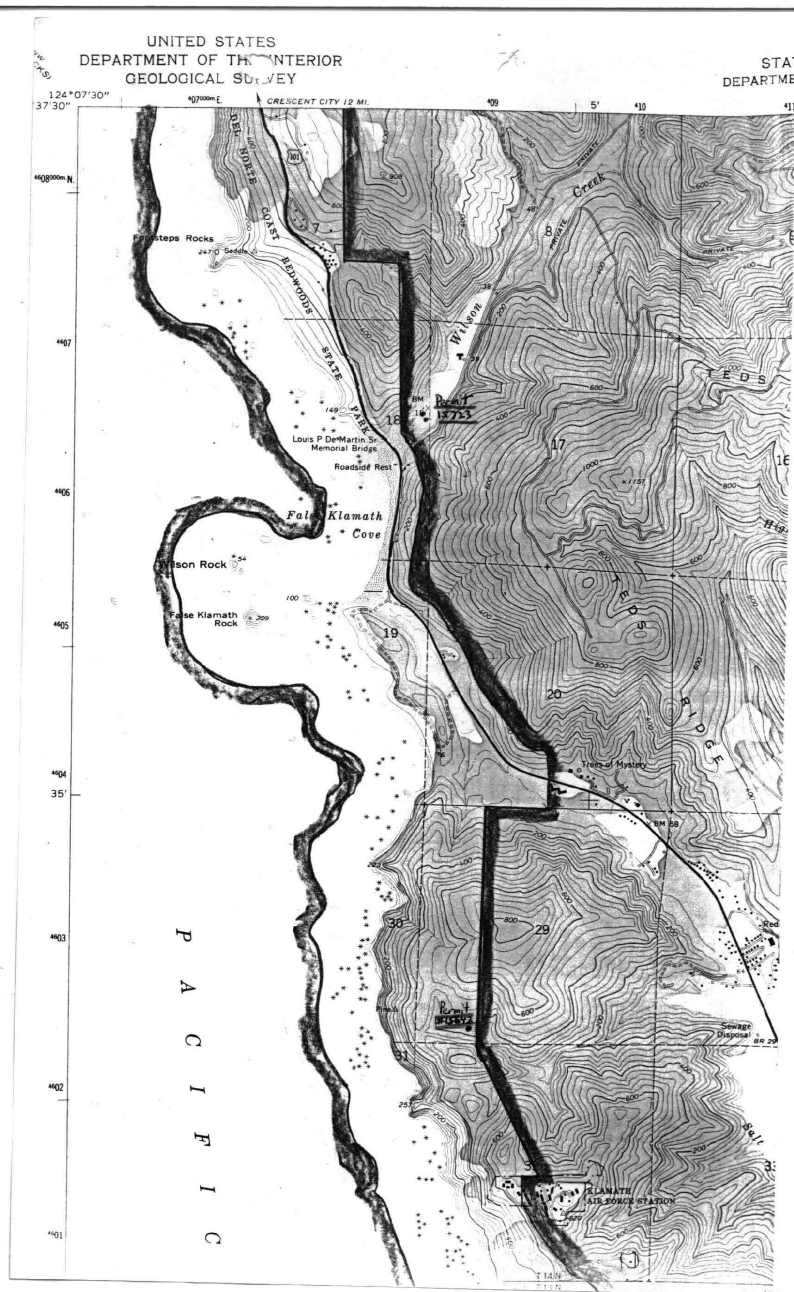
Utilizing Kelly's 205 figure:

