

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Applications 17892 by  
William E. Rodden, et al., and Applications  
17893, 17894, 17895, 17896, and 17897 by  
William E. Rodden to appropriate from various  
tributaries of Littlejohns Creek in  
Calaveras County

Decision No. D 930

ADOPTED APR 6 '59

Substance of the Applications

Application 17892 was filed on November 25, 1957, by William E. Rodden, Violet S. Boone, Lucille S. Tulloch, Pearl Schonhoff and Clairborne Schonhoff for a permit to appropriate 48 acre-feet per annum by storage to be collected from October 1 of each year to June 1 of the succeeding year from Peachy's Creek tributary to Littlejohns Creek in Calaveras County. The water is to be collected by an earth dam 24.8 feet high by 500 feet long located within NE $\frac{1}{2}$  of SW $\frac{1}{2}$  of projected Section 8, T1S, R12E, MDB&M\*, and will have a capacity of 48 acre-feet. The water will be used for stockwatering purposes and cattle will drink directly from the reservoir (Tulloch Reservoir).

Applications 17893, 17894, 17895, 17896 and 17897 were filed on November 25, 1957, by William E. Rodden for permits to appropriate water from various streams tributary to Littlejohns

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\*All townships and ranges refer to Mount Diablo Base and Meridian.

Creek as follows:

<u>App. No.</u>	<u>Name of Reservoir</u>	<u>Location</u>	<u>Height (Feet)</u>	<u>Length (Feet)</u>	<u>Capacity &amp; Amt. Requested (af)</u>	<u>Source</u>
17893	Barbara	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36 T1N, R11E	19	160	4	Unnamed Creek tributary to Martells Creek
17894	Stephanie	NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6 T1S, R12E	11	500	15	Unnamed Creek tributary to Martells Creek
17895	Bonita	SE $\frac{1}{4}$ NE $\frac{1}{4}$ projected Section 32 T1N, R12E	16	350	8	Peachy's Creek
17896	Tinnen	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19 T1N, R12E	14	270	9	Martells Creek
17897	McDowell	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29 T1N, R12E	15	350	11	Unnamed Creek tributary to Bit Springs Creek thence Martells Creek

The water will be collected between October 1 of each year and June 1 of the succeeding year and will be used for stock-watering purposes, the cattle drinking directly from the reservoirs.

#### Protests

Protests against approval of the six subject applications were submitted by Owen E. Wilkinson on behalf of Edna R. Owen and Irene Owen Wilkinson based upon prior application and riparian rights. The protests were identical in nature and claim that because the protestants' prior Application 16531 was canceled for lack of sufficient unappropriated water, approval of the subject applications would cause injury to said protestants, "...by denying

them their rights, ...". The protestants claim that they or their predecessors have diverted the water at a point within the S $\frac{1}{2}$  of Section 31, T1N, R10E, and used said water for stockwatering and irrigation purposes. In each protest the protestants stated that the protest could be disregarded and dismissed if the applicants would confine their storage season to November 1 to May 31.

#### Answers to Protests

In answer to the protestants, the applicants declare as follows:

"As evidenced by willingness of protestant to dismiss protest if diversion season is confined from November 1 to May 31, the only month placed at issue is October. During the month of October there is normally insufficient rainfall in this watershed to be of any benefit to the protestant. In an exceptional year of heavy rainfall, in October the amount of water diverted by the applicant would be negligible.

"Diverting water around or through applicant's dam would cause a great expense to the applicant."

#### Field Investigation

The applicants and protestants with the approval of the State Water Rights Board stipulated to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted July 18, 1958, by J. J. Heacock, an engineer of the Board. The applicants and protestants were present or represented at the investigation.

#### Records Relied Upon

The records relied upon in support of this decision are Applications 17892, 17893, 17894, 17895, 17896 and 17897 and all relevant information on file therewith, with particular reference

to "Report of Field Investigation", dated June 27, 1958; United States Department of Commerce, Weather Bureau "Climatological Data-California"; Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951; Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923; Decision No. D 922 of the State Water Rights Board, dated December 18, 1958; Bulletin No. 11, State Water Resources Board, "San Joaquin County Investigation", June 1955; and various U. S. Geological Survey quadrangles of the area.

