

Darcy

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary)	Order:	WR 87- 11
Permit 20167 (Application 29124))	Source:	Little Morro Creek
)		
STEVE MAC ELVAINE)	County:	San Luis Obispo
Permittee)		

FINDINGS AND ORDER VALIDATING THE
ISSUANCE OF TEMPORARY PERMIT

Steve MacElvaine, hereinafter referred to as MacElvaine, having filed Application 29124 for a temporary permit to divert and use water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the State Water Resources Control Board (Board) having consulted with the California Department of Fish and Game and the California Coastal Commission; Board Member Eliseo M. Samaniégo having concluded from available information that MacElvaine should be granted a temporary permit to divert and use water, subject to review and validation by the Board as provided by Water Code Section 1435(d); the Board finds as follows:

Issuance of Temporary Permit

1. The Water Code provides for delegation of the authority to issue temporary permits and each Board Member has been delegated this authority. When this authority is exercised, the Board is required to review and validate any temporary permit within 30 days of issuance. On October 27, 1987 Board Member Eliseo M. Samaniégo authorized issuance of the temporary permit and on the same date Raymond Walsh, Chief of Division of Water Rights, issued Temporary Permit 20167. The matter is before the Board for review and validation.

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Substance of the Application and Project

2. Temporary Permit 20167 (Application 29124) is for the direct diversion and use of water from the underflow of Little Morro Creek in San Luis Obispo County for domestic purposes within the S 1/2 of NW 1/4 and SW 1/4 of projected Section 19, T29S, R11E, MDB&M. The season of diversion is from October 27, 1987 to April 20, 1988.
3. The temporary permit allows MacElvaine to divert a maximum of 25,200 gallons per day from a point of diversion within the NW 1/4 of NW 1/4 of projected Section 30, T29S, R11E, MDB&M. Water pumped from the point of diversion will be transported to the place of use by tanker truck.

Water Rights Held by MacElvaine

4. MacElvaine owns two pieces of property in the Morro Creek/Little Morro Creek watershed. At the northerly end of the basin he owns and operates Rancho Colina Mobile Home Park (Park) on property which is reportedly riparian to Morro Creek. He indicates water is pumped from a well in the Morro Creek underflow to supply the Park with water for domestic uses. He states the well is also used to irrigate 7 acres of crops and provide stockwater on the same property. At the southerly end of the basin, he owns property claimed to be riparian to Little Morro Creek. At this location an existing well pumps the underflow of Little Morro Creek for irrigation and domestic use.

5. Due to the dry year, the yield of the well serving the Park is rapidly declining. Pumping yield has dropped from over 60 gallons per minute (gpm) to just under 26 gpm. If the well yield drops below 20 gpm, the Park will be without an adequate supply of water for domestic use.

The temporary permit allows MacElvaine to supplement the domestic water supply for the Park temporarily with water from the well on his southerly riparian property. More specifically, the permit allows water to be diverted from the southerly riparian well when the Park well yield is below 20 gpm. MacElvaine reports he will not use any water in addition to that which he has historically used from both wells.

6. MacElvaine filed Application 28822 with the Board on April 7, 1986 to appropriate water from his well on Little Morro Creek for use by the Park to resolve the problem on a permanent basis. Processing of the application is on hold pending the results of a hearing held by the Board on applications filed by the City of Morro Bay to appropriate water from the underflow of Morro Creek/Little Morro Creek.

Urgent Need of Applicant to Divert and Use Water

7. If additional water is not found to supplement the existing water supply, the mobile home park will suffer severe consequences including mandatory rationing of water or forced displacement of residents. In accordance with Water Code Section 1425, the Board finds that MacElvaine has an urgent need to divert and use the water under the temporary permit.

Notice of the Temporary Permit

8. Public notice of the temporary permit was issued October 19, 1987. Copies of the notice were posted and mailed to all known interested persons in accordance with Section 1428 of the Water Code. The closing date to file comments or objections was November 3, 1987. In addition, the Board's staff contacted all known users of water that could be affected by the diversion authorized by the temporary permit.

Objection by City of Morro Bay

9. The City of Morro Bay filed a late objection on November 6, 1987. The basis of the City's objection is the potential reduction in quantity or quality of available underflow at the City's existing municipal wells for which applications are on file. The City set three dismissal terms in its objection: (1) the applicant demonstrate and prove the proposed diversion quantitatively will not affect the short- or long-term water quality or quantity at the City's existing municipal wells; (2) approval of the application for temporary permit will not prejudice evaluation of MacElvaine's Application No. 28822; and (3) approval of the application will not result in the long term increase in use of water from Little Morro Creek.

10. Regarding the City of Morro Bay objections, the Board finds as follows:

- A. The requested season of diversion for the temporary permit is October through April. This is the normal wet season for the basin which would tend to minimize any impact on the City's diversions within the watershed. Also, the season covers the period when water use by the City is a minimum and seasonal seawater intrusion is at a minimum.
- B. This permit expires after 6 months and allows diversion of a maximum of 14 acre-feet. This amount is minor in relation to the total basin water resources. Variation in seasonal rainfall will have a much more significant effect on the basin. There is no anticipated long term effect to the basin.
- C. MacElvaine's temporary permit allows diversion and use of water only when his claimed riparian source drops below 20 gallons per minute. The temporary diversion only allows for replacement water from the well on the southerly property up to a maximum of 20 gallons per minute. Also, because the water will be hauled by tanker truck, the water will be considerably more expensive than that from the original well in the Morro Creek underflow. The hauling expense creates a motive to limit use of water by the Park under this Temporary Permit.

Thus, the resulting water use by the Park on the northerly property and his riparian agriculture operation on the southerly property is expected to be less than his historical use from both underflow wells as compared to a normal year.

Dismissal Term 2 of the objection relates to the use of water and future Board actions. Temporary Permit Term #12 and Section 14 of this Order specifically preclude any such action.

Dismissal Term #3 of the objection requests the approval of the permit not lead to any long term increase of use in the Morro Creek Basin. Temporary Permit Term #6 and the above paragraphs of this Order address this item. No long-term increase in use is expected under this Temporary Permit.

Effect of the Diversion on Lawful Users of the Water and The Rights of Downstream Users

11. Based upon the foregoing consideration, the Boards finds that water may be diverted and used under Temporary Permit 20167 without injury to any lawful user of water.

Effects of the Proposed Diversion on Fish, Wildlife, and Other Instream Uses

12. The California Department of Fish and Game has no objection to the temporary permit. In accordance with Water Code Section 1425, the Board finds water may be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses.

Findings Concerning the California Environmental Quality Act

13. The project is an emergency project exempt from the California Environmental Quality Act as provided in Section 15269(c), Title 14, California Administrative Code.

No Effect on Board's Future Decision

14. Issuance of Temporary Permit 20167 on Application No. 29124 is independent of any action the Board may take on pending applications for rights to water from the Morro Creek/Little Morro Creek watershed. No finding herein shall be construed as predeciding any issues relevant to the Board's consideration of pending applications.

Public Interest

15. The diversion and use of water by MacElvaine under a temporary permit is in the public interest and in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

NOW, THEREFORE, IT IS ORDERED that the issuance of Temporary Permit 20167 is validated subject to the conditions specified in the permit.

CERTIFICATION


The undersigned, Administrative Assistant to the Board, does hereby certify that the forgoing is a full, true and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 1987.

Aye: W. Don Maughan
 Darlene E. Ruiz
 Edwin H. Finster
 Danny Walsh
 Eliseo M. Samaniego

No: None

Absent: None

Abstain: None


Maureen Marche
Administrative Assistant to the Board