

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21667 of
John and Herman Weber to Appropriate
from Shields Creek and an Unnamed Stream
in Modoc County

Decision D 1240

ADOPTED MAR 2 1966

DECISION APPROVING APPLICATION

Application 21667 of John and Herman Weber having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on May 12, 1965, conducted by Board Member W. A. Alexander; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 21667 is for a permit to appropriate 702 acre-feet per annum (afa) by storage from November 1 of each year to June 1 of the succeeding year for irrigation and stockwatering purposes from Shields Creek and an unnamed stream in Modoc County. The points of diversion are to be located in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34 and the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 33, T42N, R14E, MDB&M. The maximum rate of diversion to storage is to be 100 cubic feet per second.

2. North Fork and South Fork Shields Creek rise on the western slope of the Warner Mountains and flow in a westerly

direction approximately 3 miles to their junction. Shields Creek continues in a general northwesterly direction approximately 2 miles, then in a westerly direction approximately 1/2 mile to the applicants' point of diversion. The creek continues in a northwesterly direction approximately 5 miles to join Parker Creek which discharges into the North Fork Pit River approximately 6 miles to the northwest. The unnamed stream parallels Shields Creek to the northeast and enters the valley through which Shields Creek flows approximately 2 miles below the applicants' point of diversion from the creek. The applicants' point of diversion on the unnamed stream is approximately 1/2 mile above the valley.

3. The applicants propose to construct a dam and a reservoir with a capacity of 702 acre-feet on the unnamed stream. An existing ditch approximately 2,000 feet in length that presently transports water from Shields Creek to the unnamed stream above the applicants' reservoir site will be enlarged. The stored water will be released to flow down the unnamed stream and the creek for rediversion at various points along the creek. The project will furnish a supplemental supply of water for the irrigation of lands belonging to the applicants which border the creek and will be used for stockwatering at the reservoir.

4. Protestants Milo and Norma Moore and Ivan V. Henderson divert from Shields Creek at the applicants' point of diversion through the existing ditch that will be enlarged

by the applicants for use on lands located downstream from where Shields Creek enters the valley. Protestants Floyd C. Porter and Clifford E. Bailey divert from Shields Creek into a reservoir on Plum Creek, a tributary of Parker Creek which parallels Shields Creek to the southwest. Protestant U. S. Department of the Interior, Fish and Wildlife Service, diverts from Parker Creek for storage at Dorris Reservoir. These uses by the protestants, as well as the present use by the applicants, are under rights confirmed by the North Fork Pit River Adjudication (Superior Court of Modoc County, Action No. 4074).

5. Except for reports of the watermaster who supervises diversions under the North Fork Pit River Decree, which are limited to the irrigation season, there are no records of the flow of Shields Creek. However, approximately 85 per cent of the precipitation in the area occurs during the period from October 1 of each year to May 1 of the following year, and there is water surplus to the decreed rights during the applicants' proposed diversion season (RT 42-44).

6. The protestants are apprehensive in respect to a possible increase in transportation losses that may result should the applicants release impounded water during the dry season for their benefit. Assuming without deciding that such releases would be required, increased return flows from additional irrigation use by the applicants should more than compensate for any increase in channel losses.

7. There is unappropriated water 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.

9. The applicants' project involves the commingling of project water with water used by the protestants under decreed rights, and under the supervision of watermaster service furnished by the Department of Water Resources. Applicants have agreed to request supervision over the operation of their reservoir to insure that the decreed prior rights are respected. The permit should contain a term providing that rights under the permit are subject to existing rights defined by the North Fork Pit River Adjudication and that the permittees make a bona fide effort to obtain watermaster supervision over the use of water under the permit.

From the foregoing findings, the Board concludes that Application 21667 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:

ORDER

IT IS HEREBY ORDERED that Application 21667 be, and it is, approved, 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 702 acre-feet per annum by storage to be collected from about November 1 of each year to about June 1 of the succeeding year at a maximum rate of diversion to storage of 100 cfs.

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 September 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, 1968.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

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. 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. Permittees shall install and maintain an outlet pipe of such size and at such location as is specified by the Department of Water Resources to comply with this paragraph.

10. Permittees shall maintain an adequate channel from the reservoir to Shields Creek at or upstream from Diversion Point 100 referred to in the North Fork Pit River Adjudication in order to convey water released from the reservoir to satisfy storage rights in Porter Reservoir.

11. Permittees shall install and maintain suitable measuring devices to measure (a) water diverted into the reservoir from Shields Creek, and (b) water released from or flowing out of the reservoir.

12. In accordance with the requirements of Water Code Section 1393, permittees shall clear the site of the proposed reservoir of all structures, trees and other vegetation which

would interfere with the use of the reservoir for water storage and recreational purposes.

13. Construction of the storage dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

14. Rights under this permit are, and shall be, subject to existing rights defined by the North Fork Pit River Adjudication, Superior Court, Modoc County, No. 4074, and such other rights as may presently exist on the stream insofar as said existing and adjudicated rights are maintained. The permittees shall request the Department of Water Resources to furnish watermaster supervision over use of water under this permit and shall pay for the cost of such service.

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 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

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

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