

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary
Permit 20321 (Application 29436) }
City of Stockton }
Applicant }

ORDER: WR 89-9
SOURCE: Calaveras
River
COUNTY: San Joaquin

ORDER VALIDATING TEMPORARY PERMIT

BY THE BOARD:

The City of Stockton (City) having filed Application 29436 for a temporary urgency permit to divert and use water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the California Water Code, as well as Water Code Section 1485; the State Water Resources Control Board (Board) having consulted with the California Department of Fish and Game (Department); the Board having concluded from available information that the City qualifies for a temporary permit to divert and use water, as provided by Water Code Section 1425 and 1485, the Board finds as follows:

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OFFICE OF THE
CHIEF COUNSEL
SWRCB

Substance of the Application

1. Pursuant to California Water Code Section 1485, the City filed Application 29436 on March 14, 1989, for a temporary permit to divert a quantity of water equal to the quantity of wastewater that is discharged into the San Joaquin River from its Regional Wastewater Control Facility.
2. The City estimates that approximately 14,000 acre-feet of wastewater will be discharged into the San Joaquin River during the diversion season from April 24 to October 15, 1989. The City plans to divert an equivalent amount of estuarine inflow from the Calaveras River at Pacific Avenue, a point within the legal boundary of Sacramento-San Joaquin Delta. The applicant originally proposed to pump the diverted water up the Calaveras River via a series of check dams and into the Stockton Diverting Canal. However, the application was amended on April 14, 1989 in order to resolve objections. The amended application proposed to transport the water via a pipeline, rather than the Calaveras River, from the Point of Diversion to a holding pond at the Stockton East Water District (SEWD) Water Treatment Plant.

The rate of pumping will not exceed 40 cubic feet per second. The water will be used for irrigation purposes within the SEWD service area in San Joaquin County. In return, SEWD will provide treated water from New Hogan Reservoir to the City for meeting its urban demands.

Compliance with Water Code Section 1485

3. Water Code Section 1485 states the following:

"Any municipality, governmental agency, or political subdivision operating waste disposal plants producing disposal water meeting the requirements of the appropriate regional board, and disposing of said water in the San Joaquin River may file an application for a permit to appropriate an equal amount of water, less diminution by seepage, evaporation, transpiration and other natural causes between the point of discharge and the point of recovery, downstream from said disposal plant and out of the San Joaquin River or the Sacramento-San Joaquin Delta. A permit to appropriate such amount of water may be granted by the board upon such terms and conditions as in the board's judgment are necessary for the protection of the rights of others. Water so appropriated may be sold or utilized for any beneficial purpose. The right to the use of water granted by this section shall not include water flowing in underground streams.

"The Legislature finds and declares that the problems incident to the full utilization of the waters of the San Joaquin River and the Sacramento-San Joaquin Delta into which it flows are unique and that a general law cannot be made applicable thereto."

4. The staff of the California Regional Water Quality Control Board, Central Valley Region, has reviewed the monitoring reports submitted by the City and determined that the City's wastewater discharge from its Regional Wastewater Control Facility is in compliance with Waste Discharge Requirements contained in NPDES Permit No. CA. 0079138, (Regional Board Order No. 86-088).

5. The Point of Diversion (California Coordinates N 541,600, E 1,767,100, Zone 3, within NW¼ of NW¼, projected Section 34, Township 2N, Range 6E, MDB&M) and legal eastern boundary of the Sacramento-San Joaquin Delta as specified in Water Code Section 12220 were plotted. The plot revealed that the Point of Diversion is within the legal boundary of the Delta and is located very close to its eastern rim.

Temporary Urgency Need of Applicant to Divert and Use Water

6. The San Joaquin Valley is facing a third consecutive year of serious drought. If the current forecasts hold, 1989 will be another low water year.

7. On February 21, 1989, SEWD declared a drought emergency for eastern San Joaquin County. On February 24, 1989, SEWD wrote a letter to Governor Deukmejian requesting a declaration of emergency for the eastern San Joaquin County. The letter informed him about the shortage of inflow to New Hogan Reservoir during the third year of drought for meeting urban and agricultural demands.
8. On March 8, 1989, the Stockton City Council adopted Resolution 89-0146 that recognized the drought emergency and authorized the City Manager to file an application with the Board for a temporary permit.
9. On March 14, 1989, the San Joaquin County Board of Supervisors adopted Resolution R-89-201, which declared a local emergency, due to drought, to exist in San Joaquin County. The local emergency shall continue to exist until it is terminated by the Board of Supervisors.
10. In April, 1988, the City Council adopted Ordinance 026-88 (Water Conservation) to provide a mechanism to deal with the drought and to establish a long term water conservation program. The 1989 Water Conservation Program of the City

includes guidelines to accomplish 20 percent reduction in anticipated demand.

11. In 1988, the Stockton metropolitan area used 61,437 acre-feet of water. Of the 61,437 acre-feet demand of the City, approximately 25,000 acre-feet per year is provided by SEWD from its storage in New Hogan Reservoir, and the remaining 36,437 acre-feet is pumped from the ground water basin.