Source

The sources of the applications under consideration herein are small streams tributary to Littlejohns Creek rising in the foothill area of southwestern Calaveras County. Littlejohns Creek rises in the southerly portion of T2N, R11 and R12E and flows for about 10 stream miles in a southerly direction thence westerly for over 40 miles to its confluence with the San Joaquin River near the City of Stockton. In general, the watershed above the various dams is rolling hill with moderate slopes and has a light covering of scattered oaks and apparently thin soil mantles. The following tabulation gives the areas of the various watersheds:

Applications	17892	17893	17894	17895	17896	17897
Area in acres	32	77	102	270	315	130
Total area of contributory watersheds - 1.45 square miles.						

Information Secured by Field Investigation

All of the dams are complete and some water was impounded at the time of the investigation on July 18, 1958. The dams were

built with the aid of the U. S. Soil Conservation Service. In all cases except for Application 17894 the spillways are constructed through hard shale or harder rock around an abutment and discharge into the natural stream channel below the toe of the dam. For the dam under Application 17894, the spillway is through a natural saddle approximately 100 feet from the right abutment and overflow discharges into a canyon westerly from the source canyon. None of the dams are equipped with outlet pipes.

At the time of the investigation Martells Creek and Peachy's Creek were both dry where they entered the valley floor above their confluence with Littlejohns Creek.

The projects of the applicants lie 15 to 20 stream miles upstream from the protestants' property.

#### Water Supply

According to Table 2 of the United States Department of Commerce, Weather Bureau, "Climatological Data-California", Annual Summaries for the years 1942 through 1952, the mean annual precipitation at San Andreas, near the local of the applicants' proposed projects is 30.07 inches. Table 1 herein sets forth the monthly precipitation at San Andreas for the period 1942 through 1952, the period of available stream flow records for Littlejohns Creek near Farmington.

Appendix D. of Bulletin No. 11, State Water Resources Board, "San Joaquin County Investigation", dated June, 1955, sets forth the flow of Littlejohns Creek at Farmington for the periods 1942-44 and 1946-52. Table II herein contains the stream flow records at that station as reported in Bulletin No. 11. A

comparison of the precipitation (Table I) during the month of October, the only month during which the protestants object to the proposed diversion, in the upper watershed, with the runoff at Farmington (Table II) reveals that little, if any, relationship exists. The flow of Littlejohns Creek at Farmington during the summer and fall months is undoubtedly return flow and drainage water from irrigation of adjacent lands and not dependent upon the antecedent rainfall. The protestants' point of diversion is about six stream miles above the Farmington Recorder Station.

According to Table 91 of Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams", dated 1923, the estimated mean seasonal runoff per square mile of Littlejohns Creek watershed, is 201 acre-feet. The estimated maximum and minimum runoff per square mile is 709 and 10 acre-feet, respectively. The distribution of seasonal runoff by months, according to Bulletin No. 5 is as follows:

January	- 34.2%	July	- 0.3%
February	- 25.2%	August	- 0.0%
March	- 23.7%	September	- 0.1%
April	- 5.5%	October	- 0.6%
May	- 2.6%	November	- 1.6%
June	- 1.0%	December	- 5.2%

Upon the assumption that the watersheds above the applicants' points of diversion contribute about the same per unit of watershed area as Littlejohns Creek as a whole and that the monthly distribution of runoff of those watersheds is also approximately

TABLE I  
 Monthly Precipitation at San Andreas  
 (in inches)

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1942	7.10	3.50	2.47	5.82	3.09	0.00	0.00	0.00	0.00	0.17	4.96	7.56
1943	7.88	3.84	7.98	2.65	.10	.20	0.00	0.00	0.00	.78	2.01	2.61
1944	3.64	5.66	2.43	2.71	.69	0.00	0.00	0.00	.45	1.60	5.63	4.03
1945	.43	7.49	6.11	.74	.96	.40	0.00	T	.18	2.60	4.66	7.18
1946	1.52	1.96	4.50	0.00	1.55	0.00	T	0.00	.09	1.29	6.37	3.00
1947	1.14	2.24	2.12	.50	.30	.48	0.00	0.00	0.00	5.15	1.48	1.12
1948	1.25	3.05	6.11	6.61	3.00	.03	0.00	T	0.00	.67	.40	4.75
1949	3.03	3.84	6.92	T	.66	0.00	.02	.06	T	.09	3.27	2.24
1950	8.42	4.45	4.14	2.52	.45	0.00	0.00	0.00	0.00	0.00	10.60	6.93
1951	6.51	3.14	3.13	1.29	1.73	T	0.00	0.00	0.00	1.53	4.13	8.02
1952	8.69	3.32	6.64	1.84	.17	.08	.05	0.00	.27	0.00	2.61	6.85
AVERAGE	4.51	3.86	4.78	2.24	1.15	.11	.006	.005	.09	1.26	4.19	4.57
MEDIAN	3.64	3.50	4.50	1.84	.69	.015	.00	.00	.00	.78	4.13	4.03

