

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Conditional Temporary)
Urgency Change Order on Permit 16482,)
issued pursuant to Application 17512,)
STATE DEPARTMENT OF WATER RESOURCES)
Permittee.)

ORDER: WR 89-24

SOURCES: Sacramento-San Joaquin
Delta and San Luis Creek

COUNTIES: Sacramento, Contra Costa
and Merced

ORDER VALIDATING AND FURTHER CONDITIONING THE ISSUANCE OF A
CONDITIONAL TEMPORARY URGENCY CHANGE ORDER
ALLOWING CHANGE IN PLACE OF USE FOR DELIVERY OF WATER
TO WESTLANDS WATER DISTRICT

BY THE BOARD:

The State Department of Water Resources (DWR) having filed a petition for Temporary Urgency Change in the place of use pursuant to Chapter 6.6 (commencing with Section 1435), Part 2, Division 2 of the Water Code; the State Water Resources Control Board (Board) having consulted with the Department of Fish and Game (DFG); Board Chairman Maughan, on September 21, 1989, having concluded from available information that a conditional temporary urgency change order (Order) was appropriate, and having issued said Order subject to review and validation by the Board within 30 days, as provided by Water Code Section 1435(d); the Board finds as follows:

SUBSTANCE OF THE PETITIONED CHANGES:

1. On September 13, 1989, DWR petitioned the Board to authorize a temporary change in place of use under Permit 16482 to be effective from the date of the conditional order through December 31, 1989.

2. The petitioned change is for Westlands Water District (Westlands) to be temporarily added to the place of use under this permit. The petitioned change would allow the transfer of up to 55,000 acre-feet (af) of water from Kern County Water Agency (Kern) to Westlands for use by exchange in their Priority II contract area.

ACTION BY BOARD CHAIRMAN MAUGHAN:

3. On September 21, 1989, Board Chairman Maughan, in accordance with Water Code Section 1435(d) and Board Resolution No. 84-2, issued a Conditional Order authorizing the petitioned change, subject to several specified conditions including certification by DWR that the transfer/exchange will be executed as proposed in the petition and that an annual report will be provided to the Board of the amount of water transferred and amount returned each year, until all the water is repaid. The Board concurs in and incorporates herein by reference the findings set forth in that Order.

NOTICE OF THE PETITION:

4. On September 25, 1989, Notice of the petition for the temporary urgency change was mailed to interested parties.
5. In accordance with Water Code Section 1438(b)(1), the Notice was published in the September 30, 1989 edition of the Bakersfield Californian newspaper.
6. The final date for submitting objections was October 12, 1989.

COMMENTS AND OBJECTIONS:

7. We received comments or objections to the petition for a temporary urgency change from Environmental Defense Fund (EDF), Bay Institute of San Francisco, the Four Entities (Central California Irrigation District, Firebaugh Canal Water District, Columbia Canal Company, San Luis Canal Company), and California Sportfishing Protection Alliance (CSPA).

- a. The EDF, CSPA, and the Bay Institute of San Francisco oppose any increase in exports from the Delta as a result of the repayment of exchange water to Kern by Westlands, and EDF requests that this change be conditioned to prevent a resulting increase in exports from the Delta. CSPA (objections 7, 8, 9, and 10) and Bay Institute assume that this change will result in future increased diversions from the Delta to repay Kern, and argue that an Environmental Impact Report is required before this change can be approved. DWR, in its petition, stated that the 1989 transfer amount would be returned to Kern in future years from water that would otherwise be delivered to Westlands under existing contracts with no net increase in exports from the Delta. A condition in this Order would help ensure that no unreasonable impacts on beneficial uses will occur as a result of this temporary change. Such a condition would also be in accordance with our recent policy direction in Orders WR 89-20 and WR 89-21 that we will not approve increased Delta exports in the absence of an adequate environmental assessment which addresses potential fishery impacts and other environmental effects of the proposed project. Consequently, we will condition this change to (1) prohibit additional diversions from the Delta to repay Kern, and (2) require the permittee to notify the Chief of the Division of Water Rights at least thirty days before each

payback will begin and to show, at that time, that each payback will not result in an increase in Delta exports.

