

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 22210 of
Delmar L. and Sally L. Reynolds and
Application 22211 of Blair and P. L.
Smith and E. W. and M. P. Sawyer, Jr.,
to Appropriate from Little Shasta River
in Siskiyou County

Decision D 1274

DECISION DENYING APPLICATIONS

Application 22210 of Delmar L. and Sally L. Reynolds and Application 22211 of Blair Smith, et al having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on June 28, 1966, conducted by Board Member W. A. Alexander; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22210 is for a permit to appropriate 3.0 cubic feet per second (cfs) by direct diversion from March 1 to October 31 of each year for irrigation and stock-watering purposes from Little Shasta River in Siskiyou County. The point of diversion is to be located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, T45N, R5W, MDB&M.

Application 22211 is identical to Application 22210 except that the place of use is different and recreation is added as a use.

2. Little Shasta River heads on the southerly side of Willow Creek Mountain at an elevation of approximately 6,000 feet and flows in a general southwesterly direction approximately 14 miles to the applicants' proposed place of diversion. From there, it continues in a general easterly direction approximately 8 miles to the Shasta River.

3. Applicants Smith and Sawyer plan to construct an earth dam across Little Shasta River approximately one-eighth of a mile downstream from where the Montague Water Conservation District's canal crosses the river. Water diverted at the dam will be used on 320 acres described in Application 22211 which are owned jointly by Smith and Sawyer and also on 126.3 acres described in Application 22210 which they are purchasing. The water will be used as a supplement to a ground water supply.

4. Both applications state that the water applied for is only that water which is conveyed from another watershed by the Montague Water Conservation District and spilled into Little Shasta River. The water referred to is conveyed from the District's Dwinnell Reservoir on Shasta River by the district's canal and is released into Little Shasta River through a headgate at the canal crossing. This structure was installed in the year 1964 and is the district's terminal

spill facility. The water is released only during infrequent and unpredictable periods of short duration when the canal is at full capacity and there is a sudden reduction in demand for water at the end of the canal. The average annual total spill in the future is not expected to exceed 10 or 20 acre-feet and this may be reduced through the sale of surplus water to owners of ponds within the district (RT 92, 93).

5. A statutory adjudication proceeding to determine the relative rights, based upon prior appropriation, of claimants to the use of water in Shasta River and its tributaries, which includes Little Shasta River, resulted in entry of a judgment and decree of the Superior Court of Siskiyou County on December 30, 1932 (Action No. 7035). Protestant W. C. Ealy, located five miles below the applicants, is a successor in interest to H. E. Jones who was decreed to have a right to divert 0.57 cfs from the natural flow of Little Shasta River. Protestant Frank G. Belcher, Jr., located approximately two miles upstream from protestant Ealy, holds License 5066 (Application 10949) for 9.6 cfs and License 5068 (Application 14580) for 6.0 cfs from Little Shasta River. These applications were filed and the licenses were issued since the adjudication and before the district commenced to release water from the canal into the river. There has not been sufficient flow in Little Shasta River to meet the protestants' needs during the summer months and they have been using water spilled by the district into the river.

6. The applicants make no assertion that there is water in Little Shasta River during their proposed diversion season which is surplus to the needs of holders of prior rights, but claim that because the water spilled into the river by the district is "foreign water" and has entered the stream after the adjudication and after protestant Belcher received his licenses, it is not covered by the protestants' prior rights (RT 128).

Holders of prior appropriative rights have first claim to foreign water introduced into a stream:

" . . . Foreign waters are subject to appropriation from the stream in which they are found to be running. Thus, when a party turns water into a stream from his ditch that is carrying water of another stream, and abandons it without any intention of recapturing it, the water thus abandoned becomes publici juris and belongs to the party who appropriates the stream, according to priority of use. If two persons appropriate the water of a stream below the point at which the abandoned water is allowed to flow, the prior appropriator is first entitled to the increased flow, to the extent of his appropriation. . . ." (51 Cal. Jur. 2d 739, citing Davis v. Gale, 32 Cal. 26)

The fact that the decree in the Shasta River adjudication proceeding was entered before the district commenced releasing water into Little Shasta River does not preclude the holders of adjudicated rights from satisfying their decreed allotments from the increased available supply.

water to which the appropriator was entitled under the decree. Legally, such abandoned foreign water becomes part of the stream so far as the rights of appropriators are concerned.

8. The rights of protestant Belcher under his licenses extend to water released from the District's canal when needed to supply the quantity of water to which he is entitled, subject to prior rights of others.

9. Unappropriated water is not available to supply the applicants.

From the foregoing findings the Board concludes that Applications 22210 and 22211 should be denied.

ORDER

IT IS HEREBY ORDERED that Applications 22210 and 22211 be, and they are, denied.

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

Dated: MAY 11 1967

/s/ George B. Maul
George B. Maul, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member