

T. Wilson

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Complaint by)
NORTH FORK ENVIRONMENTAL GROUP,)
Compl ai nant,)
SEQUOIA FOREST INDUSTRIES,)
Li censed Applications 10365)
and 10957,)
Respondent.)

ORDER: WR 88- 4
SOURCE: South Fork Willow
Creek
COUNTY: Madera

88

ORDER DENYING REQUEST FOR HEARING

BY THE BOARD:

1.0 BACKGROUND

A complaint having been filed by the North Fork Environmental Group (NFEG) against the diversion and use of water by Sequoia Forest Industries (SFI), an investigation having been conducted by the staff of the State Water Resources Control Board (Board), the staff having concluded that an enforcement action was not warranted, and NFEG having requested a hearing by the Board, the Board finds as follows:

2.0 SFI OPERATIONS

SFI operates the North Fork Sawmill on land leased from Sequoia Forest Timber Industries (SFTI), an affiliated corporation, about one

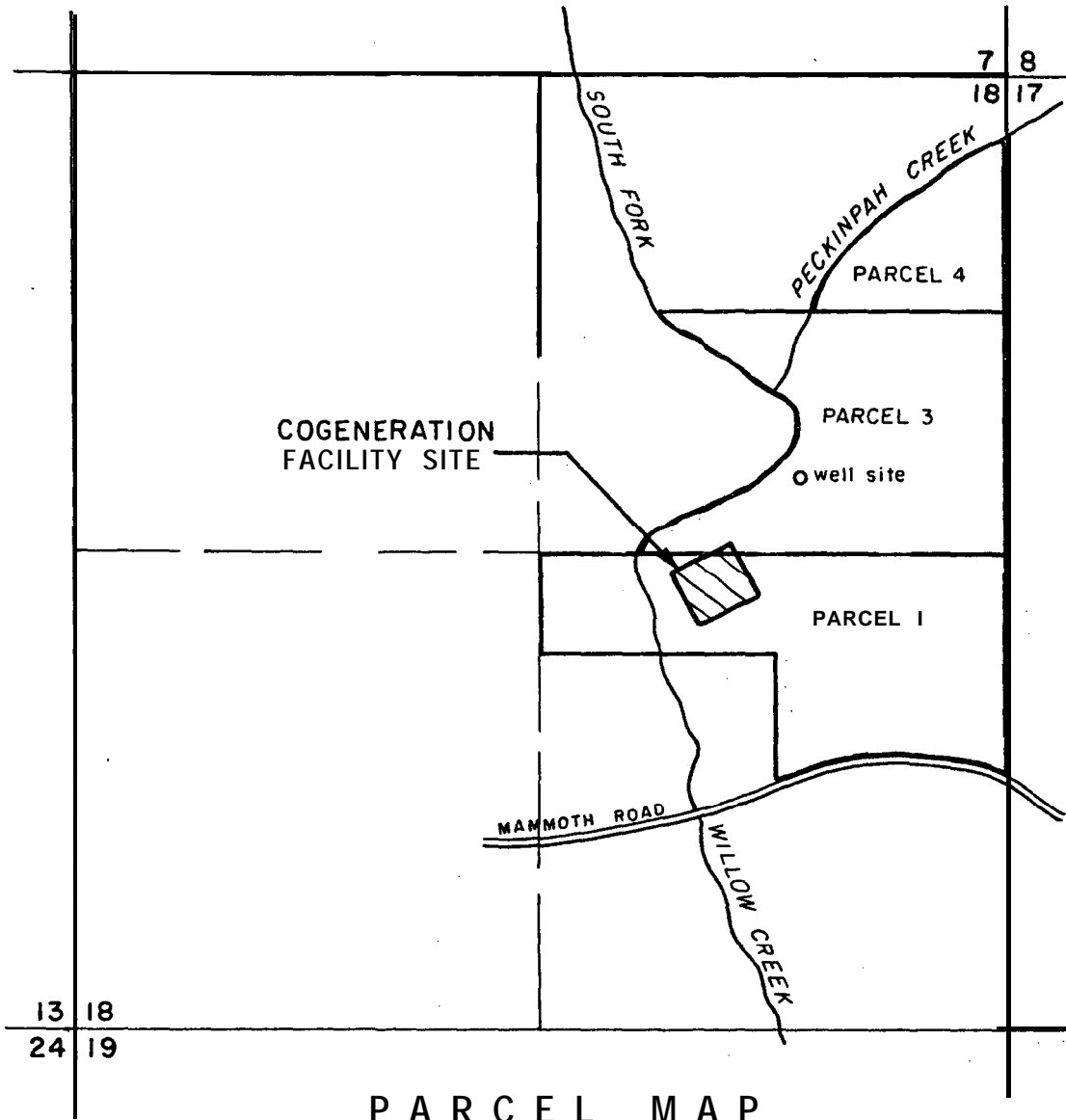
mile northeast of the community of North Fork in Madera County. Water is used for log deck sprinkling, boiler makeup, air compressor cooling and saw cooling. The mill discharges about 100,000 gallons per day (gpd) to waste ponds from the foregoing operations. Water is also used for irrigation for nearby camp housing and tanker trucks divert water from the South Fork of Willow Creek, apparently for suppressing dust on roads.