TABLE II  
 Littlejohns Creek at Farmington  
 (in acre-feet)

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1942										370	900	1960
1943	14130	11340	33850	3020	250	240	250*	250*	240*	120*	120*	120*
1944	120*	21170	17010	360	330	230	80	0	0	**	**	**
1945	**	*	**	**	**	**	**	**	**	**	**	**
1946	**	**	153	306	480	631	703	939	915	400	510	970
1947	240	500	3890	180	790	**	**	**	**	**	**	**
1948	250	19	2990	5130	450	600	630	630	650	370	70	0
1949	60	1080	12180	320	570	570	470	500	340	32	95	12
1950	18960	11680	2680	1070	330	290	250	230	170	90	14820	36440
1951	18430	**	10220	1050	530	180	180	180	180	180	120	6140
1952	37030	15070	37250	2400	**	**	**	**	**	**	**	**
AVERAGE	11150	8690	13380	1540	466	392	366	390	356	224	2380	6520
MEDIAN	7190	11340	10220	1050	465	290	250	250	240	180	120	970

\* estimated  
 \*\* no record



the same, the flows in acre-feet reaching the several points of diversion during October should be approximately as follows:

<u>Application</u>	<u>Mean</u>	<u>Maximum</u>	<u>Minimum</u>
17892	.06	.21	.003
17893	.14	.51	.007
17894	.19	.66	.01
17895	.50	1.77	.025
17896	.59	2.07	.029
17897	.24	.84	.012

#### Other Matters

The protestants filed Application 16531 on August 17, 1955, to appropriate 3 cubic feet per second from Littlejohns Creek between March 1 and October 1 of each year for irrigation of 160 acres and stockwatering purposes. The application was protested by two downstream users. A field investigation was made on July 22, 1957, and on July 23, 1957, the applicants requested that the application be canceled.

#### Discussion

According to the report of field investigation made on July 18, 1958, Owen E. Wilkinson, representing the protestants, stated that he did not believe that the appropriations could materially affect them, except possibly in the month of October.

The amount of runoff from the 1.45 square miles of drainage area above the applicants' projects during the month of October as discussed in a previous section is of such small proportions as to be insignificant to the protestants some 15 to 20 stream miles

downstream. Upon the basis of the foregoing information the protest must be considered as without merit.

The existence of unappropriated water during the diversion season, other than the month of October, was not contested by the protestants. From the record it is evident that substantial amounts of runoff occur from Littlejohns Creek watershed during the major portion of the diversion season proposed in the applications, and that unappropriated water exists in sufficient quantities in the sources named in the subject applications to Justify the issuance of permits for the entire season requested.

#### Conclusions

The information indicates, and the Board finds, that unappropriated water exists at times in substantial quantities in the sources from which the applicants seek to appropriate and that such water may be taken and used in the manner proposed by the applicants during those times without injury to downstream parties. It is, therefore, the conclusion of the Board that Applications 17892, 17893, 17894, 17895, 17896 and 17897 should be approved and that permits should be issued to the applicants subject to the usual terms and conditions.