New Hogan Reservoir has a capacity of 317,000 acre-feet; however, it had only 41,700 acre-feet in storage on April 28, 1989. Because of SEWD obligations to meet agricultural demands of 75,000 acre-feet, it would provide the City only 5,000 acre-feet instead of 25,000 acre-feet during 1989. Without an additional supply of surface water, the City will have to pump an additional 20,000 acre-feet from the ground water basin. The ground water basin is designated as a "critically overdrafted basin" by the Department of Water Resources.

12. In 1980 (Department of Water Resources, Bulletin 118-80), saline water had migrated into the basin as a result of the overdraft and severely impacted the utility of ground water in the vicinity of Stockton. Wells had to be abandoned and

replacement water supplies were obtained by drilling additional wells. To partially mitigate these adverse impacts on the ground water basin, supplemental water from the Calaveras River through SEWD's Aqueduct was obtained.

13. Conditions have improved in the basin due to a series of wet years in the early 1980's; however, saline water migration is still a problem that can be aggravated by increased ground water pumpage. A 1985 Eastern San Joaquin County ground water study by Brown and Caldwell Consulting Engineers concluded that: the ground water levels declined at an average rate of 1.7 feet per year during the period 1947 to 1984; the saline water front has advanced inland about one mile between 1963 and 1983 (i.e., 264 feet/year); and saline water would migrate into the basin an additional two miles by the year 2020 under current ground water pumping rates.

Rather than pumping additional supplies from the critically overdrafted basin, the City applied for a temporary permit to divert a quantity of water equal to the quantity of wastewater that is discharged into the San Joaquin River from its Regional Wastewater Control Facility pursuant to Water Code Section 1485. The diverted water will be transported to SEWD's water treatment facilities for meeting its agriculture

demand and, in return, SEWD will provide treated water from New Hogan Reservoir to the City for meeting its urban demands.

14. Based on the above information, the Board concludes that the City has an urgent temporary need to divert and use water.

Effects of the Diversion on Any Lawful User of Water

15. Application 29436 was noticed on March 15, 1989, in accordance with the Water Code. Notice was sent to all affected downstream diverters and interested parties known to the Board. Objections to the temporary permit were due by 5:00 p.m., March 28, 1989. Three parties responded to the notice, their responses are briefly summarized below:

- (a) The U.S. Bureau of Reclamation objected, but agreed to dismissal of its objection provided the total diversion in any one week under this permit is limited to the quantity of wastewater released from the applicant's Regional Wastewater Control Facility during that same week. Term 6 in the permit resolves the concern raised by the Bureau.

(b) The California Sportfishing Protection Alliance (CSPA) and the Department objected to the issuance of the temporary permit based on the application as filed. Since the concerns raised by them are related to protection of fisheries and instream uses, these are discussed in the next section.

16. The Board concludes that water may be diverted and used under the temporary permit without injury to any lawful user of water.

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

17. The concerns raised by CSPA to the issuance of the temporary permit are:

- (a) The originally proposed check dams on the Calaveras River may impede the upstream migration of salmon and other fish species;
- (b) The quality of water in the San Joaquin River and Delta estuary may be adversely affected; and

(c) The proposed pumps may harm and injure fish and aquatic species unless the pumps are screened.

18. The Department recommended issuance of the temporary permit to the City subject to the following conditions:

(a) No instream work shall begin before May 15, 1989.

(b) The season of diversion shall be restricted to a period beginning May 15 and ending October 15, 1989.

(c) The applicant shall develop a plan, which is to be approved by the Department, for the protection of riparian wetlands.

(d) A Streambed Alteration agreement between the applicant and the Department is required to be executed before any instream work is initiated.

19. To resolve the concerns of CSPA and the Department, a meeting was held on April 6, 1989. Based on discussions at this meeting and further negotiations, the Department and CSPA agreed to withdraw their objections provided the City uses pipe with a screened intake, rather than the Calaveras River,

to transport water from the Point of Diversion to SEWD's water holding pond. The City agreed to the protest dismissal conditions of the Department and CSPA and submitted an amended application on April 14, 1989. The City eliminated the Calaveras River alternative; in its place, the City proposes to pump water through a pipeline to a holding pond at the SEWD Water Treatment Plant. Except for amending the method of transporting water from the point of diversion to the place of use, there is no other change in the amended application.

Based on the amended alternative for the transportation of water, both the Department and CSPA withdrew their objections. The Department further added that the pumping intake need not be screened if the City begins pumping after May 15, 1989. Term 14 in the temporary permit addresses this concern of the Department.

20. The Board concludes that the water may be diverted and used under the temporary permit without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

Findings Concerning the California Environmental Quality Act

21. The project is an emergency project and the applicant, being a lead agency, has filed a Notice of Exemption in accordance with Title 14, California Code of Regulations, Section 15269(c) (emergency exemption). The Board also finds that this is an emergency project exempt from the California Environmental Quality Act in accordance with said Section.

