

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