2.1 Use and Sources of Water for Operations

Water is obtained for SFI operations from the following sources.

1. a deep well situated on the property leased from SFTI;
2. sheet flow from log deck captured by waste ponds;
3. water recycled from waste ponds;
4. the South Fork of Willow Creek, Peckinpah Creek and Pitcher Creek under a claim of riparian right; and
5. the South Fork of Willow Creek, tributary to the San Joaquin River under licensed water right Applications 10365 and 10957.

During 1985 and earlier years, about 300 to 350 gallons per minute (gpm) were diverted from the South Fork of Willow Creek for the operation of the mill. Commencing during 1985, conservation measures were initiated which were projected to reduce peak demand for water from the South Fork from 300 to 350 gpm to about 68 gpm.



PARCEL MAP



T. 8 S. R. 23 E
 MADERA CO.
 M.D.B. & M.

STATE OF CALIFORNIA
 STATEWATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

APPLICATIONS
 10365 - 10957
 COMPLAINT No. 262.0 (20-90)
 SEQUOIA FOREST INDUSTRIES

NOT TO SCALE

DATE: 1-26-88 DRAWN: A.G. CHECKED: L.L.E DWG: 3375

Waste Discharge Requirement Order No. 87-005, NPDES No. CA0078221, adopted on March 27, 1987 was issued to SFI by the Regional Water Quality Control Board, Central Valley Region (Regional Board).

Among other matters, the requirements prohibit:

1. the discharge of wastewater retained in the pond system; and
2. the discharge of storm water runoff from the log deck to Willow Creek except during rainfall and for 36 hours thereafter.

Finding number 6. of the order explains the relationship between these two prohibitions. It provides:

"Wastewater from the pond system shall not be discharged to surface waters. During dry periods, the pond water is recirculated back to the log deck for reuse. During the rainy season and at the onset of a storm event, log deck sprinkling will stop and the initial one-half inch of rainfall from each storm will be retained in the pond system. Subsequent storm water runoff from the log deck will by-pass the closed pond system, be screened and discharged to Willow Creek...."

The requirements also include other prohibitions, effluent limitations, receiving water limitations and self-monitoring requirements.

3.0 THE COMPLAINT AND ANSWER

3.1 The Complaint

On September 8, 1986, Mr. Charles D. Reed filed a complaint against SFI.¹ The initial complaint references the foregoing historical use figures and the reduced peak demand figure of 68 gpm and states:

"This situation is causing concern to all people who believe that unreasonable withdrawel [sic] of water from our free flowing creeks is environmentally damaging, and aesthetically distasteful."

3.2 The Answer

SFI's answer to the complaint: (1) claimed appropriative and riparian rights to the use of water from the South Fork; (2) stated that the 1986 use of water for the mill and for domestic uses during the critical low water months had not exceeded 80 gpm; and (3) denied any improper or unreasonable use of water.