- b. The EDF, the Bay Institute, and the Four Entities object to any increase in adverse drainage impacts from Westlands Water District as a result of this temporary urgency change. We have reviewed this issue and we find that no significant impact will occur, for the reasons stated in Finding 6 of the conditional temporary urgency change order dated September 21, 1989. Condition 10 of the September 21 order will assure that the transferred water is used in the manner assumed in Finding 6 of that order. As stated above, there will be no additional diversions from the Delta because of the paybacks. Instead, the paybacks to Kern will come from Westlands' usual allotments. As a result, over the ten-year payback period there will be no increase in the total amount of water for irrigation of Westlands and no increase in the drainage from Westlands because of this temporary change. To the extent that the objectors are objecting to alleged ongoing drainage problems, such problems should be addressed in a different proceeding, not in this temporary change proceeding.
- c. The Bay Institute commented that the Board did not give it notice of the petition for temporary urgency change considered herein. We have reviewed our records and we find that the Board did send a copy of the notice to Bill Kier, the contact person of record for the Bay Institute.
- d. CSPA's objections numbered 1 through 5 are addressed to past decisions of the Board and not to the petition for temporary urgency change

herein. Consequently, they are irrelevant and will not be considered in this Order.

- e. CSPA argues in its objection number 6 that the water not used by Kern should be used for additional Delta outflow rather than as petitioned. Absent this change, Kern would use the water for groundwater recharge this year under existing authorizations rather than forfeit it. Consequently, the choice of use of this water is between groundwater recharge in Kern's area and irrigation in Westlands.

CONCLUSION:

8. Based on the above findings, the Board concludes that the September 21, 1989 conditional temporary urgency change order issued by Board Chairman Maughan should be validated subject to the following further conditions.

ORDER

IT IS HEREBY ORDERED THAT:

1. The issuance of the September 21, 1989 conditional temporary urgency change order by Board Chairman Maughan temporarily authorizing a change in the place of use, under Permit 16482, is hereby validated subject to the terms and conditions specified in that Order and the following conditions.
2. Westlands' payback of transferred water under this order shall not result in any additional diversions from the Delta as a result of this change.

3. The permittee shall notify the Chief of the Division of Water Rights when water made available under this conditional temporary urgency change is to be paid back to Kern. These notices shall include documentation that the payback will not result in an increase in Delta exports beyond that which would have occurred without this change. The notifications shall be submitted to the Division Chief thirty days prior to each payback period.

4. Permit 16482 shall remain subject to the terms and conditions of this temporary urgency change until the water made available under this change is repaid to Kern.

CERTIFICATION

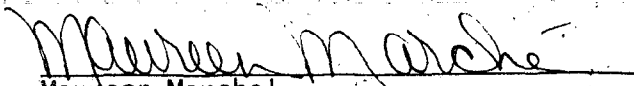
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 19, 1989.

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

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary
Permit 20386 (Application 29601) of
RICO AND DEBORAH PETRINI
Permittee,

ORDER: WR 89-26
SOURCE: Purisima Creek
COUNTY: San Mateo

FINDINGS AND ORDER VALIDATING
TEMPORARY PERMIT

Rico and Deborah Petrini having filed Application 29601 for a conditional temporary urgency 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 (State Board) having consulted with the California Department of Fish and Game; State Board Chairman W. Don Maughan having reviewed available information and having authorized issuance of a temporary permit; a temporary permit having been issued on November 6, 1989; the State Board finds as follows:

SUBSTANCE OF THE APPLICATION

1. On October 30, 1989, Rico and Deborah Petrini filed Application 29601 for a conditional temporary permit to directly divert 1,000 gallons per day from November 2, 1989 through April 30, 1990. The total amount of water taken from the source will not exceed 0.56 acre-feet. The water will be diverted

from Purisima Creek via a one-inch PCV pipe, and will be used for domestic use and fire protection at the applicants' residence.

Temporary Urgency Need of Applicant to Divert and Use Water

2. Until recently, the permittees have relied on a well located on their property for water to supply their needs. When the permittees purchased the property approximately four years ago, the well seemed to be in good working order. Since that time the steel well casing has deteriorated and this has resulted in severely impairing the quality of the water. Over the past four years, the permittees have spent approximately \$37,000 to renovate the well, drill additional wells and remedy the quality problem, but to no avail. Yield from the new wells has been minimal or nonexistent and is not adequate to meet the permittees' domestic needs. In recent months, the permittees have been trucking in water to supply their internal household needs.

3. In addition to their temporary permit, the permittees have submitted an application to the State Board for appropriation of unappropriated water by direct diversion and storage. The applicants state that they have adequate financial resources and will be able to purchase storage tanks within two to three months from the date of issuance of a regular permit. The permittees may also pursue purchasing water from another lawful user if a regular water right permit is not granted prior to expiration of their temporary permit or if the season or amount granted in the regular permit is not adequate to meet their needs.

4. Based on the above information, the State Board concludes that Rico and Deborah Petrini have an urgent temporary need to divert and use water as authorized by Temporary Permit 20386, and that they have taken steps to provide water for their needs after expiration of the temporary permit.

