

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Licensed Application 5136)

JOHN MEIER, ET AL.

Licensees

OWEN W. BAUER

Protestant

Order: WR 79-24

Source: Unnamed Creek

County: Del Norte

ORDER APPROVING IN PART, PETITION TO ADD TO THE  
PLACE OF USE UNDER LICENSED APPLICATION 5136

BY THE BOARD:

Clifford G. Percy and Norman Restad (former licensees) having filed a petition to add to the place of use under licensed Application 5136 (License 1479); 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 Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of Licensed Application

1. Licensed Application 5136 allows diversion of 0.037 cubic foot per second from July 1 to September 1 for irrigation of two acres, and throughout the year as required for domestic use within Lots 1060 to 1070 of Block 27 of Bertsch Ocean View Tract.

Substance of Change Petition

2. The petition seeks to add Lots 1 through 4, Block 1 and Lots 1 and 2, Block 2 of Ocean View Tract No. 2 as additions to the place of use.

### Petitioners' Projects

3. Norman Restad, the previous licensee, built the present Percy residence (the proposed addition to the place of use) in 1964 and installed a one-inch pipeline from the house to the licensed 5,000 gallon storage tank. The Restads assigned one-half of the license to the Percys in May 1973 and the remainder to the Meiers in May 1975. The Meiers' place of use conforms with the license, but the Percys' does not.

4. The Meiers use water to meet the domestic needs of six people in a fully plumbed house; irrigate about one-half acre of lawn, pasture, and garden; and stockwater two cows. The Percys use water to meet the domestic needs of five people in a fully plumbed house, irrigate 5,000 square feet of lawn, and stockwater six head-of cattle.

### Protest

5. Bauer protested the petition claiming that any increased use of water would injure him. He claims a riparian and pre-1914 appropriative right. He states that if the licensees will recognize his right of prior appropriation and his riparian rights, he will withdraw his protest. The McNamaras, the protestants' lessees', divert from two points on the stream on Miller-Rellim Lumber Company property below the licensed point of diversion. The water is piped across the Company's property and used to meet the domestic needs of seven people in a fully plumbed house and trailer and for stockwatering of 130 head of cattle.

### Effect of the Proposed Change on Legal Users of Water

6. Water Code Section 1702 states:

"Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the Board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

7. The record indicates that the quantity allowed by the license, and the quantity used under the license in the past is more than adequate for the proposed use and that there will be no increase in the quantity diverted during the irrigation season.

8. The protestants claim of use under a pre-1914 appropriative right, and the extent to which any such right may have been lost or diminished by non-use cannot be completely assessed on the basis of the current record. The existence of a riparian right, which may have been implied when the protestants place of use was severed from the stream, is likewise not susceptible to complete evaluation. The report of field investigation indicates a present diversion of 4,320 gallons per day. Approval of this change under the specified conditions will not impact upon any rights the protestant may have more adversely, if at all, than the existing license.

9. The proposed change will not operate to the injury of any legal user of the water involved.

#### Does the Proposed Change Initiate a New Right?

10. The uses on which the license was based, as reported in the 1934 inspection report, were as follows:

(a) Irrigation: Two acres of truck garden from June 1 through September 15.

(b) Domestic: Use year-round by four people in a fully plumbed house and stockwatering of two cows and some poultry.

11. Current uses are as follows:

(a) At licensed place of use:

1. Irrigation of  $\frac{1}{2}$  acre of lawn, garden and pasture.

2. Domestic use, year-round, by six people in a fully plumbed house and stockwater for two cows.

(b) At the proposed addition to place of use:

1. Irrigation of 5,000 square feet of lawn.
2. Domestic use, year-round, by five people in a fully plumbed house and stockwater for six head of cattle.

12. The proposed change during the irrigation season does not constitute the initiation of a new right. However, the proposed increase in domestic use during the remainder of the year exceeds the quantity on which the license was based and can only be accomplished by the filing of a new application.

#### Environmental Consideration

13. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines, and the Board has determined that the added place of use will not cause any significant adverse effect on the environment:

#### Record, in this Matter

14. The records, documents, and data used in evaluating this petition are: Application 5136 and all relevant information on file therewith, particularly the reports on field investigation made on September 1, 1976, and October 17, 1977, and the Engineering Staff Analysis dated January 31, 1978; Board Decision 1283; and topographic maps published by the United States Geological Survey for the area.

Conclusions

15. From the foregoing findings, the Board concludes that the petition to increase the place of use should be granted in part, as set forth in the order following.

ORDER

IT IS HEREBY ORDERED that the petition to increase the place of use under License 1479 be granted during the period from July 1 to September 1.

IT IS FURTHER ORDERED that licensee shall install a meter in the pipeline leading to the Percy property, and monthly readings shall be submitted to the Board with the Report of Licensee.

Dated August 16, 1979

/S/ W. DON MAUGHAN

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W. Don Maughan, Chairman

/S/ WILLIAM J. MILLER

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William J. Miller; Vice Chairman

/S/ L. L. MITCHELL

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L. L. Mitchell, Member

/S/ CARLA M. BARD

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Carla M. Bard, Member

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