#### ORDER

Applications 17892, 17893, 17894, 17895, 17896 and 17897 for permits to appropriate unappropriated water having been filed with the State Water Rights Board, protests against their approval having been submitted, an investigation having been made by agreement of the parties under Rule 737, said Board having considered

all of the available information, and now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 17892, 17893, 17894, 17895, 17896 and 17897 be and the same are hereby approved, and it is ordered that permits be issued to the applicants subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated under Application 17892 shall be limited to the amount which can be beneficially used and shall not exceed 48 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

2. The amount of water appropriated under Application 17893 shall be limited to the amount which can be beneficially used and shall not exceed 4 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

3. The amount of water appropriated under Application 17894 shall be limited to the amount which can be beneficially used and shall not exceed 15 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

4. The amount of water appropriated under Application 17895 shall be limited to the amount which can be beneficially used and shall not exceed 8 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

5. The amount of water appropriated under Application 17896 shall be limited to the amount which can be beneficially used and shall not exceed 9 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

6. The amount of water appropriated under Application 17897 shall be limited to the amount which can be beneficially used and shall not exceed 11 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

7. The maximum amounts herein stated may be reduced in the license if investigation so warrants.

8. Complete application of the water to the proposed uses shall be made on or before December 1, 1960.

9. Progress reports shall be filed promptly by permittee on forms to be provided annually by the State Water Rights Board until license is issued.

10. All rights and privileges under these permits including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at \_\_\_\_\_, California, on this \_\_\_\_ day of \_\_\_\_\_, 1959.

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Henry Holsinger, Chairman

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W. P. Rowe, Member

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Ralph J. McGill, Member

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Applications 17979 )  
and 17980 by George Moskowite to ) Decision No. D 936  
appropriate from two unnamed streams )  
in Napa County )

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ADOPTED AUG 27 '59

Substance of the Applications

Application 17979, filed February 6, 1958, by George Moskowite, is for a permit to appropriate five acre-feet per annum by storage to be collected between November 1 of each year and May 15 of the succeeding year from an unnamed stream in Napa County for stockwatering purposes. Water is to be collected by an earth dam 22 feet high and 135 feet long located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 9, T7N, R3W, MDB&M. The dam will create a reservoir which with a freeboard of 3 feet on the dam will have a surface area of one acre and a capacity of 10 acre-feet. The reservoir will be used to provide stockwater for 100 head of cattle.

Application 17980, filed February 6, 1958, by George Moskowite, is for a permit to appropriate eight acre-feet per annum by storage to be collected between November 1 of each year and May 15 of the succeeding year from an unnamed stream in Napa County for stockwatering purposes. Water is to be collected by an earth dam 20 feet high and 117 feet long located within the

SE $\frac{1}{2}$  of SW $\frac{1}{2}$  of Section 9, T7N, R3W, MDB&M. The dam will create a reservoir which with a freeboard of 4 feet on the dam will have a surface area of one acre and a capacity of 8 acre-feet. The reservoir will be used to provide stockwater for 100 head of cattle.

#### Protest

Leroy E. Gray protests against the approval of Applications 17979 and 17980 and alleges that during the fall and early winter there is not enough runoff to fill the reservoirs and supply water to his property for livestock use which is immediately downstream from the applicant's project; that during dry seasons the dams might cut off his supply for the entire year; that water has been used on his property since the 1850's for stockwatering in variable amounts up to 1500 gallons per day; and that his right to the use of water is based on use begun prior to December 19, 1914.

#### Answer to Protest

In answer to the protest against the applications, the applicant alleges that building of the dams will benefit protestant "by putting and keeping the water in the underground and by raising the water level"; that only a small part of the winter runoff will be stored and that it will be used exclusively for stockwatering purposes; that one of the reservoirs was built a number of years ago and at that time there was no protest; that both of the dams have been approved by the Soil Conservation Service.

### Field Investigation

Applicant and protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules. A field investigation was conducted on September 24, 1958, by J. Victor Scammon, an engineer of the Board, at which the applicant and the protestant were present. On January 26, 1959, Mr. Scammon interviewed the applicant and the protestant and made further observation of flows in the sources.

### Records Relied Upon

The records relied upon in support of this decision are Applications 17979 and 17980 and all relevant information on file therewith, with particular reference to the report of the field investigation made on September 24, 1958, and the memorandum of investigation made on January 26, 1959, both by the above-named engineer; a report of the Division of Water Resources, entitled "Putah Creek Cone Investigation", dated December, 1955; United States Geological Survey, "Capell Valley" quadrangle, 7½-minute series, Edition of 1951.

