

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22859)
of Jack W. and June Greening)
to Appropriate from Sacramento)
River in Shasta County)

Decision 1334

DECISION DENYING APPLICATION

Jack W. and June Greening having filed Application 22859 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Resources Control Board on November 26, 1968; applicants and protestant having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 22859 is for a permit to appropriate 7 cubic feet per second (cfs) by direct diversion from April 1 to November 15 of each year for irrigation purposes from the Sacramento River in Shasta County. The points of diversion are to be located within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 28, T30N, R3W, MDB&M, and the SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 34, T30N, R3W, MDB&M.

2. Applicants presently irrigate approximately 1,257 acres of land adjacent to the Sacramento River. Irrigation water is supplied both from the river under claim of riparian right and from groundwater sources.

3. Kimberly-Clark Corporation pumps groundwater from wells. After use by the company, the water is treated to meet the discharge requirements set by the Central Valley Regional Water Quality Control Board. A portion of the treated water is used by Kimberly-Clark for irrigation of its own lands. Waste water not used by the company is discharged to the Sacramento River about 2-1/2 miles above applicants' proposed point of diversion. The maximum monthly mean discharge into the Sacramento River between January 1966 and February 1968 was 23 cfs.

4. In Decision D 1045 the Board found that there was no unappropriated water in the Sacramento River in the vicinity of applicants' land during the period June 15 to August 31. This finding is not contested by the applicants. Instead, applicants assert that since the Kimberly-Clark discharge is abandoned foreign water, it is in the nature of unappropriated water and is subject to appropriation by them. The protestant United States Bureau of Reclamation contends that the discharge inures to the benefit of appropriative rights prior to Application 22859 to the extent the total supply is not sufficient to satisfy those rights.

5. The contention of the Bureau is correct. In Decision D 1274 the Board held that holders of prior appropriative rights have first claim to foreign water introduced into a stream and abandoned by the discharger:

" . . . 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 (1867) and Stevison Water District v. Roduner, 36 Cal.2d 264, 223 P.2d 209 (1950))

6. The Kimberly-Clark effluent to the Sacramento River does not increase the flow of the river sufficiently to satisfy all appropriative rights prior to Application 22859 during the summer months (RT 26).

7. Applicants indicated that the diversion of the 7 cfs would not be practical if the period June 15 to August 31 were omitted from the season of diversion (RT 62).

From the foregoing findings, the Board concludes that Application 22859 should be denied.

ORDER

IT IS HEREBY ORDERED that Application 22859 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: March 6, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

GEORGE B. MAUL
George B. Maul, Member

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member