

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 21478 )  
of James E. and Orma K. Albaugh )  
to Appropriate from Willow Creek )  
in Lassen County )

Decision D 1237

ADOPTED DEC 23 1965

DECISION APPROVING APPLICATION IN PART

James E. and Orma K. Albaugh having filed Application 21478 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant 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 21478 is for a permit to appropriate 625 acre-feet per annum (afa) by storage from November 1 of each year to April 1 of the succeeding year for irrigation, stockwatering, and recreational purposes from Willow Creek in Lassen County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 17, T38N, R9E, MDB&M.

2. Willow Creek rises in the mountains southeast of Big Valley and flows in a northwesterly direction approximately

25 miles to where it bifurcates and forms an Ash Creek branch. Applicants propose to divert from Willow Creek approximately 5 miles above this bifurcation through an existing diversion system which takes the water from the creek through approximately  $2\frac{1}{2}$  miles of pipe and canal to two reservoirs. One of the reservoirs (Albaugh No. 2) is in existence and is covered under License 4435 (Application 11736) which authorizes 30 acre-feet of storage from Willow Creek. This reservoir will be enlarged from its present 40 acre-foot capacity to a capacity of 450 acre-feet. Immediately downstream from this reservoir applicants propose to construct another reservoir (Albaugh No. 4) with a capacity of 175 acre-feet. The maximum rate of diversion to storage in the reservoirs will be 2.4 cubic feet per second.

3. A decree of the Superior Court of Modoc County (No. 3670) dated October 27, 1947, and commonly referred to as the Ash Creek decree, defines rights to the use of water from Ash Creek and its principal tributaries, Rush Creek, Butte Creek, and Willow Creek. Under the decree, the total allotments for diversion from Ash Creek below the USGS gaging station "near Adin" are 87.95 cfs. A flow of 90 cfs at the gaging station is required to satisfy these allotments due to natural losses occurring between the gaging station and the various points of diversion. The diversion season for these decreed allotments begins on March 1.

4. The flows of Ash Creek for the period 1929-32 and 1957-63 have been recorded at the mentioned gaging station.

Available records of the flow of Willow Creek show that it usually does not exceed 10 cfs when the flow of Ash Creek is less than 90 cfs, and in dry periods, its flow is approximately 5 cfs. The records of the flows of Ash Creek at the gaging station, adjusted for the contribution of Willow Creek, show that from March 15 to March 31 a flow in excess of 90 cfs at the gaging station occurred 66 per cent of the time during the years 1958 through 1963 and only 40 per cent of the time during the years 1929 through 1932. The holders of decreed rights have not been using their full entitlements from March 1 to March 15, and surplus water is available to the applicants during this period.

5. The protestant, W. H. Hunt Estate Company, flood-irrigates a portion of a 5,000-acre tract of land located along Ash Creek approximately 3 miles below Ash Creek-Butte Creek confluence under rights confirmed by the Ash Creek decree. It has no objection to the approval of the application if the diversion season is limited to the period from November 1 of each year to March 15 of the succeeding year.

6. There is unappropriated water available to supply the applicants from November 1 of each year to March 15 of the succeeding year, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21478 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 following Order.

The records, documents, and other data relied upon in determining the matter are: Application 21478 and all relevant information on file therewith, particularly the report of the field investigation made May 11, 1965; USGS 15-minute topographic quadrangles, "Adin, California," and "Hayden Hill, California"; USGS Water Supply Papers, with reference to records of flow of Ash Creek; files of Application 20099; Judgment and Decree, Case No. 3670, in the Superior Court of the State of California in and for the County of Modoc; Ash Creek Reference, Division of Water Resources, Report on Water Supply and Use of Water on Ash Creek and Tributaries, Modoc and Lassen Counties, California, dated February 1938; and The Resources Agency of California, Department of Water Resources, "Water Master Service in Northern California," 1962 season and 1963 season.

ORDER

IT IS HEREBY ORDERED that Application 21478 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 625 acre-feet per annum by storage to be collected from about November 1 of each year to about March 15 of the succeeding year. Diversion to storage shall not exceed the rate of 2.4 cfs. The total quantity collected to storage under this permit and License 4435 shall not exceed 625 acre-feet per annum.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

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

3. Actual construction work shall begin on or before June 1, 1966, 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, 1967.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1968.

6. Progress reports shall be filed promptly by permittees 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. Permittees 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. Permittees shall install and maintain outlet pipes of adequate capacity in their dams as near as practicable to the natural stream channel, or provide other means satisfactory to the State Water Rights Board for the release of water from the reservoirs. Any requirements of the State Department of Water Resources regarding the installation of outlet pipes will be acceptable for the purpose of this paragraph.

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

11. Construction of the dams shall not be commenced until the Department of Water Resources has approved plans and specifications.

12. 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  
1965.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

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

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