### Sources and Water Supply

The sources of the proposed appropriations are branches of an intermittent stream rising on the northern slope of Capell Valley within Section 9, T7N, R3W. The west branch is the source under Application 17979; the east branch is the source under Applica-

tion 17980. The drainage area above each point of diversion is about 140 acres sparsely covered with brush and timber. Capell Valley is drained by Capell Creek which is tributary to Putah Creek above Monticello Reservoir of the United States.

With regard to water supply, the report of the Division of Water Resources entitled, "Putah Creek Cone Investigation", dated December, 1955, discloses that the water supply available to the area in the vicinity of applicant's projects results from precipitation directly on the area; that mean seasonal precipitation in the vicinity is about 28 inches; that the average seasonal runoff of Putah Creek from the area above Monticello Dam with a watershed of 577 square miles is about 625 acre-feet per square mile of watershed as determined from the estimated natural runoff at United States Geological Survey gaging station "Putah Creek near Winters"; that extremes in seasonal natural runoff at said station varied from a minimum of 65 acre-feet per square mile during 1930-31 to a maximum of 1,750 acre-feet per square mile during 1940-41; and that mean seasonal precipitation over the watershed above Monticello Dam is about 36 inches. This ratio might not prevail at the reservoir sites because of the lower elevation of their drainage area but the amount of runoff should be sufficient to fill the reservoirs to overflow level each winter.

Mr. Scammon's observations on January 26, 1959, of flow in the sources the day after a rainfall of 0.27 inches at Monticello are as follows:



Unnamed stream (west branch - Application 17979) Immediately below damsite	.020 cfs
Unnamed stream (east branch - Application 17980) Immediately below dam	.012 cfs
In spillway channel - (Application 17980)	slight trickle
In creek immediately above reservoir - (Application 17980)	no flow
In creek about 500 feet above reservoir - (Application 17980)	surface flow at some locations
At point on protestant's land below con- fluence of the two unnamed sources	0.045 cfs

No flows were observed in either of the sources on September 24, 1958.

#### Applicant's Projects

Concerning the projects covered by the applications at issue, the investigation report of September 24, 1958, discloses that the dam and reservoir described under Application 17980 are constructed and have been used for the past five or six years; that an inspection of the spillway of said dam indicated that said reservoir had filled and spilled during the winter of 1957-58; and that the dam is not provided with outlet works.

#### Position of Protestant

At the field investigation held on September 24, 1958, Mr. Gray further expressed apprehension over the effect operation of the proposed reservoirs would have on maintenance of the supply to satisfy his requirements for watering livestock; but stated that he would withdraw his protest against Application 17979

if applicant would reduce the season of collection in storage to the period January 1 to May 15 and provide a method of bypassing flows that would occur outside of that season; and that if applicant were to consent to these conditions he would also withdraw his protest against Application 17980.

Applicant objected to the additional cost of providing outlet works to the dam.

#### Discussion

Concerning the seasonal occurrence of water in sufficient quantities to satisfy the applications, the evidence is undisputed in this respect. Based upon the recorded runoff of the entire upper Putah Creek watershed as previously discussed, expectation of seasonal runoff above the proposed points of diversion is at least 625 acre-feet per square-mile per season which in terms of the 140 acres tributary to each reservoir site would amount to an average of some 136 acre-feet per season. This is far in excess of the amounts for which permits are sought.

While a finding that the existence of unappropriated water is a necessary prerequisite to issuance of a permit, that in itself in this instance is not sufficient basis for approval of the subject applications. It is settled law that the first duty of this Board in performing its functions is to protect prior rights to the use of water.\* Applicant's projects as proposed under the subject applications do not include provision for the

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\* Meridian, Ltd., v. San Francisco, 13 Cal. 2d 424.

bypassing or release of water and thereby could under circumstances of low flow, deprive protestant of his reasonable and lawful supply. The facts that the reservoirs were approved by the Soil Conservation Service, and that the reservoir described under Application 17980 was constructed and placed into operation without objection do not relieve applicant of the responsibility of providing in advance competent assurance that the projects can be operated without injury to lawful users of water. In view of protestant's stated conditions for withdrawal of his protest, it will suffice for applicant to provide for the bypassing or releasing of water around or from the reservoir proposed under Application 17979 in amounts sufficient to satisfy protestant's rights to the flow from this source.

