

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0025-EXEC

In the Matter of Hearing on

Golden State Water Company

Notice of Proposed Revocation of License 2329 (Application 001483)

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

On August 13, 2007, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued a Notice of Proposed Revocation for License 2329 (Application 1483) for non-use. Golden State Water Company (Licensee) requested a hearing on the proposed revocation. In accordance with the attached Settlement Agreement, the State Water Board's prosecution team (Prosecution Team) and the Golden State Water Company have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 SUBSTANCE OF LICENSE

License 2329 authorizes direct diversion of 7 cubic feet per second (cfs), with an annual limit of 1,720.5 acre-feet (af) from April 1 to December 31 of each year from San Dimas Canyon for irrigation and domestic use.

3.0 FACTUAL BACKGROUND

The Division conducted an inspection of the project on April 18, 1990. The report of inspection states that water was diverted from Licensee's diversion dam and conveyed to irrigate a 105-acre golf course. The water was diverted at a concrete diversion dam by gravity into a 10-inch steel pipeline to the golf course pond, whence the water was pumped from the pond for sprinkler irrigation of the golf course. The capacity of the limiting section was 1.5 cfs. No other diversion facilities were identified in the inspection report. Metered water diversion data for this facility is reported as Recordation No. 1902157 in the Main San Gabriel Basin Watermaster Report.

On March 25, 1993, the Division requested that Licensee file a petition for change to add the golf course to the place of use. Licensee subsequently filed the required petition. Due to failure to submit (a) a completed supplemental portion of the form, and (b) an engineered map for the petition, the petition was cancelled on March 20, 2006. Since there was no use within the authorized place of use, the Division issued a Notice of Proposed Revocation for License 2329 on August 13, 2007.

4.0 DISCUSSION

The Prosecution Team and Licensee have reached settlement on the proposed revocation. Licensee has submitted a complete petition packet, seeking to revise the place of use to show only the golf course. Licensee agrees not to challenge revocation of License 2329 if Licensee fails to diligently pursue its change petition. In addition, Licensee agrees to voluntarily modify the license to reflect only the use on the golf course. This would reduce License 2329 to a maximum direct diversion rate of 1.5 cfs, with an annual diversion limit of 300.65 af. This reflects metered records of water diversion and use during the authorized diversion season.

5.0 CONCLUSION

The State Water Board finds that the issues identified in the Notice of Public Hearing dated November 3, 2008 and revised on December 31, 2008 have been resolved based on the Settlement Agreement and there is no further need for a hearing. License 2329 will be modified to reflect the voluntary revocation of a portion of the right.

ORDER

IT IS HEREBY ORDERED that the attached Settlement Agreement between the Prosecution Team and the Golden State Water Company is approved and incorporated by reference into this Order.

MAR 30 2009

Dated: _____



Dorothy Rice
Executive Director

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the Golden State Water Company (Golden State or Licensee) and the Division of Water Rights (Division) of the State Water Resources Control Board (State Water Board). The parties enter into this Settlement Agreement because it is their collective desire to settle the issues raised in the Notice of Proposed Revocation issued to the Southern California Water Company, dated August 13, 2007.¹ This Settlement Agreement will be submitted to the Executive Director of the State Water Board for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director of the State Water Board issues an order approving the Settlement Agreement. The Executive Director's order will incorporate by reference this Settlement Agreement, and resolve the issues raised by the Notice of Proposed Revocation for License 2329.

BACKGROUND

The Division and Golden State stipulate to the following facts:

1. The State Engineer (predecessor to the State Water Board) issued License 2329 on November 10, 1941 to the San Dimas Water Company. The license authorizes the San Dimas Water Company to divert 7 cubic feet per second (cfs), with an annual limit of 1,720.5 acre-feet (af) from April 1 to December 31 each year from San Dimas Canyon for irrigation and domestic use.
2. The license was assigned to California Cities Water Company on February 14, 1966. The license was subsequently assigned to Southern California Water Company on May 3, 1990.
3. Licensee's representatives informed the Board on September 3, 2008 that the Southern California Water Company is now the Golden State Water Company.
4. The Division conducted an inspection of the project on April 18, 1990. The report of inspection states that water was diverted from Licensee's diversion dam and conveyed to irrigate a 105-acre golf course. The water was diverted at a concrete diversion dam by gravity into a 10-inch steel pipeline to the golf course pond; then the water was pumped from the pond for sprinkler irrigation of the golf course. The capacity of the limiting section was 1.5 cfs. The flow on April 18, 1990 was 0.5 cfs. No other diversion facilities were identified in the inspection report.