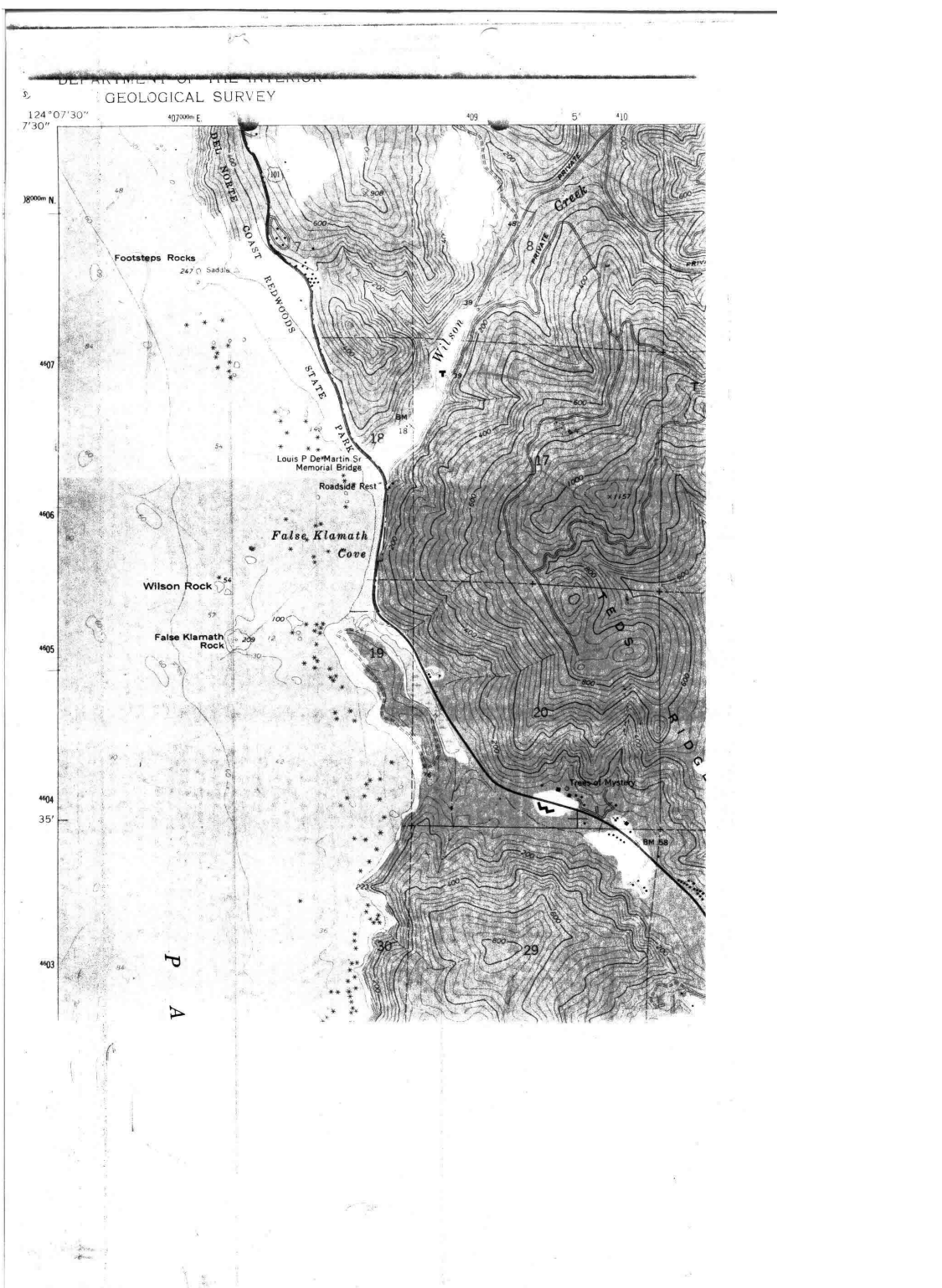
$$\frac{328 \text{ acres}}{328 + 205} = \frac{X \text{ gpd}}{1,100,000 \text{ gpd}}$$

$$X = \frac{676,923}{\text{gpd}}$$

$$\text{Difference} = 6,410 \text{ gpd}$$

Thus (by straight line figures) The Service should receive a permit for about 680,000 gpd for our portion of the property purchased - based on the original application figure of 1,100,000 gpd.





Docket Information

Number of Documents in Docket 100

Documents Dated from 10/29/1968 to 5/13/1997

Docket Compiled: 6/14/2011