

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2007-0032-DWR

In the Matter of License 13527 and Permit 20770B (Applications 30049A and 30049B)

Hidden Valley Lake Community Services District

ORDER DENYING TEMPORARY URGENCY CHANGE

SOURCE: Putah Creek Underflow

COUNTY: Lake

ORDER DENYING TEMPORARY URGENCY CHANGE IN STREAMFLOW TERM

1.0 INTRODUCTION

On July 13, 2007, the Hidden Valley Community Services District (District) filed a Petition for Temporary Urgency Change with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to the provisions of Water Code section 1435. The petition requests relief from compliance for the period July 15 through October 31, 2007 with the license and permit term that requires provision of supplemental water to Putah Creek. The request is denied.

2.0 SUBSTANCE OF PETITION

The District holds License 13527 (issued on November 29, 2001), which authorizes direct diversion of 1.5 cubic feet per second (cfs) throughout the year, with an annual limit of 651 acre-feet (af) for municipal uses. The right is subject to the following condition:

Licensee shall provide supplemental water downstream from the points of diversion to augment low flows in Putah Creek. Said supplemental water shall be introduced at a point on Putah Creek located approximately North 406,600 feet and East 1,848,100 feet, California Coordinate System, Zone 2, being within the NW ¼ of the NW ¼ of projected Section 28, T11N, R6W, MDB&M, as shown on the map entitled "Hidden Valley Lake Community Services District – Supplemental Water Release Location". The point of supplemental water discharge may be changed upon written approval of the Chief, Division of Water Rights.

For the period July 15 to October 31 of each year, licensee shall make up the difference between actual discharge, as measured at the site of the former Guenoc USGS gaging station on Putah Creek at Guenoc as shown on the 1958 USGS 7.5 minute series quadrangle map for Middletown, California, and the median daily discharge listed below:

Median Daily Discharge for Putah Creek at Guenoc, 1954-1975 (all amounts in cfs)

July	August	September	October
4.7	1.7	0.9	0.6

Licensee shall not be required to provide supplemental water at a rate greater than two cubic feet per second.

The District also holds Permit 20770B (issued on December 29, 1994 and amended on November 29, 2001). The amended permit authorizes direct diversion of 4.4 cfs throughout the year, with a 1,649 af annual limit. The total quantity of water diverted under Permit 20770B and License 13527A shall not exceed 2,300 af per annum. The amended permit contains the same supplemental water term as License 13527.

The petition requests relief from compliance with the supplemental water term for the period July 15 through October 31, 2007. The District's petition provides the following information:

- (a) On June 26, 2006, the District notified the State Water Board of the loss of the pipeline used to discharge water to Putah Creek. The District reached an agreement in September 2006 with a neighboring landowner to use their wells to meet the minimum flow requirements in Putah Creek for that year. The alternate wells were only used for two days in October 2006. For 2007, the District estimates that supplemental water will be required for the entire period, July 15 through October 31. The neighboring landowner did not agree to let the District use their wells for 2007.
- (b) In March 2006 the District obtained from the California Office of Emergency Services and the Federal Emergency Management Agency \$1.2 million in funding to stabilize the bank of Putah Creek for replacement of the pipeline and for repairs.
- (c) The repair work requires approvals from the Central Valley Regional Water Quality Control Board, U.S. Army Corps of Engineers and State Department of Fish and Game, which were granted in November 2006, December 2006 and January 2007, respectively.
- (d) The District executed a new easement agreement with Sutter Home Vineyards in March 2007 for the relocation of the pipeline on the Sutter Home property.
- (e) The District states that it has an urgent need to gain relief from the supplemental water condition for 2007 and has made every effort to repair the conveyance pipeline in a timely manner after it was destroyed. The District has no other source or method for delivering water to Putah Creek at the supplemental water discharge point.
- (f) The District filed a Notice of Exemption pursuant to sections 15269(a) and (b) of the Guidelines for the Implementation of the California Environmental Quality Act. (Cal. Code Regs, tit. 14, § 15269(a) and (b).)

3.0 DISCUSSION

Under Water Code section 1435, the State Water Board must make the following findings in order to approve a temporary urgency change:

- The Permittee/Licensee has an urgent need to make the proposed temporary urgency change.
- The temporary urgency change will not operate to the injury of any lawful user of water.
- The proposed temporary urgency change does not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
- The proposed change is in the public interest.

1. Does the District have an urgent need to make the proposed temporary change?

“Urgent need” means that the proposed change is necessary to further the constitutional policy that water be put to beneficial use to the fullest extent and waste be prevented. (Wat. Code § 1435, subd. (c).) The State Water Board shall not find an urgent need if petitioner has not exercised due diligence in petitioning and pursuing a long term change, if applicable. (Id.)

The District does not intend to make beneficial use of water pursuant to the petition. On July 16, 2007, Division staff questioned whether the matter qualifies as “urgent”. The pipeline broke in 2005, and the repairs will not be done until November 1, 2007. Division staff questioned why work had not begun on this facility already, since the funding and all approvals to do the work have been in place since January 2007.