3.3 Enlargement of Complaint

Following SFI's answer, Mr. Reed enlarged upon his complaint with the following points:

1. SFI's historical and current use of water exceeds its appropriative rights.
2. SFI operates tanker trucks which are filled from the South Fork. The simultaneous diversion of water by fixed pumps and by the

¹ The complaint makes no mention of NFEG; however, based on subsequent correspondence, Mr. Reed appears to be a representative for NFEG.

tanker trucks almost dries up the creek during the low flow season.

3. SFI has the means to obtain sufficient water from wells and the appropriate permits are unjustified.

4.0 STAFF INVESTIGATION

An investigation was conducted on March 4, 1987. The results of the investigation are set forth in a memorandum titled Report of Investigation dated April 21, 1987. The following findings are included in the report:

Licensed Applications 10365 and 10957 authorize a diversion of up to 0.052 cfs (33,608 gpd) for domestic and industrial uses throughout the year. In the event of fire, the total maximum rate of diversion increases to 0.111 cfs (71,741 gpd). SFI has diverted water in excess of the amounts authorized by its licenses. In addition to appropriate rights, however, SFI has a riparian right to divert and use water from the South Fork of Willow Creek. The appropriate rights do not limit SFI's riparian right to divert water from the South Fork.²

² Subsequent to the priority date of the licenses, the Board adopted Section 731 of Title 23 of the Cal. Code of Regulations. Under Section 731 the Board will issue a permit for the total reasonable requirements of a project; however, the amount that can be diverted will be reduced by the amount of water determined to be available under a subsequent adjudication of any prior right to that use of water.

In response to the waste discharge requirements issued by the Regional Board, SFI has increased pond storage capacity in order to retain wastewater.³ In conjunction with water conservation, this development has enabled SFI to recirculate waste water and to reduce the total quantity of water diverted from the South Fork. For example, during July-October of 1986 the peak diversions were 53 gpm and during the following October-June rainy season the peak diversions were 6 gpm.

In addition to the foregoing, waste cogeneration facilities were under construction on property leased from SFTI by the North Fork Energy Corporation (NFEC). The parcel is within the sawmill property. NFEC has agreed to develop a well to supply the water needs of the SFI cogeneration facility and for the water needs of the sawmill.

The report also concluded that the foregoing changes would eliminate the need to divert water from the South Fork. The report was forwarded to the NFEG on April 27, 1987.

5.0 REQUEST FOR HEARING

5.1 Response to Report of Investigation

By letters dated May 1 and June 22, 1987 NFEG indicates that the report failed to address adequately the following matters:

³ Ponds holding wastewater or capturing sheet flow do not require appropriative water rights.

1. Water has been diverted from the South Fork in excess of licensed rates.
2. Diversion has occurred at unreasonable rates injurious to fish and wildlife.
3. Riparian rights claimed by SFI should be supported by more evidence and the amounts should be quantified.
4. The Board should limit SFI's total rate of diversion for licensed and riparian diversions.
5. The source, amount and right to the use of water in SFI's waste ponds.
6. SFI waste discharges may be injuring fish in the South Fork.

5.2 Hearing Request

By letters dated August 10 and September 8, 1987 a hearing was requested by NFEF. The request is based upon unspecified earlier correspondence alleging improper use of water from the South Fork of Willow Creek. No new information is provided or offered by NFEF's request for hearing.

6.0 APPLICABLE LAW

Chapter 3, Subchapter 2, Article 18, Title 23 California Code of Regulations, Section 820 et seq., sets forth our regulations pertaining to enforcement of terms and conditions in permits and licenses. These sections provide, in part, that:

"Any person affected by a violation of any term or condition of a permit or license may file a written complaint with the Board; and,

"If the Board's staff finds that no violation has occurred, the complainant will be notified and no further action will be taken unless the complainant requests a hearing, in which event the board will determine whether to hold a hearing based on information supplied by the complainant and the staff."
(Sections 820 and 821.)

7.0 DISCUSSION

7.1 Rights to the Use of Water

SFI has appropriative and riparian rights to the use of water from the South Fork of Willow Creek. SFI's claim of riparian right is adequately documented and supported by an opinion by the law firm of Kronick, Moskovitz, Tiedemann & Girard.

