

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the)	ORDER:	WR 89-14
Determination of the Rights)		
of the Various Claimants)	SOURCE:	San Gregorio
to the Waters of)		Creek Stream
)		System
SAN GREGORIO CREEK STREAM)		
SYSTEM,)	COUNTY:	San Mateo
)		
In San Mateo County,)		
California)		
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ORDER APPROVING AND DENYING PETITIONS FOR RECONSIDERATION
OF ORDER WR 89-7

BY THE BOARD:

1.0 INTRODUCTION

The Board having adopted the Order of Determination for the San Gregorio Creek Stream System Adjudication (Resolution No. 89-29) on April 20, 1989; the Board having received timely petitions for reconsideration from Michael Urgo, Hilbert and Daniel Murillo, Michael and Jennifer Ross, Raymond and Lynn Roberts, Bruce and Nancy Turner, Steve Rogers, the California Department of Parks and Recreation (DPR), and Tim and Joy Oden; and the Board having considered the petitions, finds as follows:

2.0 GROUNDS FOR RECONSIDERATION

Water Code Section 2702(a) provides that any party affected by an Order of Determination may petition the

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Board for reconsideration. Resolution No. 89-29 which approved the Order of Determination states that the Board shall order reconsideration on petitions which are filed in a timely manner and which allege that:

- "(1) Property was acquired without actual or constructive notice of the adjudication proceedings and a use of surface water of the San Gregorio Creek Stream System is being made which is not authorized in the order; or,
- "(2) The claimant or successor in interest has changed the purpose of use or place of use of water from the allocation specified in the order of determination."

All other petitions must be justified on a case by case basis consistent with Title 23, California Code of Regulations Section 768 which provides that reconsideration of a Board order may be requested for any of the following causes:

- "(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- "(b) The decision or order is not supported by substantial evidence;
- "(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- "(d) Error in law."

3.0 **SUMMARY AND DISCUSSION OF PETITIONS**

3.1 Petition of Michael Urgo

Summary of Petition

On May 16, 1989, Michael Urgo filed a petition for reconsideration. He requests an increase in his domestic allotment from his shallow well or the tributary to San Gregorio Creek from 500 gallons per day (gpd) to 1,000 gpd. He also requests an allotment of 7,460 gpd, second priority, from San Gregorio Creek for irrigation of two acres. He states that the reason he did not present evidence of the use of irrigation water from San Gregorio Creek at the hearing on objections was that it was not needed "because of what was stated and observed in the original claim and field investigation." The Order of Determination does not allocate any water to Michael Urgo from San Gregorio Creek for irrigation use.

Discussion

Michael Urgo requests that the domestic allotment from his well or the tributary to San Gregorio Creek be increased from 500 gpd to 1,000 gpd because the number of family members living in his home can triple for half of the year. On April 10, 1989, Mr. Urgo wrote to the Board and requested this increase in his domestic allotment because he is in the process of enlarging his

home and during the summer months he will be sharing his home with another family.

The Order of Determination allocates water based on the actual use of water as of September 20, 1985. The standard domestic allotment is 500 gpd per residence. Allocations are not given for prospective uses of water.

Because the request made in this petition is for an increase in an allotment it does not qualify under either circumstance described in Resolution 89-29. Nor can the requested increase be justified under any of the causes for reconsideration listed in Section 768 of Title 23, California Code of Regulations.

The Order of Determination provides several mechanisms for obtaining additional water after the San Mateo County Superior Court enters a decree in this matter. Paragraphs 27 and 28 of the Order allow persons to apply to the Court or to the Board to activate unexercised riparian rights or to increase an allotment under a riparian right and Paragraph 14 of the Order allows persons to apply to the Board for an appropriative right. An application to appropriate water can be filed at any time. Use of the

reconsideration process to expand a riparian claim based on a prospective use is inappropriate because the water apportioned to all other riparian claimants was based on actual use as of September 20, 1985.

Mr. Urgo also requests that he be allotted 7,460 gpd, second priority, for irrigation of two acres of riparian land from San Gregorio Creek. On page two of his petition, he states that the reason he did not present evidence regarding his use of water for irrigation at the hearing on objections was that "at the time of the hearing these facts I feel, were not needed, because of what was stated and observed in the original claim and field investigation."

On July 10, 1980, Board staff conducted a field inspection of Mr. Urgo's property. The notes of the field inspection do not mention any use of water from San Gregorio Creek for irrigation.

