

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20099  
of Loren W. and Ilda M. Van Allen  
to Appropriate from Butte Creek  
in Lassen County

Decision D 1161

ADOPTED JAN 22 1964

DECISION APPROVING APPLICATION

Loren W. and Ilda M. Van Allen having filed Application 20099 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 20099 is for a permit to appropriate 600 acre-feet per annum by storage from October 15 of each year to April 1 of the succeeding year for irrigation purposes from Butte Creek in Lassen County. The point of diversion is to be located within the  $SE\frac{1}{4}$  of  $NE\frac{1}{4}$  of Section 24, T38N, R9E, MDB&M. Following the proceedings in lieu of hearing, the applicants requested by letter of September 9, 1963, that their application be amended to have their storage season conform with the season of other rights to storage on Butte Creek, which is from about November 1 of each year to about March 15 of the succeeding year.

2. Applicants propose to create a reservoir with a capacity of 600 acre-feet by constructing a dam across Butte Creek approximately 7 miles above the confluence of Butte and Ash Creeks. The water impounded by the reservoir will be released down the channel of the creek, and it will be rediverted at existing diversion facilities for the irrigation of 208 acres of alfalfa, general crops and pasture.

3. Protestant W. H. Hunt Estate Company flood-irrigates a portion of a 5,000-acre tract of land located along the reach of Ash Creek commencing approximately 3 miles below the Ash Creek-Butte Creek confluence. Protestants Schmidt et al. divert from Butte Creek at a point located approximately 3 miles below the applicants' proposed reservoir for the irrigation of approximately 75 acres of meadow and farmlands. Protestant Bulpitt diverts from Butte Creek at a point approximately 1 mile downstream from the applicants' proposed reservoir for stockwatering purposes and for the irrigation of approximately 56 acres of land.

4. A decree of the Superior Court of Modoc County (No. 3670), dated October 27, 1947, referred to as the Ash Creek Decree, confirmed rights asserted by the protestant Hunt Estate Company to certain flow allowances from Ash Creek for irrigation use on their lands for the period from March 1 to October 15 and for stockwatering and domestic uses during the balance of the season. However, the Company's irrigation season commences about March 15 of each year and the Company has agreed to withdraw its

protest if the applicants' diversion season is limited to the period from about November 1 of each year to about March 15 of the succeeding year. By the same decree, similar rights were confirmed in the applicant and protestants Bulpitt, Schmidt, et al. to divert from Butte Creek except that the diversion for irrigation was limited to the period from April 1 to October 15.

5. Protestant Myers, located approximately 4 miles below the applicants' proposed reservoir, holds Permit 13039 to collect 142 acre-feet per annum between about November 1 and about March 15 of each year in off-stream reservoirs.

6. The records of USGS gaging stations on Butte and Ash Creeks near Adin show sufficient water occurs in these sources to satisfy the decreed rights of the protestants to stockwatering and domestic uses, the rights of the protestant Myers under Permit 13093, and the applicants.

7. There is unappropriated water available to supply the applicants, 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.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20099 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 20099 and all relevant

information on file therewith, particularly the report of the field investigation made April 25, 1962, the files of Application 19743; the Ash Creek Judgment and Decree, Case No. 3670, Superior Court, Modoc County; USGS Water Supply Papers with particular reference to streamflow records of the Ash Creek Watershed, Department of Water Resources, Bulletin No. 23, "Surface Water Flow," for the years 1958, 1959 and 1960; the USGS 7.5-minute Adin SE, NE, SW, NW, and Bieber NE quadrangles (Preliminary Sheets) and U. S. Weather Bureau Climatological Data, Annual Summaries for 1957 through 1961.

ORDER

IT IS HEREBY ORDERED that Application 20099 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 600 acre-feet per annum by storage to be collected from about November 1 of each year to about March 15 of the succeeding year.

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

3. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

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 allow representatives of the State Water Rights 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. This permit does not authorize collection of water to storage during the period from about March 15 to about November 1 of each season to offset evaporation and seepage losses or for any other purpose.

10. Permittee shall install and maintain an outlet pipe of adequate capacity in permittee's dam as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoir or collected in the reservoir during and

after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

11. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of permittee's reservoir and (b) immediately below the storage dam in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoir.

12. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

13. A separate application for approval of plans and specifications for construction of the dam described in this approved water right application shall be filed with and approved by the Department of Water Resources prior to commencement of construction of the dam.

14. Rights under this permit are and shall be subject to existing rights defined by the Ash Creek Adjudication, Superior Court, Modoc County, No. 3670, and such other rights as may presently exist on the stream, insofar as said existing and adjudicated rights are maintained.

Adopted as the decision and order of the State Water  
Rights Board at a meeting duly called and held at Sacramento,  
California, on the                      day of                      , 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member