That SFI may divert water under a riparian claim of right in excess of amounts authorized under its licensed applications does not provide a basis for revoking the licensed applications. Water Code Section 1675 provides that a license may be revoked for the following reasons:

1. the terms and conditions of the license have not been observed,
2. water has not been put to beneficial use, or
3. the beneficial use of water has ceased.

Neither the allegations in the complaint nor our investigation provide a basis for revoking SFI's licensed applications.

Under the Water Code, the collection of sheet flow or diffused surface flow does not require an appropriative permit from the Board. The staff's report of investigation concluded that appropriative water rights were not required for SFI waste ponds even though the ponds collected storm runoff. In the absence of new information from NFEG and any apparent connection between water rights for the waste ponds and the harm alleged to the South Fork we will not reconsider the staff's conclusion.

7.2 Injury to Fish and Wildlife From Diversions

Subsequent to the request for hearing, additional inquiries were initiated by staff to confirm SFI developments projected in the report of investigation. These inquiries indicate that:

1. SFI has connected the sawmill's water system with the new well system, and water is no longer being diverted from the South Fork for operation of the mill.
2. The tanker trucks are no longer refilling from surface water courses; the trucks are being refilled from the waste retention ponds.
3. The surface water pumping system is being maintained in the event of a failure in the ground water well system.

On the basis of 1. and 2. above, we conclude that there is no basis for continued concern about the effect of surface water diversions on the fish and wildlife in the South Fork of Willow Creek.

7.3 Licensed Applications Will Not Be Lost for Nonuse

Although the Water Code provides that a license may be revoked when the beneficial use of water has ceased, SFI's failure to divert water from the South Fork of Willow Creek may not result in the forfeiture of their licensed applications. Water Code Section 1010(a) provides that a right to the use of water will not be lost due to the cessation in use of water under an existing right as the result of the use of reclaimed or polluted water. Section 1011(a) makes similar provision for the cessation in use due to water conservation. We conclude, accordingly, that the amounts authorized for diversion under licensed Applications 10365 and 10957 will not be lost for nonuse to the extent the reduction in use is explained by use of polluted water or due to conservation efforts.⁴ Although the amount conserved apparently exceeds the licensed amounts, the licenses must report such savings when filing its Report of Licensee Form.

7.4 Injury to Fish and Wildlife From the Discharge of Waste

The staff also contacted the Regional Board in response to NFEG's concern that waste discharges from SFI were injuring fish in the South Fork of Willow Creek. Regional Board personnel indicated that except

⁴ The use of groundwater is not viewed as being a reduction in the use of water due to water conservation or the use of polluted water.

for a minor violation in the fall of 1987, SFI has been in compliance with its waste discharge requirements.

8 . 0 CONCLUSIONS

Having considered the files for licensed Applications 10365 and 10957 and the file containing NFEG's complaint and the report of investigation of the complaint concerning the South Fork of Willow Creek, we conclude as follows:

1. SFI has appropriate and riparian rights to divert water from the South Fork of Willow Creek;
2. SFI is satisfying its water needs from ground water, water conservation and from recycled wastewater thereby eliminating the need to divert water from the South Fork of Willow Creek except on a standby basis;⁵ and
3. by ceasing all diversions, SFI's operations will not cause injury to the fish and wildlife in Willow Creek and NFEG's request for a hearing is without merit and should be denied.

⁵ If SFI intends to use the license on a standby basis, a petition to change the place of use should be filed in accord with the April 21, 1987 report of investigation.

ORDER

IT IS HEREBY ORDERED that the request for hearing by Mr. Charles D. Reed on behalf of NFEG is denied.

CERTIFICATION

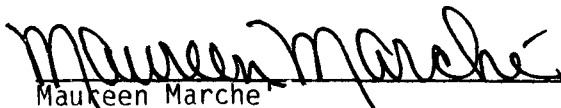
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 17, 1988.

AYE: W. Don Maughan
D. E. Ruiz
E. H. Finster
E. M. Samaniego
D. Walsh

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

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