Mr. Urgo filed a Proof of Claim of Water Right on February 17, 1981, in which he claimed a riparian right to water from San Gregorio Creek. However, the only source of water described in the Proof of Claim was an eight foot deep well for year round domestic use. He did not claim any water for irrigation use from San

Gregorio Creek. The description of his use of water and the findings of the Board regarding his water rights are summarized in Part II of the Report on San Gregorio Creek Adjudication as follows:

"Abstract of Claim. Michael Urgo, Box 63, Star Route 1, La Honda, CA 94020, claims water by riparian right from San Gregorio Creek for an unspecified amount all year for domestic purposes. Claimant states that the current water supply is from a hand-dug, shallow well, possibly not water from the underflow from San Gregorio Creek.

"Findings of the Board. The Claimant's property is riparian to San Gregorio Creek and the source of water is believed to be underflow. He is allotted 650 gallons per day (gpd) for domestic use including domestic irrigation. See Paragraphs 26 and 27, Section III, regarding future use of water under unexercised riparian rights." (Report, p. II-8)¹

On December 16, 1984, Mr. Urgo filed an objection to the Report. He did not object to the absence of an allocation for irrigation use from San Gregorio Creek.

Mr. Urgo testified at the hearing on objections on August 14, 1985. He did not present any evidence on his use of water from San Gregorio Creek for irrigation (Transcript of Board's hearing on August 14, 1985, Vol. I, pp. 37-40). Since there was no evidence presented regarding the use of water for irrigation

¹ Paragraphs 26 and 27, Section III, provide mechanisms for activating dormant riparian rights.

from San Gregorio Creek, no water was allotted to Mr. Urgo for this purpose from San Gregorio Creek.

Paragraphs 27 and 28 of the Order provide several mechanisms for activating dormant riparian rights. It is inappropriate to use the reconsideration process for this purpose.

3.2 Petition of Hilbert and Daniel Murillo

Summary of Petition

On May 19, 1989, Hilbert and Daniel Murillo filed a petition for reconsideration on the grounds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced. The Murillo's request an allotment from a spring located at the head of Spanish Ranch Creek for domestic use. The Order does not allocate any water to the Murillo's from this or any other source.

Discussion

Hilbert and Daniel Murillo allege that they acquired their property in 1977. They are using water from a spring located at the headwaters of Spanish Ranch Creek and their use of water is not authorized in the Order. The files do not indicate that the Murillo's received notice of the Board's proceedings in this adjudication.

The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89-29).

3.3

Petition of Michael and Jennifer Ross

Summary of Petition

On May 23, 1989, Michael and Jennifer Ross filed a petition for reconsideration on the grounds that they acquired title to their property on September 15, 1986 without actual or constructive notice of the adjudication proceedings and that a use of surface water is being made for domestic use which is not authorized in the Order.

Discussion

Michael and Jennifer Ross allege that they acquired their property on September 15, 1986. A use of surface water is being made which is not authorized in the Order. The Ross's allege that they had no actual or constructive notice of the adjudication proceedings and our files do not contain any evidence to the contrary. The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89-29).

Petition of Raymond and Lynn RobertsSummary of Petition

On May 30, 1989, Raymond and Lynn Roberts filed a petition for reconsideration on the grounds that they acquired title to their property in 1983 without actual or constructive notice of the adjudication proceedings and a use of surface water is being made which is not authorized in the Order. They request an allotment of water to irrigate a one-quarter acre site on their property.

Discussion

Raymond and Lynn Roberts allege that they acquired their property in 1983 without actual or constructive notice of the adjudication proceedings. Their property is riparian to San Gregorio Creek and their use of water from San Gregorio Creek for irrigation is not authorized in the Order. The files do not indicate that the Roberts' received a copy of the Report or the notice of adoption of the Report which informed interested parties of the objection procedure. Therefore, they were not able to object to the Report. The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89-29).

Petition of Bruce and Nancy TurnerSummary of Petition

On May 30, 1989, Bruce and Nancy Turner filed a petition for reconsideration on the grounds that they acquired title to property without actual or constructive notice of the adjudication proceedings and a use of surface water is being made which is not authorized in the Order. They request the following allotments:

- a. 510 gpd, first priority, for inside residential domestic use;
- b. 4,029 gpd, second priority, for domestic irrigation of one-half acre of lawn and garden;
- c. 21,522 gpd, second priority, for irrigation of five acres of orchards, gardens, and lawn.

Discussion

Bruce and Nancy Turner allege that they acquired their property on June 16, 1984 without actual or constructive notice of the adjudication proceedings. They allege that their property is riparian to San Gregorio Creek. A use of water is being made which is not authorized in the Order. The files do not indicate that the Turner's received a copy of the Report or the

notice of adoption of the Report which informed interested parties of the objection procedure. Therefore, they were not able to object to the Report. The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89-29).

3.6 Petition of Steve Rogers

Summary of Petition

On May 31, 1989, Steve Rogers filed a petition for reconsideration on the grounds that he acquired title to property in December 1986 without actual or constructive notice of the adjudication proceedings and surface water is being used for domestic purposes which is not authorized in the Order. He requests an allotment for domestic use.

