

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary
Permit 20571 (Application 30027)

DELTA WETLANDS, Permittee

ORDER: WR 91-10

SOURCE: Holland Cut
Tributary to Old River

COUNTY: Contra Costa

FINDINGS AND ORDER VALIDATING THE
ISSUANCE OF TEMPORARY PERMIT

Delta Wetlands having filed Application 30027 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 (State Board) having consulted with the California Department of Fish and Game (DFG), the California Department of Water Resources (DWR), the United States Bureau of Reclamation (USBR) and other known diverters of water; the Executive Director, Walter G. Pettit having reviewed available information, authorized issuance of a temporary permit to divert and use water subject to review and validation by the State Board as provided by Water Code Section 1425(d); a temporary permit having been issued on November 15, 1991; the State Board finds as follows:

Issuance of Temporary Permit

1.0 Water Code Section 1425(d) provides for delegation of the authority to issue temporary permits. The State Board has delegated this authority to Walter G. Pettit. When this authority is exercised, Water Code Section 1425(d) further requires that the State Board review and validate any temporary permit so issued within 30 days of issuance. On November 14, 1991, Executive Director Walter G. Pettit authorized issuance of the temporary permit, and on November 15, 1991, the Chief of the Division of Water Rights (Division) issued Temporary Permit 20571. The matter is before the State Board for review and validation.

Substance of the Application and Project

2.0 Temporary Permit 20571 (Application 30027) is for direct diversion and use of water from Holland Cut tributary to Old River thence San Joaquin River in Contra Costa County. The temporary permit authorizes Delta Wetlands to divert up to 900 acre-feet of water from November 15, 1991 to May 2, 1992 for water quality evaluation purposes. The point of diversion is located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 30, T2N, R4E, MDB&M.

3.0 Delta Wetlands plans to fill an existing demonstration pond in order to study potential organic loading and dilution that may occur on Delta Wetlands project islands as a result of storage operations under proposed

Delta Wetlands pending applications. The demonstration pond has a capacity of 150 acre-feet and a surface area of 50 acres. The pond is located in portions of Sections 24, 19, and 30, all with T2N, R3E, MDB&M. The pond may be filled up to six times during the diversion period.

Urgent Need of Permittee to Divert and Use Water

4.0 Delta Wetlands has filed Applications 29061, 29062, 29063, and 29066 with the Division of Water Rights. Under the project proposed by these applications, Delta Wetlands proposes to store 312,000 acre-feet of water on four Delta islands during periods of high Delta flow. Water will then be released into the Delta from the islands during the low flow period of May, June and July for export or to meet instream needs. Pursuant to the California Environmental Quality Control Act (CEQA), a draft Environmental Impact Report (EIR) was prepared and was released for public comment during December 1990. As a result of the comments received, additional water quality studies have been proposed. These studies must be conducted during the winter and early spring months when water may be available for diversion and use. Furthermore, the timely completion of the EIR requires that the studies be completed as soon as possible. Consequently, the State Board finds that the Delta Wetlands has an urgent need to divert and use water under the temporary permit.

A term has been included in the permit which prohibits the diversion of water under the temporary permit until a study protocol has been submitted to the Division and has been determined to be acceptable by the Division Chief. The same term requires Delta Wetlands to prepare and submit to the Division Chief a report of evaluation along with potential impacts on water quality.

Notice of Temporary Permit

5.0 Public notice of the application for the temporary permit was issued on October 30, 1991. In accordance with Water Code Section 1428, copies of the notice were posted and mailed to all known interested parties and diverters from the source stream system.

Objections

6.0 Written objections to the permit were received from DWR, United States Fish and Wildlife Service (USFWS), and DFG. DWR requested that any permit issued by the State Board include the State Board's standard permit term 91 which prohibits the diversion of water when supplemental project water is being released from the Central Valley Project (CVP) or the State Water Project (SWP) to satisfy inbasin requirements. USFWS requested that the State Board require a State Board approved monitoring program for Delta smelt, that Delta Wetlands be required to monitor

intake and discharge water quality, and that diversions be permitted only when the Delta is "measurably out of balance" with respect to water quality standards and conditions required by State Board Decision 1485. DFG requested that diversions be permitted only when the Delta Cross Channel gates near Walnut Grove are closed and when supplemental water is not being released from the CVP or SWP to meet inbasin entitlements. DFG further requested that Delta Wetlands be required to install and maintain fish screens acceptable to DFG and that diversions between February and June be prohibited unless and until a diversion schedule can be agreed upon by DFG and Delta Wetlands which will not cause injury to Delta smelt.

Oral comments were received from USBR which requested that no diversions be allowed when water for inbasin entitlement is being released from the CVP or the SWP. No other comments or objections were received.

Effect of the Diversion on Other Lawful Uses of Water

7.0 Term 8 of the temporary permit prohibits the diversion of water if water is being released from storage from the SWP or the CVP to comply with State Board Decision 1485 standards and conditions and requires that Delta Wetlands contact USBR to determine when water is available for diversion. Term 12 of the temporary permit is State Board standard

permit term 91 as requested by DWR. These terms were included to satisfy objections regarding any potential impact the study may have on other legal water users. With these terms and conditions, the State Board finds that water may be diverted and used under Temporary Permit 20571 without injury to any lawful user of water.

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

8.0 DFG and USFWS have both expressed concerns regarding potential adverse effects to Delta smelt which are proposed for listing as a threatened species under the federal Endangered Species Act. In order to provide protection for Delta Smelt, Term 11 prohibits the diversion of water between February 1 and May 2, 1992 without the approval of DFG and USFWS.

The temporary permit contains additional terms whose purpose is to ensure that fish and wildlife are adequately protected from potential negative impacts which may result from the project. These include term 9 which prohibits the diversion of water until Delta Wetlands installs fish screens adequate to DFG and term 10 which prohibits the diversion of water when the Delta Cross Channel gates are open.

Because the terms and conditions included in Temporary Permit 20571 satisfy the objections that the State Board received based on environmental concerns and because the temporary permittee is prohibited

from diverting water when water must be released from the CVP and the SWP to meet required water quality standards, the State Board finds that water may be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses.

Findings Concerning the California Environmental Quality Act

9.0 The State Board finds that the project meets the requirements of Section 15306 of the California Code of Regulations, Title 14 and is a Class 6 Categorical Exemption (Information Collection).

Public Interest

10.0 Diversion and use of water by Delta Wetlands under Temporary Permit 20571 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 20571 is validated subject to the conditions specified in the permit.

CERTIFICATION

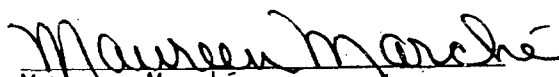
The undersigned, Administrative Assistant to the State Board, does hereby certify that the foregoing is a full, true and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 12, 1991.

AYE: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego
John Caffrey

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to
the Board