#### Conclusion

In view of the foregoing, we find that unappropriated water normally exists in the sources named in the subject applications which water may be taken and used in the amounts proposed under the applications with the proviso that the reservoir under Application 17979 be equipped with physical means for the bypassing around or the releasing of water therefrom.

#### ORDER

Applications 17979 and 17980 for permits to appropriate unappropriated water having been filed, a protest having been received, stipulations to proceedings in lieu of hearing having

been submitted, an investigation having been held by the State Water Rights Board, and said Board having considered the available information and now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17979 be and the same is hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed five (5) acre-feet per annum by storage to be collected from about November 1 of each year to about May 15 of the succeeding year.
2. The maximum amount herein stated may be reduced in the license if investigation so warrants.
3. Actual construction work shall begin on or before December 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.
4. Said construction work shall be completed on or before December 1, 1961.
5. Complete application of the water to the proposed use shall be made on or before December 1, 1962.
6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.
7. 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 Rights 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.
8. Permittee shall provide means for the bypassing or releasing of water around or from the reservoir to the extent necessary to satisfy downstream rights but not in excess of flows that would occur in the absence of regulation by the reservoir.

AND IT IS FURTHER ORDERED that Application 17980 be and the same is hereby approved, and it is ordered that a permit be issued subject to vested rights and to the following terms and conditions; to wit:

1. the amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed eight (8) acre-feet per annum by storage to be collected from about November 1 of each year to about May 15 of the succeeding year.
2. The maximum amount herein stated may be reduced in the license if investigation so warrants.
3. Construction work shall be completed on or before December 1, 1961.
4. Complete application of the water to the proposed use shall be made on or before December 1, 1962.
5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.
6. 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 Rights 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.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at California, on this        day of        1959.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23535  
of WARD B. and SHIRLEY A. SHINN  
to Appropriate from Willow Valley  
Creek in Nevada County.

Decision 1394

DECISION APPROVING APPLICATION IN PART

Ward B. and Shirley A. Shinn having filed Application 23535 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 23535 is for a permit to appropriate 4,200 gallons per day by direct diversion from January 1 to December 31 of each year and 30 acre-feet per annum (afa) by storage from October 1 of each year to May 1 of the succeeding year for irrigation, domestic, fish culture, wildlife enhancement and stockwatering purposes from Willow Valley Creek in Nevada County. The project includes two onstream reservoirs,

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one with a capacity of 20 acre-feet, and the other of 10 acre-feet. All points of diversion are to be located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 4, T16N, R9E, MDB&M.

#### Applicants' Project

2. Applicants own and are starting to develop as an attractive area to which they intend to retire about 20 acres of land which lie on both sides of Willow Valley Creek. Development to date consists primarily of the construction of the 20 acre-foot onstream reservoir in the fall of 1971, and the construction of two small reservoirs on a spring fed tributary of Willow Valley Creek. The two small reservoirs, with a total capacity of about four acre-feet, are not included in this application because the applicants consider that these reservoirs do not involve storage, but merely regulatory use of water pursuant to riparian or other rights. The fish culture proposed by the application will take place in the existing 20 acre-foot reservoir, and in the proposed 10 acre-foot reservoir, and water will ultimately be pumped uphill to irrigate five acres of orchard and 15 acres of pasture.

#### Water Supply

3. Willow Valley Creek, a tributary of Deer Creek, has a watershed area of about three-fourths of a square mile above applicants' points of diversion. Ample water is usually available during the non-irrigation season for collection to storage for later use. During the irrigation season, the water in Willow

Valley Creek is supplied by springs, some of which rise above and some on the applicants' property. Immediately below applicants' property the watershed is traversed by the Nevada Irrigation District's Snow Mountain Ditch, and some water from this ditch reaches Willow Valley Creek by seepage or waste.

#### Protests

4. Protestants Chet R. and Ida Ball have apparent riparian rights to the water of Willow Valley Creek and they pump water for irrigation of a small garden, three acres of fruit trees and pasture, domestic use for five persons, and stockwatering five head of livestock. - Their property is located on the creek just downstream from Snow Mountain Ditch.

