

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24079)
CLYDE H. AND ETTA E. SMITH)
Applicants)
EDWARD AND EMMA S. BURTON, ET AL.)
Protestants)

Decision: 1533
Source : Mill Creek
County : Siskiyou

DECISION DENYING APPLICATION 24079

BY THE BOARD:

Clyde H. and Etta E. Smith having filed Application 24079 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 stipulations, the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24079 is for a permit to appropriate 1.0 cubic foot per second (cfs) by direct diversion from Mill Creek during the period May 1 to September 30 and 49 acre-feet per annum (afa) by storage from November 1 to April 1 for irrigation. Total annual appropriation is not to exceed 350 afa. The application covers three points of diversion from Mill Creek within (1) NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 14, (2) NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 14, and (3) SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 11, T43N, R10W, MDB&M.

Applicants' Project

2. The project consists of three existing ditches which partially need rehabilitating. All of the diversion points and portions of the ditches are

existing facilities that are being used by other persons under their existing rights. The uppermost ditch would convey water to an offstream storage reservoir and would also be used for direct diversion. The lower two ditches would be used for direct diversion only and could serve only part of the property by gravity. The water is to be used to irrigate 50 acres within Sections 1 and 2, T43N, R10W, MDB&M.

Background

3. Mill Creek rises in the Marble Mountain Wilderness area west of Scott Valley in Siskiyou County. The drainage area contains about 20 square miles and the elevation varies from about 7,080 feet at the headwater to about 3,000 feet. Mill Creek is tributary to Shackelford Creek thence Scott River near the lower end of the Scott Valley area.

4. In 1950 the Siskiyou County Superior Court entered a decree determining the rights of various claimants to the waters of Shackelford Creek Stream System, including Mill Creek. This decree resulted from statutory adjudication proceedings conducted by the State Division of Water Resources. The decree did not include any right for the applicants to divert water from Mill Creek through any of the ditches specified in Application 24079.

Protests

5. Ten protests were filed against the approval of Application 24079. Nine protestants allege injury to vested rights under the Shackelford Creek Decree. The California Department of Fish and Game (Department), the other protestant, alleges injury to Mill Creek as a spawning and nursery stream for steelhead and silver salmon. The Department agreed to dismissal of its protests upon agreement with the applicant for protection of fish and wildlife.

Right of Access

6. Owners of the property at the applicants' lower two diversion points stated that they will not grant right of access to the applicants for additional diversion at those points. The applicants make no claim of right of access to those two points. The owner of property over which the existing ditch (China Ditch) from the uppermost diversion traverses has also firmly refused to grant any right of access for water conveyance. The record is clear that the applicants will not be able to obtain the necessary rights of access.

Record in this Matter

7. The records, documents and other data used in determining this matter are: Files of Application 24079 and all information on file therewith; files of Shackleford Creek Decree; Division of Water Resources; Shackleford Creek Adjudication; Report on Investigation and Watermaster Service on Shackleford Creek and Tributaries, 1945, 1946, 1947 and 1948 seasons; United States Department of the Interior, Geological Survey -- Water Resources Division, "Surface Water Records of California" -- Volume 1: Colorado River Basin, Southern Great Basin and Pacific Slope Basins excluding Central Valley.

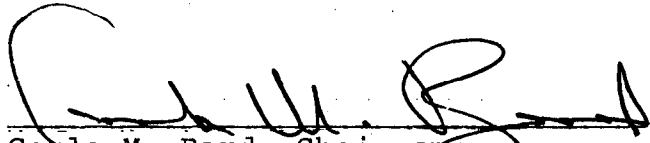
Conclusions

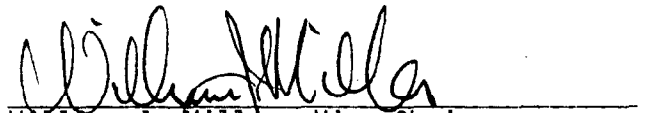
8. From the foregoing findings, the Board concludes that Application 24079 should be denied.

ORDER

IT IS HEREBY ORDERED That Application 24079 be denied.

Dated: SEP 20 1979


Carla M. Bard, Chairwoman


William J. Miller, Vice Chairman

ABSENT

L. L. Mitchell, Member


W. Don Maughan, Member