The District responded that, as a municipal water provider, the District believes it is imperative that it take all necessary steps to ensure that it is in compliance with all terms and conditions of its water right license and permit so as not to jeopardize its municipal water supply. The District indicated that construction work in the channel could not commence until the channel was sufficiently dry, which is why construction could not start until this month. Division staff notes that the pipeline is located outside of the watercourse (except the outlet works), but stream bank repair and stabilization work is part of the project.

2. Will the proposed temporary change operate to the injury of any other lawful user of water?

The petition asserts that the requested change can be made without injury to any other lawful user of water on the basis that water rights in this watershed were addressed in the Condition 12 Settlement Agreement in the Stipulated Judgment for the Upper Putah Creek Watershed Adjudication, Sacramento County Superior Court Case No. 515766 (Stipulated Judgment), and as set forth in State Water Board Order WR 96-002. The petition also asserts that any supplemental water discharged pursuant to the District’s subject condition would not be available for appropriation by any other user.

The Stipulated Judgment and Order WR 96-002 address a single issue: the reservation of water in the upper Putah Creek watershed established in Condition 12 of U.S. Bureau of Reclamation Permits 10657, 10658 and 10659 (Applications 11199, 12578 and 12716). These documents do not address the relative impacts on downstream water users of changing the District’s water right terms and conditions. In particular, the District’s information does not address potential impacts to License 918 (Application 3797) of Peter Luchetti for diversion of 0.95 cfs for irrigation from May 15 to October 31 of each year. The License 918 point of diversion is downstream of the point of discharge of supplemental water. The Luchetti water right is senior to the District’s rights. The District’s request to discontinue the supplemental water discharge, while still diverting under its junior rights, may adversely impact the senior right of Luchetti. The Division is unable to find that there will be no injury to any other lawful user of water.

3. Will the proposed temporary change have an unreasonable effect upon fish, wildlife, or other instream beneficial uses?

The petition asserts that the requested change can be made without unreasonable effect upon fish, wildlife, and other instream beneficial uses because conditions in Putah Creek are similar today to the summers of 1964, 1975 and 1976. In those years, water demands of the District were substantially less (the subdivision did not exist in 1964) than those required by the current development. The District provided gage data for 1964, 1975, 1976 and 2007. The petition asserts that the low flow conditions in Putah Creek are a condition of drought. The flow in Putah

Creek for 2007 was about 38 percent of long-term average. The average monthly flows in cfs for the 2006-07 water year are:

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
2.85	9.72	129.90	38.00	579.61	131.87	41.97	19.30	3.12

Since flows were low in three other water years (1964, 1975 and 1976), the petition concludes that reducing the flow to zero from July 15 through October 31 should not be considered an unreasonable effect on resources.

On July 16, 2007, Division staff advised the District that the lack of flow in prior drought years did not appear to be a basis for finding that discontinuing all streamflow would not cause unreasonable effect upon instream resources. Division staff also asked what is the District's current diversion rate and asked that the District identify any measures it intends to take to lessen the severity of the impact to public trust resources.

The District's July 17, 2007 response states that the supplemental flow condition was intended to "augment" low flows in Putah Creek. The condition was not intended to provide flow when it otherwise would not exist or under every conceivable condition. The District asserts that public trust resources have been subjected to lengthy periods of no flow at the Guenoc gage in past years. Such low flow conditions have periodically occurred in the past as a part of the normal hydrologic cycle of wet and dry seasons, even without the District's development. The year 2007 is no different. The District asserts that the Putah Creek channel has dried up due to drought. The District's observations of the Putah Creek channel downstream of the supplemental water discharge point and the Guenoc gage indicate that the riparian vegetation, fish, wildlife and other instream resources will not be unreasonably affected by the short-term suspension of supplemental water resources. The District anticipates that the warm water fish will be sustained in the perennial pools located downstream of the supplemental water discharge point and the Guenoc gage.

The District did not provide 2007 diversion data. Instead, it provided 2006 data. Thus, the Division is unable to determine what impact the District's current diversions are having on instream flows. Moreover, the District did not identify any supplemental conservation measures beyond existing water conservation practices that it intends to take in 2007 to lessen the impacts of the proposed change on instream resources.

The Division notes that the water right term does not have a separate set of conditions for drought years.

On July 24, 2007, Division staff contacted Linda Hanson with the Department of Fish and Game to determine whether the proposed change would affect fish, wildlife or other instream resources. Ms. Hanson informed Division staff that it would. Ms. Hanson questioned why the District has not installed a temporary pipeline or a fire hose or similar conveyance facility in the breached area to maintain the streamflow.

4. Is the proposed change in the public interest?

Pursuant to the proposed change, the downstream flows would change from the minimum flows listed in condition 15 of the permit and license to no flow conditions from July 15 to October 31. The District could have made the releases using temporary measures and avoided the impacts of the proposed change.

The petitioned change does not further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. Consequently, it is not in the public interest to approve the change.

THEREFORE, IT IS ORDERED:

The temporary urgency petition is denied.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: October 9, 2007