

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 17179,)
17276, 18445, 18448, 18668, 18760 and)
18904 of Mills Ranch, a Corporation,)
and Others to Appropriate from Wagon)
Creek in Siskiyou County)

Decision D 1046

ADOPTED NOV 13 '61

Applications 17179, 17276, 18445, 18448, 18668, 18760 and 18904 for permits to appropriate unappropriated water having been filed; protests having been received; a hearing having been held before the State Water Rights Board on June 28 and 29, 1961, in Mt. Shasta, California, before Kent Silverthorne, Chairman, and W. A. Alexander, Member; the applicants and protestants having appeared; evidence having been received; and the Board, having considered all of the evidence and now being fully advised in the premises, finds as follows:

Application 17179

1. Application 17179 was filed on June 16, 1956, by Mills Ranch and G. L. Deetz for a permit to appropriate 98 acre-feet per annum (afa) by storage from October 1 of each year to March 31 of the succeeding year from Wagon Creek, tributary to Sacramento River in Siskiyou County, for irrigation.

2. Applicants propose to impound 49 afa in a reservoir on Wagon Creek within the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4, T40N, R5W,

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MDB&M*, and 49 afa in Metcalf Lake, an offstream natural lake situated in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4, T40N, R5W. Metcalf Lake is to be enlarged by raising the natural barrier at its lower end so that the total height will be 15 feet, creating a reservoir with a surface area of approximately 5 acres and a total estimated capacity of 49 acre-feet. Water will be diverted to Metcalf Lake from Wagon Creek at a point above the onstream reservoir by means of a 10-inch pipe. Applicants intend to install an outlet pipe at the lower end of the lake for releasing water which will then flow by ditch back into Wagon Creek. The water impounded in the onstream reservoir will be released down the natural channel of Wagon Creek to the Mills and Deetz lands where it, together with water released from Metcalf Lake, will be rediverted through existing facilities for irrigation purposes. The applicants presently divert from Wagon Creek at several points in Sections 35 and 36, T41N, R5W, and Section 1, T40N, R5W, under claim of riparian and old appropriative rights. The water to be developed by storage will be used to supplement the natural flow. Mills and Deetz presently divert practically the entire flow of Wagon Creek in low water years during the summer. The place of use consists of 904 acres within Sections 25, 26, 35 and 36, T41N, R5W, and Sections 1 and 2, T40N, R5W.

*All township references are from Mount Diablo Base and Meridian.

3. There is adequate runoff of Wagon Creek during the proposed season of storage to fill applicants' reservoirs without interference with use by downstream diverters. There are no diverters from Wagon Creek between the proposed storage reservoirs and place of use. With the exception of Virginia L. Carter, protestants have stated they would be satisfied (should their own applications be denied) if applicants were to construct a diversion ditch around the high level of the onstream reservoir and bypass the entire natural flow of Wagon Creek during the irrigation season.

4. Mrs. Carter contends that use of Metcalf Lake in the manner proposed by applicants would impair the flow of certain springs below the lake which she relies upon for a water supply. She also claims a right to the use of water of Metcalf Lake by virtue of a notice posted and recorded in 1901. No proof was presented in support of the first contention. However, the limitations placed upon the lake level by Paragraphs 8 and 9 of the Order hereunder would appear to afford protection for the springs if they are in fact affected by the lake. Such rights as were initiated by the aforesaid notice were lost by failure to comply with the provisions of Section 1416 of the Civil Code requiring that within 60 days after a notice is posted, the claimant must commence construction of diversion works. No such works were ever commenced.

5. Metcalf Lake can be used for offstream storage of Wagon Creek water without injury to other rights, subject to the conditions hereinafter indicated. Applicants have agreed, and

their permit will require, that the outlet pipe to convey water stored in the lake back to Wagon Creek will be placed not lower than 2 feet above the natural lake bed. No water should be withdrawn from the lake prior to July 1 of each year.

6. Maintenance of the proposed reservoir on Wagon Creek as described in Application 17179 will not injure other rights, provided adequate provision is made for bypassing the full natural flow from April 1 to September 30. This can be accomplished by diversion of the natural flow into a ditch around the reservoir as proposed by protestants or by suitable outlet works at or near the base of the dam. The first alternative has been agreed to by Robert Mills representing Mills Ranch, but applicant Deetz refused to agree thereto. No information was presented at the hearing as to the relative advantage of one method over the other. The permit issued to applicants will require permittees to construct and maintain facilities adequate to bypass the entire natural flow of Wagon Creek at their storage reservoir from April 1 to September 30 of each year, plans for which are to be approved by the State Water Rights Board prior to construction of the dam.

Applications 17276, 18445, 18448, 18668, 18760

7. Application 17276 was filed on September 14, 1956, by Virginia L. Carter to appropriate 200 afa from Wheeler Creek (described in the application as a tributary of Wagon Creek but

elsewhere referred to as Wagon Creek) from October 1 of each year to May 15 of the succeeding year for domestic, irrigation, and recreational purposes. The point of diversion is to be within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T40N, R5W. Water is to be stored in Metcalf Lake, in certain other natural depressions in the same vicinity, and in several small reservoirs to be constructed on the Carter Ranch. The place of use is 510 acres owned by Mrs. Carter within Sections 27 and 34, T41N, R5W.