5. Protestants Carlile H. and Lois L. Varnell, with property downstream from the Balls but not abutting upon Willow Valley Creek, have a decreed right to divert 3.60 miners inches of water from the creek, which they use for irrigation, stockwatering and domestic use.

6. Protestant Nevada Irrigation District claims pre-1914 appropriative rights to divert from Deer Creek, and holds License 8808 (Application 1615) and pending Application 21895, all of which have points of diversion downstream from the applicants. The district diverts from Deer Creek to help serve approximately 6,000 acres within the district by means of three ditches located between the Deer Creek-Gold Creek confluence and the USGS gaging station "near Smartville."



7. The U. S. Bureau of Reclamation's protest is based upon its pending petitions for assignment of State Applications 20713 and 20714 for the Marysville Project, which has been authorized by Congress, but construction of which has not yet commenced. The Bureau's protest points to this Board's Decision 1124 as containing a finding that Deer Creek has no available unappropriated water from about June 1 to about October 1. Willow Valley Creek nearly always maintains hydraulic continuity with Deer Creek, even during the late summer months, except when protestants Ball and Varnell need to use all the available supply.

Construction of Dam Without an Outlet Pipe

8. Just prior to construction by the applicants of the 20 acre-foot reservoir in the fall of 1971, applicants were advised by a member of the Board's staff by telephone that an outlet pipe would be required for the protection of downstream rights. The construction plans for the dam as prepared by the Soil Conservation Service included provisions for an outlet pipe near the base of the dam, and the applicants, on September 5, 1971, wrote the California Regional Water Quality Control Board, Central Valley Region, that an "8-inch steel water pipe will be placed in the bottom of the dam for continual flow of water for downstream users and for continual flow during construction." For various reasons, including weather conditions during construction, the dam was constructed without an outlet pipe. Applicants have submitted to the Board plans of a syphon which they propose to install and operate in lieu of an outlet pipe. They refer to continuous seepage under or around the dam, and the existence of seepage at this location is confirmed by the Soil Conservation Service.

9. A period of actual operation of the dam and reservoir during the non-storage season, particularly during the late summer months, is needed to determine whether the reservoir seepage to Willow Valley Creek, as supplemented by construction and operation of a syphon, will adequately protect vested rights and prevent unauthorized storage of water, or whether the applicants should be required to install an outlet pipe in the existing dam. Jurisdiction will be reserved for that purpose.

Availability of Unappropriated Water

10. Although water is available for the applicants for collection to storage in most years from about October 1 to about May 1, in water-short years the water is needed in October for irrigation under vested rights. Because there is ample water supply in the winter and spring months, and in order to protect October stream flow in water-short years, the authorized storage season will begin on November 1.

11. Consistent with the Board's findings in Decision 1124, unappropriated water is not available in Willow Valley Creek during the months of June, July, August and September. Direct diversion which excludes these months would be of little value and therefore the direct diversion portion of the application will be denied.

12. Unappropriated water is available to supply the applicants during the months of November through April, and, subject to suitable conditions, such water may be diverted and used

in the manner proposed without causing substantial injury to any lawful user of water.

13. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 23535 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 23535 and all relevant information on file therewith, particularly the report of field investigation made July 28, 1971, and subsequent reports and correspondence in the files; also the files of Application 20263 (Decision 1124).

ORDER

IT IS HEREBY ORDERED that Application 23535 be, and it is, approved in part, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 30 acre-feet per annum by storage to be collected from November 1 of each year to May 1 of the succeeding year.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Said construction work shall be completed on or before December 1, 1973.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

5. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

6. 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.

7. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any

substantial effect upon water quality in the area involved, and  
(2) the water quality objectives cannot be achieved solely  
through the control of waste discharges.

8. 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.

9. The State Water Resources Control Board reserves jurisdiction for a period of two years to determine whether seepage from the existing reservoir on Willow Valley Creek, as supplemented by installation and operation of a syphon, adequately protects downstream vested rights. If, after notice to permittee and opportunity for a hearing, the Board finds the syphon to be inadequate, the permit shall become subject to an additional term requiring the installation and maintenance of an outlet pipe.

10. Permittee shall install and maintain an outlet pipe of adequate capacity in their proposed dam on Willow Valley Creek as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

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

Dated: March 2, 1972

E. F. DIBBLE  
E. F. Dibble, Acting Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

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