Effect of the Diversion on Other Lawful Users of Water

5. The location of the Point of Diversion is within the boundaries of the Purisima Creek Adjudication (Adjudication), Superior Court of San Mateo County, No. 278007, Modified and Amended Decree. Paragraph 23 of the modified decree provides that at times when the flow of Purisima Creek at the Purisima Creek Road upper bridge exceeds 3.52 cubic feet per second, water surplus to that allocated in the decree will be present. When the flow rate is less than this amount, the decree provides for distribution of the entire flow of Purisima Creek to various water right holders. In accordance with paragraph 10(g) of the decree, the priority of the Petrini's right to divert water under Temporary Permit 20386 is junior in priority to all the claimants listed in the decree.
6. The seasons of use described in Paragraph 12 of the decree are as follows: Allotments by direct diversion for irrigation shall be for continuous use from March 1 to October 31 of each year; allotments by direct diversion for domestic and stockwatering purposes shall be for continuous use throughout the year.
7. To protect the rights specified in the Adjudication, Temporary Permit 20386 contains the following special terms. Term 11 of the temporary permit

states that the rights under the temporary permit are specifically subject to the existing rights determined by the Adjudication. Term 14 of the temporary permit states that diversion of water during the primary season of diversion under the Adjudication shall be subject to regulation by the watermaster appointed to enforce the terms of the Adjudication.

8. Application 29601 was noticed on November 2, 1989, in accordance with the Water Code. Notice was sent to all affected downstream diverters and interested parties known to the State Board, and objections were due November 9, 1989.

Two parties responded to the notice and their responses are briefly summarized below:

- (a) Judy Mariant representing the California Coastal Commission (Commission) telephoned state Board staff with some questions regarding the protection of downstream agricultural users and about the acquisition of water rights in general. After her questions were answered, she said that she was satisfied with the project and that the Commission had no other concerns with the project.
- (b) John L. deBenedetti III objected to the project on behalf of the deBenedetti family. The objection was filed on the grounds that it exceeds emergency requirements when other solutions might be available; that it could be precedent setting; and that it might be hard to terminate the temporary permit once it is issued by the State Board.

The deBenedetti family is a claimant listed in the Adjudication. As mentioned above, the temporary permit contains terms which make it specifically subject to the adjudicated rights and subject to regulation of the watermaster appointed to enforce the terms of the Adjudication. Terms 10 and 13 of the temporary permit, respectively, are meant to prevent concerns pertaining to termination of the temporary permit, and setting of precedents by the temporary permit. Furthermore, the transmittal letter sent with the temporary permit to the permittees specifically says that, due to the findings of the Adjudication, the State Board will not extend the permit during the summer months of 1990 nor should the permittees anticipate issuance of a new temporary permit during the winter months of 1990-91.

9. The State Board concludes that, subject to adjudicated rights, the water is available for diversion and use under the temporary permit without injury to lawful users of water.

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

10. State Board staff has contacted representatives of the California Department of Fish and Game. They have reviewed the Petrini's request to divert water through April 30, 1990 and have advised staff that the proposed temporary diversion is not expected to adversely affect fish, wildlife or other instream beneficial uses. They have not proposed additional terms for inclusion in the temporary permit. Therefore, the State Board concludes that the water may be diverted and used under the temporary permit without unreasonable adverse effect upon fish, wildlife, or other instream beneficial uses.

Findings Concerning the California Environmental Quality Act

11. The project is an emergency project and a Notice of Exemption has been filed in accordance with Title 14, California Code of Regulations, Section 15269(c) (emergency exemption).

Public Interest

12. The State Board concludes that diversion and use under Temporary Permit 20386 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

13. Water Code Section 1425 provides for delegation of the authority to issue temporary permits. The State Board has delegated this authority to each State Board Member. Section 1425 further requires that when the delegated authority is exercised, the State Board shall, not later than 30 days following issuance, review and validate any temporary permit issued.
14. State Board staff explained the foregoing situation to State Board Chairman Maughan and recommended approval of the temporary permit. State Board Chairman Maughan concurred with the staff recommendation and authorized issuance of the temporary permit. On November 6, 1989, Walter G. Pettit, Chief of the Division of Water Rights, issued Temporary Permit 20386.

ORDER

NOW THEREFORE, IT IS ORDERED THAT issuance of Temporary Permit 20386 is validated subject to the conditions specified in the permit.

CERTIFICATION

The undersigned, Administrative Assistant to the State 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 November 16, 1989.

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

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