8. Applications 18445, 18448, 18668 and 18760 were filed by Lucille Morgan, W. C. Thompson, Albert M. and Beulah Vollmer, and Josephine Brown, respectively. The source, amount, season of diversion, and point of diversion under these four applications are identical with Application 17276. The proposed place of use under each is confined to the respective applicant's property located several miles downstream on Wagon Creek below the Mills and Deetz lands.

9. Application 17276 was filed by Mrs. Carter as a protest to Application 17179. Mrs. Carter assisted in the preparation of the other applications in this group. These applicants contemplate a joint enterprise for impoundment of a total of 200 afa. Water stored in Metcalf Lake and in the other natural depressions would percolate or flow by gravity onto the Carter Ranch where it would be used for the purposes described in Application 17276. Excess water would be allowed to flow onto the Mills and Deetz lands which lie at a lower elevation between the Carter Ranch

and Wagon Creek. These applicants contemplate that such excess waters would eventually find their way into Wagon Creek, either as surface flow or percolation, thus improving the low-flow conditions in Wagon Creek below the Mills and Deetz lands for the general benefit of all landowners along the creek.

10. None of these applicants have any plan for controlling the flow of water across the Mills and Deetz lands; they have no right of access on said lands and will not be permitted by the owners to enter upon said lands; they have no plan for measuring accretions to Wagon Creek which might result from operations on the Carter Ranch, and they have suggested no means for segregating such accretions, if any should occur, from the natural flow of Wagon Creek. They have not determined how and in what proportions any water appropriated by storage would be divided among them after such water had traversed the Carter Ranch and had been subjected to use by Mrs. Carter should any such water reach the lower applicants in identifiable quantities.

11. The proposals of the downstream applicants on Wagon Creek are far too nebulous and uncertain to warrant approval of their applications. They have failed to present a reasonably definite and feasible plan for appropriating water by offstream storage and conveyance of the stored water to their respective lands for beneficial use thereon.

12. Storage in Metcalf Lake is an essential feature of the appropriations proposed in both Applications 17179 and 17276. It is not physically possible for the lake to be used by both

applicants in the manner proposed in their respective applications. Therefore, both applications cannot be approved. Since Application 17179 is prior in time, it is also prior in right unless the public interest requires a different conclusion. Both applications are primarily for irrigation use, and neither is contrary to public interest. Lands to be irrigated under both applications are within the watershed of Wagon Creek, and unconsumed drainage and seepage would in both instances return to Wagon Creek for the benefit of downstream users.

In view of the foregoing findings, Application 17179 should be approved and Application 17276 should be denied.

Application 18904

13. Application 18904 was filed August 7, 1959, by Lucille Morgan for a permit to appropriate 1 cubic foot per second from April 15 to October 15 of each year from three unnamed streams and from Deer Creek, all tributary to North Fork Sacramento River, for domestic, irrigation, and stockwatering purposes. The water is to be carried by ditch from the North Fork Sacramento River watershed to Wagon Creek. The water is then to flow down Wagon Creek to be rediverted at a point within the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 7, T4ON, R4W, for use on 16 acres of land owned by Mrs. Morgan. The points of diversion under this application are within Section 16 and Section 10, T4ON, R5W.

14. Application 18904 was intended to describe a joint undertaking by Mrs. Morgan and other parties who were to

file separate applications. However, only Application 18904 was completed. Mrs. Morgan testified that her purpose in going ahead with the project described in her application would be for the general benefit of the area, that "there are some big farmers who really need it," that the only use she would make of the water would be to form a lake so as to create "a beautiful spot there," (RT 179-184). No evidence was produced on behalf of applicant to prove the amount of water that might be developed at the sources described in the application or that such water could be feasibly conveyed to the Wagon Creek watershed and would be applied to a reasonable beneficial use therein. Under these circumstances, the application should be denied without prejudice to filing a new application at such time as proof of the necessary facts in support of the proposed appropriation is available.

From the foregoing findings, the Board concludes that Application 17179 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; and that Applications 17276, 18445, 18448, 18668, 18760 and 18904 should be denied.

IT IS HEREBY ORDERED that Application 17179 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 to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 98 acre-feet per annum by storage to be collected from

about October 1 of each year to about March 31 of the succeeding year, of which quantity not more than 49 acre-feet per annum shall be stored on Wagon Creek and not more than 49 acre-feet per annum shall be stored in Metcalf Lake.

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

3. Actual construction work shall begin on or before August 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1964.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

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. The outlet pipe in Metcalf Lake shall be placed not lower than 2 feet above the natural lake bed.

9. No water shall be withdrawn from storage in Metcalf Lake prior to July 1 of each year.

10. Permittee shall construct and maintain adequate facilities to bypass the entire natural flow of Wagon Creek around or through their storage reservoir on Wagon Creek from about April 1 to about September 30 of each year and shall submit plans for said facilities to the State Water Rights Board for its approval prior to construction of the dam.

11. This permit does not authorize collection of water to storage during the period from about April 1 to about September 30 of each year to offset evaporation and seepage losses or for any other purpose.

12. 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.

IT IS FURTHER ORDERED that Applications 17276, 18445, 18448, 18668, 18760 and 18904 be, and each of them is, hereby denied.

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 , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member