

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22485 of)
Jerome J. and Eva S. Preciado to Appro-) Decision 1306
priate from an Unnamed Stream in Sierra)
County)

DECISION APPROVING APPLICATION IN PART

Jerome J. and Eva S. Preciado having filed Application 22485 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 (predecessor of the State Water Resources Control Board) pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 22485 is for a permit to appropriate 0.35 cubic foot per second by direct diversion, year round, for domestic and irrigation use from an unnamed stream tributary to Sierra Valley channels, thence Middle Fork Feather River in Sierra County. The points of diversion

are to be located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 31, T21N, R14E, MDB&M.

2. The applicants' proposed place of use consists of 25 acres which have belonged to the Preciado family since 1948. Applicants moved permanently to the property in 1953, and since that time have used water for domestic, livestock and irrigation purposes from the same source, in the same quantity and for the same season for which they now seek a permit.

3. The unnamed stream from which appropriation is requested flows southeasterly through applicants' property in the NE $\frac{1}{4}$ of Section 31, thence easterly for about 1-1/2 miles. The U.S.G.S. Sierraville quadrangle map indicates that the unnamed stream terminates in Section 33 before it reaches Turner Creek. In the summer months the flow of the unnamed stream ordinarily recedes to a point westerly of State Highway 89 in Section 32 and has no connection with Turner Creek.

4. The protests of Gordon K. Church, Frank R. Turner, Sierra Valley Ranch and Thomas S. Dargie are all based upon interference with rights to appropriate from Turner Creek or Turner Canyon. All these rights were adjudicated in Sierra County Superior Court Action No. 3095 by a decree entered on January 19, 1940. That proceeding is commonly referred to as the Middle Fork Feather River

Adjudication. In that proceeding none of these protestants or their predecessors in title or anyone else claimed any rights or was authorized by the final decree to appropriate from any point of diversion located on the unnamed stream. While the unnamed stream appears to flow to and terminate in the property now owned by protestant Dargie, the latter's authorized points of diversion are from Turner Creek at diversion points 180 and 188, as designated in the adjudication decree and maps. The points of diversion claimed by Mr. Dargie in Section 33 are apparently points of rediversion. In any event, as indicated above, the unnamed stream recedes from the Dargie property and supplies it no water in the summer months.

5. Action No. 3095 was a statutory adjudication of water rights, and all appropriative or riparian rights of the protestants are limited to those set forth in the final decree. See Water Code Section 2774. None of the protestants' adjudicated rights would be adversely affected by the proposed appropriation.

6. Applicants' irrigation use will be between March 1 and November 1 and the permit will be limited accordingly. Since the unnamed stream has no connection with the Sierra Valley channels in the summer months, applicants might claim that they have riparian rights to the unnamed stream that were not forfeited in Action No. 3095. A clause in the permit will prevent any possible duplication of rights.

7. Applicants now intend to move their points of diversion upstream to a spring located on property of W. E. Copren, by agreement with Mr. Copren. If this intent becomes definite, they should file a petition to authorize this proposed change.

8. Unappropriated water is 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22485 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 22485 and all relevant information on file therewith, particularly the report dated January 31, 1968, of the field investigation made August 2, 1967, the files of Middle Fork Feather River Adjudication, and U.S.G.S. Sierraville Quadrangle, dated 1955, 15-minute series.

ORDER

IT IS HEREBY ORDERED that Application 22485 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 0.35 cubic foot per second by direct diversion to be diverted from about March 1 of each year to about November 1 of each year for irrigation and domestic use and throughout the balance of the year, as needed, for domestic use.

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, 1969, and shall 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, 1971.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 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.

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. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

Adopted as the decision and order of the State
Water Resources Control Board at a meeting duly called
and held at Sacramento, California.

Dated: JUL 3 1968

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

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

/s/ Norman B. Hume
Norman B. Hume, Member

/s/ E. F. Dibble
E. F. Dibble, Member