

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23579 )  
of DONALD E. and DIANE T. AUBURN )  
to Appropriate from Willow Valley )  
Creek in Nevada County. )

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Decision 1389

DECISION DENYING APPLICATION

Donald E. and Diane T. Auburn having filed Application 23579 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 23579 is for a permit to appropriate 0.1 cubic foot per second (cfs) by direct diversion from May 1 to October 15 of each year for irrigation, stockwatering and recreational purposes from Willow Valley Creek in Nevada County. The point of diversion is to be located within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 3, T16N, R9E, MDB&M.

### Applicants' Project

2. The applicants have constructed a dam and reservoir with a capacity of one-half acre-foot on Willow Valley Creek approximately one-half mile below the creek's point of origin. The creek flows from the applicants' reservoir approximately one and one-fourth miles to enter Deer Creek, a tributary of the Yuba River.

3. The applicants propose to irrigate approximately six acres using the reservoir for regulation. They claim a riparian right to use water from Willow Valley Creek for the same purpose.

### Protests

4. Protests were filed by Silas N. Miller and Ward B. and Shirley A. Shinn who claim riparian rights, and by Carlile and Lois Varnell who claim pre-1914 appropriative rights, to water from Willow Valley Creek. The protestants Shinn also hold Application 23535 to appropriate 4,200 gallons per day by direct diversion, year round, and 30 acre-feet per annum by storage from Willow Valley Creek from October 1 to May 1 of each year. These protestants are located on a reach of the creek between the applicants and the Deer Creek junction.

Nevada Irrigation District (hereinafter referred to as "District") claims pre-1914 appropriative rights to water from Deer Creek and holds License 8808 (Application 1615) to appropriate 100 cfs from April 1 to October 1 from the creek.

The Bureau of Reclamation has petitioned the Board for assignment of State Applications 20713 and 20714 for its proposed Marysville Project on the Yuba River. It contends that the approval of Application 23579 would jeopardize the safe yield of the proposed Marysville Reservoir.

#### Flows in Willow Valley Creek

5. There are no records of the flows of Willow Valley Creek. On July 28, 1971, the date of the field investigation on Application 23579, the flow through the applicants' reservoir was 40 gallons per minute (0.089 cfs).

There is an abundance of water in the creek during the winter months. During the summer irrigation season the creek's supply is limited to flow from springs and some seepage and wastewater from the District's Snow Mountain ditch, which transverses the Willow Valley Creek watershed below the applicants' reservoir.

#### Availability of Unappropriated Water

6. State Water Rights Board (predecessor to the State Water Resources Control Board) Decision D 1124 adopted April 4, 1963, found that there had not been sufficient water in Deer Creek to meet the District's requirements pursuant to its rights in most years during the period from about June 1 to about October 1. No information has been presented to this Board which would justify a different conclusion at the present time. A permit with the months of June through September excluded

from the diversion season would be of little or no value to the applicants.

7. Unappropriated water required for the approval of Application 23579 is not available during the critical part of the requested irrigation season.

From the foregoing findings, the Board concludes that Application 23579 should be denied.

This decision does not affect any riparian right applicants may have to the use of water from the named source on the proposed place of use.

The records, documents, and other data relied upon in determining the matter are: Applications 1615 and 20263 (Decision D 1124), 23535 and 23579 and all relevant information on file therewith, particularly the report of field investigation made on July 28, 1971.

ORDER

IT IS HEREBY ORDERED that Application 23579 be, and it is, denied.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: January 6, 1972

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

E. F. DIBBLE  
E. F. Dibble, Vice Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

W. W. ADAMS  
W. W. Adams, Member