

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary Permit 20620 (Application 30128)	)	)	ORDER:	WR 92-06
	)	)	SOURCE:	Shaw Gulch
	)	)		
Conrad and Nellie Dell'Oca, Living Trust, Permittee	)	)	COUNTY:	San Mateo

---

FINDINGS AND ORDER VALIDATING THE  
ISSUANCE OF TEMPORARY PERMIT

Conrad and Nellie Dell'Oca Living Trust hereinafter referred to as Dell'Oca, having filed Application 30128 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 Water Board) having consulted with the California Department of Fish and Game; the Executive Director, Walter G. Pettit having reviewed available information and authorized issuance of a temporary permit to divert and use water subject to review and validation by the State Water Board as provided by Water Code Section 1435(d); a temporary permit having been issued on May 20, 1992; the State Water Board finds as follows:

Issuance of Temporary Permits

- 1.0 Water Code Section 1425(d) provides for delegation of the authority to issue temporary permits. The State Water Board has delegated the authority to authorize issuance of temporary permits to Walter G. Pettit.

When this authority is exercised, Water Code Section 1425(d) further requires that the State Water Board review and validate any temporary permit so issued within 30 days of issuance. On May 20, 1992, Executive Director Walter G. Pettit authorized issuance of the temporary permit and on the same date, the Chief of the Division of Water Rights (Division) issued Temporary Permit 20620. The matter is before the State Water Board for review and validation.

### Substance of the Applications and Project

- 2.0 Temporary Permit 20620 is for the withdrawal of 703,588 gallons from storage in an existing reservoir on Shaw Gulch tributary to Bradley Creek thence Pescadero Creek in San Mateo County. The reservoir is located within the NE 1/4 of the SE 1/4 of fractional Section 34, T7S, R5W, MDB&M. The water will be used to irrigate 10 acres of existing vegetables and herbs planted within the NE 1/4 of the SE 1/4 and the W 1/2 of projected fractional Section 34. The season of diversion is from May 20 to October 14, 1992.
- 3.0 Collection and use of water in the reservoir is authorized by Permit 20239 (Application 28507) issued to Charles and Judith Butler (Butler) in July 1985. A small portion of the reservoir inundates land owned by Dell'Oca and Dell'Oca's tenant farmer has been irrigating crops with water pumped from that portion of the reservoir overlying Dell'Oca property. The acreage being irrigated, however, is not included in the place of use for Permit 20239.

## Litigation

4.0 Butler filed suit in Superior Court of San Mateo County seeking, among other matters, an injunction to prevent Dell'Oca from pumping water out of the reservoir. On December 19, 1991, the Superior Court issued a Memorandum of Decision which generally defined the rights of each party and which appointed the State Water Board to render an informal opinion as to the best physical solution of this matter. The Court also enjoined Dell'Oca from removing water from the reservoir until authorized to do so by the State Water Board. A recommendation to the Court is pending.

## Urgent Need of Permittee to Divert and Use Water

5.0 As long as the reservoir is spilling, it appears that Dell'Oca can divert water under claim of riparian right. When the reservoir stopped spilling this year, Dell'Oca was without a source of irrigation water for previously planted crops as he cannot legally use water stored in the reservoir until such diversion is authorized by the State Water Board. In consideration of the above circumstances, the State Water Board finds that Dell'Oca has an urgent need to divert and use water under the temporary permit.

## Stipulation Regarding Temporary Permit

6.0 State Water Board staff informed Dell'Oca that in view of the Superior Court's Memorandum of Decision, the State Water Board would not issue a

temporary permit without approval of the Court. Based on a field inspection in April 1992, Division staff made a preliminary estimate that the recommendation to the Court will be to allow diversion of up to 2.32 acre-feet of stored water from the reservoir for use on the Dell'Oca property. The respective parties stipulated that they do not object to the State Water Board taking action to expeditiously process the application for a temporary permit to divert 2.32 acre-feet of stored water from the reservoir and approving such application if the State Water Board concludes that applicable statutory requirements are met.

7.0 The parties also stipulated that the temporary permit be conditioned as follows:

- (1) The amount of 2.32 acre-feet is to be reduced by 52,500 gallons which Dell'Oca diverted from the reservoir on April 30, 1992;
- (2) All water diverted from the reservoir is to be metered;
- (3) Notification is to be given to Butler before and after pumping;
- (4) Access to read the meter before and after pumping is to be provided to Butler;
- (5) Water diverted under the temporary permit is to be considered part of any diversion which may be allowed under a regular permit for the period covered by the temporary permit.

8.0 On May 20, 1992, the Court agreed to State Water Board processing of the temporary permit in accordance with the parties' stipulation. The temporary permit is conditioned in accordance with the stipulation.

### Notice of the Temporary Permit

9.0 Public notice of the application for temporary permit was issued on May 18, 1992. Copies of the notice were posted and mailed to all known interested parties and diverters from the source in accordance with Water Code Section 1428. The closing date to file comments or objections was June 1, 1992. No objections were received to diversion of water as specified in the public notice and as authorized in the temporary permit.

### Effect of the Diversions on Other Lawful Users of Water

10.0 Based upon the facts described above, the State Water Board finds that water may be diverted and used under Temporary Permit 20620 without injury to any lawful user of water.

### Effects of the Proposed Diversions on Fish, Wildlife and Other Instream Uses

11.0 No unresolved written objection by the California Department of Fish and Game has been received stating that the diversion may impair instream beneficial uses. Accordingly, the State Water 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

12.0 The State Water Board is lead agency under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. State

Water Board staff conducted an environmental review of the proposed temporary diversion and determined on May 20, 1992 that the project consists of only minor alterations in the conditions of land, water and vegetation and will not cause a significant environmental impact. Therefore, the State Water Board finds that the project qualifies for an exemption from CEQA in accordance with Title 14, California Code of Regulations, Section 15062.

13.0 No Effect on State Water Board's Future Action

Action by the Court and State Water Board regarding long-term diversion of water for use on Dell'Oca property is still pending. No finding herein shall be construed as predetermining any issues relevant to the State Water Board's consideration of that issue.

Public Interest

14.0 Diversion and use of water by Dell'Oca under Temporary Permit 20620 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the issuance of Temporary Permit 20620 is validated subject to the conditions specified in the permit.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water 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 June 18, 1992.

AYE: W. Don Maughan  
John Caffrey  
Marc Del Piero  
James M. Stubchaer

NO: None

ABSENT: Eliseo M. Samaniego

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the State Board