Discussion

Steve Rogers alleges that he acquired property within the County Service Area No. 7 (CSA No. 7) in December 1986 without actual or constructive notice of the adjudication proceedings. Mr. Rogers' water supply is furnished by the County of San Mateo. Mr. Roger's use of water is not authorized in the Order. Further, no water was allotted to CSA No. 7 for this property. Although the County of San Mateo, operator of CSA

No. 7, did receive notice of and has participated in the adjudication proceedings, Mr. Rogers apparently did not receive any notice and was unable to participate. The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89-29).

3.7

Petition of California Department of Parks and Recreation

Summary of Petition

On May 31, 1989, the California Department of Parks and Recreation (DPR) filed a petition for reconsideration on the grounds that there is relevant information which, in the exercise of reasonable diligence, could not have been produced. DPR has now completed a four year study begun in late 1984 of central coastal lagoons and their fish and invertebrate populations. As a result of information contained in the study, DPR requests that Paragraph 24(b) on page 84 of the Order be revised as follows:

"May 1 to June 15 - 10 cubic feet per second when the sand bar at the mouth of San Gregorio Creek is open and for 45 days after the sand bar has closed or until the lagoon is unstratified; 2 cubic feet per second when the sand bar is closed after the lagoon has become unstratified. If, at any time the lagoon again opens, a flow of 10 cubic feet per second will be maintained for an additional 45 days."

Discussion

DPR began a four year study of central coastal lagoons and their fish and invertebrate populations in late 1984. Because the study had only begun at the time objections were filed, DPR was not able to analyze the data in order to make any conclusions with regard to the bypass flows or to provide the Board with the results of the study either by February 1, 1985 (deadline for filing objections) or September 20, 1985 (close of the Board's record in the hearing on objections). DPR has concluded the study and is currently able to provide relevant evidence which, in the exercise of reasonable diligence could not have been produced during the hearing on objections to the Report on San Gregorio Creek Adjudication. DPR's petition qualifies under 23 CCR 768(c).

3.8

Petition of Tim and Joy Oden

Summary of Petition

On May 30, 1989, Tim and Joy Oden filed a petition for reconsideration on the grounds that they acquired title to the property without actual or constructive notice of the adjudication proceedings and that a use of surface water for domestic use is being made which is not authorized in the Order. They request an allotment of water for domestic and livestock uses on two parcels.

Discussion

Tim and Joy Oden own two parcels within the San Gregorio Creek Stream System. They allege that they purchased the 43 acre parcel in 1983 and the 3 acre parcel in 1985. The files do not indicate that the Oden's received any notice of the adjudication proceedings. A use of surface water is being made on the 43 acre parcel which is not authorized in the Order. The Board has previously decided that reconsideration would be ordered under this circumstance (Resolution No. 89- 29). However, no use of surface water is being made on the 3 acre parcel. Therefore, the 3 acre parcel does not qualify under the provisions of Resolution No. 89-29. Allocations are not given for prospective uses of water.

4.0 CONCLUSIONS

4.1 Petition of Michael Urgo

Mr. Urgo's petition does not qualify for reconsideration under either circumstance described in Resolution No. 89-29 nor does it qualify under any cause stated in 23 CCR 768. Therefore, the petition for reconsideration should be denied.

4.2

Petitions Which Qualify Under Resolution No. 89-29

The petitions of Hilbert and Daniel Murillo, Michael and Jennifer Ross, Raymond and Lynn Roberts, Bruce and Nancy Turner, Steve Rogers, and Tim and Joy Oden (as it relates to the 43 acre parcel only) qualify under Resolution No. 89-29. Therefore, they should be approved.

4.3

Petitions Which Qualify Under 23 CCR 768

DPR's petition qualifies under 23 CCR 768(c).

Therefore, it should be approved.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the petition for reconsideration of Michael Urgo is denied. The petitions for reconsideration of Hilbert and Daniel Murillo, Michael and Jennifer Ross, Raymond and Lynn Roberts, Bruce and Nancy Turner, Steve Rogers, and the California Department of Parks and

Recreation are approved. The petition of Tim and Joy Oden is approved as it relates to the 43 acre parcel and it is denied as it relates to the 3 acre parcel.

CERTIFICATION

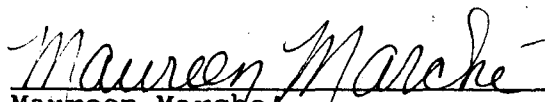
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 5, 1989.

AYE: W. Don Maughan
Darlene E. Ruiz
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None



Maureen Marche
Administrative Assistant
to the Board