Public Interest

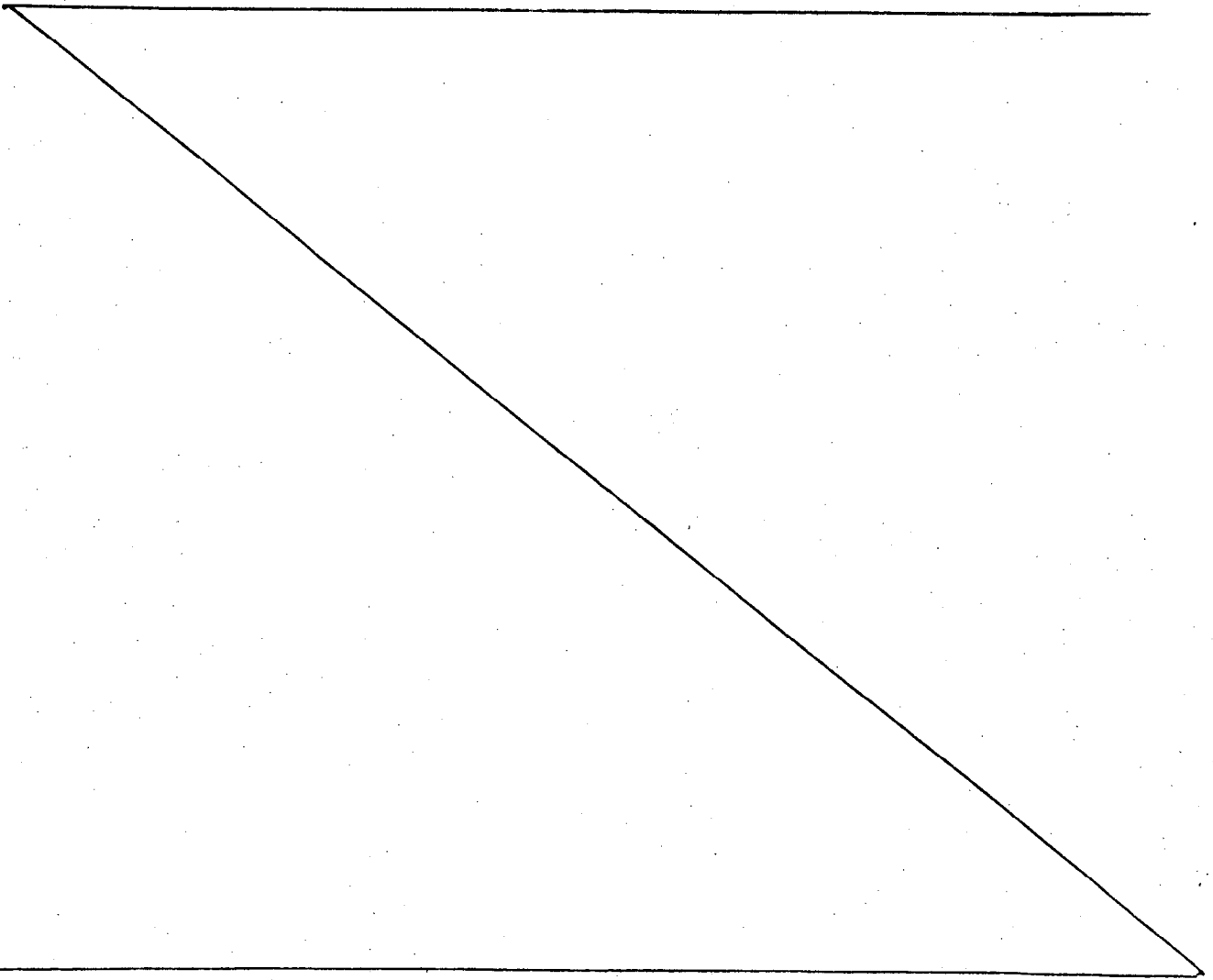
22. The Board concludes that the proposed diversion and use of water is in the public interest and in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

Issuance of Temporary Permit

23. Water Code Section 1425 provides for delegation of the authority to issue temporary permits. The Board has delegated this authority to each Board Member. Section 1425 further requires that when the delegated authority is

exercised, the Board shall, not later than 30 days following issuance, review and validate any temporary permit issued.

24. Board staff explained the foregoing situation to Board Chairman Maughan and recommended approval of the temporary permit. Board Chairman Maughan concurred with the staff recommendation, and on April 24, 1989, authorized issuance of the temporary permit. On the same day, Walter G. Pettit,



Chief of the Division of Water Rights, issued Temporary
Permit 20321.

ORDER

NOW THEREFORE, IT IS ORDERED THAT issuance of Temporary Permit
20321 to the City of Stockton is validated subject to the
conditions specified in the permit.

CERTIFICATION

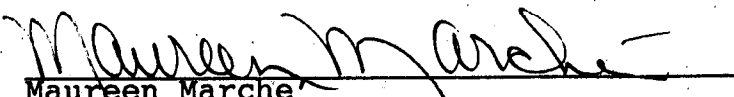
The undersigned, Administrative Assistant to the Board, does
hereby certify that the foregoing is a full, true, and correct
copy of an order duly and regularly adopted at a meeting of the
State Water Resources Control Board held on May 16, 1989.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego

NO: None

ABSENT: Danny Walsh

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board