

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications )  
22662 and 22663 of William H. )  
Foy, Jr., and Nancy E. Foy to ) Decision 1302  
Appropriate from Unnamed )  
Streams in El Dorado County )

DECISION APPROVING APPLICATIONS

William H. Foy, Jr., and Nancy E. Foy having filed Applications 22662 and 22663 for permits 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 (predecessor of the State Water Resources Control Board) pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 22662 is for a permit to appropriate 7 acre-feet per annum (afa) by storage from

November 1 of each year to April 30 of the succeeding year for irrigation, stockwatering and recreational use from an unnamed stream, tributary to Perry Creek, thence Middle Fork Cosumnes River, in El Dorado County. The point of diversion is to be located within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 28, T9N, R12E, MDB&M.

2. Application 22663 is for a permit to appropriate 3 afa and 5 afa by storage from November 1 of each year to April 30 of the succeeding year for irrigation, stockwatering and recreational use from an unnamed stream, also tributary to Perry Creek. The points of diversion are to be located, respectively, within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 28, T9N, R12E, and within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 21, T9N, R12E.

3. Applicants are in the process of establishing a walnut orchard of 68 acres. Stored water is intended for at least one summer irrigation of the walnuts. The smaller reservoir included in Application 22663 has been in existence for an unknown period of years. The Soil Conservation Service has plans ready for the other proposed reservoirs. Recreation would consist of swimming and fishing in the reservoirs, and the water would also be used for 12 head of Hereford. The applicants claim riparian rights to the same sources from which they propose to store winter and spring water.

4. Protestant County of Amador claims a pre-1914 appropriative right to divert about 30 cfs from the Middle Fork Cosumnes River approximately 5 miles downstream from the Perry Creek-Middle Fork Cosumnes junction for irrigation and for domestic and municipal uses in the town of Plymouth. The County purchased this right and system in 1961, and changed the name to the Plymouth Ditch. The County does not object to appropriation between December 1 and March 1, but only to appropriation in the months of March, April and November.

5. The Plymouth Ditch is an earthen ditch, with wooden flumes in rugged areas, which extends 18 miles from the Middle Fork to the town of Plymouth. The County is in the process of rebuilding various portions of the ditch because of its high transportation losses. Although the County claims the right to appropriate about 30 cfs from Middle Fork and about 25 cfs from the South Fork as well as the full flow of several lesser streams nearer Plymouth, only a small portion of the water appropriated arrives in Plymouth for beneficial use. Of the years 1964 and 1965, June of 1965 was the month with the highest mean monthly deliveries at 9.1 cfs. Each

spring, water is first diverted from the streams nearest Plymouth, then from the South Fork, and finally from the Middle Fork.

6. There is a U.S.G.S. gaging station on the Middle Fork about 5.6 miles above the head of Plymouth Ditch. Its records from 1958 through 1966 show that in the months of March and April of all years the flows were substantially in excess of the amounts claimed by the County. In some years the flows in November were less than the maximum claims of the County, but November is after the end of the irrigation season. The available November supply is more than is needed to meet the beneficial use requirements of the Plymouth Ditch.

7. 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.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 22662 and 22663 should be approved and that permits 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:

1. Files of Applications 22662, 22663, 10457, 10674 and 20893, particularly the report of field investigation made October 5, 1967, in the files of Applications 22662 and 22663.
2. "Report of Investigation of Water Diversion and Deliveries through Plymouth Ditch in Amador County 1964 and 1965 Seasons" contained in the State Water Resources Control Board's 262.0 file.
3. U. S. Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California" for the period of published record.
4. United States Department of the Interior, Geological Survey--Water Resources Division, "Surface Water Records of California--Volume 2: Northern Great Basin and Central Valley" 1961 through 1964.
5. United States Department of the Interior, Geological Survey--Water Resources Division, "Water Resources Data for California, Part 1. Surface Water Records--Volume 2: Northern Great Basin and Central Valley" for the period of published record (1965 - ).
6. U. S. Geological Survey topographic maps of the area under consideration.

ORDER

IT IS HEREBY ORDERED that Applications 22662 and 22663 be, and they are, approved, and that permits be

issued to the applicants subject to vested rights and to the following limitations and conditions:

1-a. The water appropriated under the permit issued on Application 22662 shall be limited to the quantity which can be beneficially used and shall not exceed 7 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 of the succeeding year. This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

1-b. The water appropriated under the permit issued on Application 22663 shall be limited to the quantity which can be beneficially used and shall not exceed 3 and 5 acre-feet per annum by storage in two reservoirs to be collected from about November 1 of each year to about April 30 of the succeeding year. This permit does not authorize collection of water to storage outside 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 December 1, 1968, 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, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

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. Water entering the reservoir or collected in the reservoir during and after the current storage season

shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit.

10. Permittee shall install and maintain an outlet pipe of adequate capacity in his dams as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board to comply with the preceding paragraph.

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

Dated: **MAY 16 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