The inspection report used water diversion data from the Main San Gabriel Basin Watermaster Report, for the period 1972 to 1989, Recordation No. 1902157, State No. 1N/9W – 25. Diversions can be made only when there are releases from San Dimas Reservoir, which is a flood control reservoir owned by the Los Angeles County Flood Control District (Flood Control District). The inspection report estimates the maximum diversion rate as 0.8 cfs. Division staff calculated that this was equivalent to annual use of 300 af.

¹ The Golden State Water Company, according to its representatives, was formerly named Southern California Water Company, the entity to which the Notice of Proposed Revocation was issued.

5. The Division's April 18, 1990 inspection confirmed that the only location where surface water appropriated under License 2329 is used is the golf course. According to the place of use map dated February 25, 1938 in the Division's files, the golf course does not appear to be within the place of use of License 2329.
6. The Division requested, by letter dated March 25, 1993, that a petition for change be filed because the 105-acre golf course did not appear to be within the licensed place of use.
7. Licensee submitted a Petition for Change dated May 5, 1994, to reduce the place of use to the 105-acre golf course and change the purposes of use to irrigation and groundwater basin recharge. The letter accompanying the petition requested that the change in place of use for the golf course be approved for 1.0 cfs, with an annual limit of 300 af and the remainder of the right be used for groundwater recharge.
8. The Division's September 26, 1994 letter advised Licensee that the Division intended to partially revoke License 2329. The Division stated that due to non-use of water, License 2329 should be reduced to a maximum diversion rate of 1.0 cfs, with an annual limit of 300 af, as set forth in the Division's December 10, 1992 letter.
9. Public notice of the petition for change in the place of use was circulated on October 11, 1995. No protests were received.
10. By letters dated July 21, 1998, August 31, 1998 and November 16, 1998, Division staff requested that Licensee submit: (a) a completed questionnaire Supplement to WR 1 (5/96) and (b) engineered maps for the petition. Licensee was also advised of the petition deficiencies by letters dated March 16, 2005 and November 22, 2005. Licensee did not submit the requested material. Accordingly, on March 20, 2006, the petition for change was cancelled pursuant to Water Code section 1701.4.
11. Surface water diversion and use records submitted by Golden State show that the diversion works covered by License 2329 was used to divert 300.65 af from April 1, 2006 to December 31, 2006.
12. Licensee has not applied its full licensed amount of water to beneficial use pursuant to License 2329 for at least five consecutive years when water was available to Licensee.
13. On August 13, 2007, the Division issued a Notice of Proposed Revocation for License 2329.
14. By letter dated September 3, 2007, Licensee requested a hearing before the State Water Board, as provided by Water Code sections 1675.1, on the Notice of Proposed Revocation.
15. The Division's Prosecution Team and Licensee communicated by teleconference on February 3, 2009 to discuss potential settlement.

AGREEMENT

Both the Division and Golden State agree to settle this matter, in lieu of proceeding to hearing on the Notice of Proposed Revocation, on the following terms

- 1) Golden State has filed a new petition for change of place of use for License 2329 to reflect the golf course as the revised place of use. Golden State's petition was received by email on February 17, 2009 and regular mail on February 18, 2009. The petition complies with Water Code section 1701 and has been accepted by the Division for processing.
- 2) Golden State agrees to amend License 2329 to reflect as its maximum diversion rate 1.5 cfs and annual surface water diversion total of 300.65 af. The annual limit reflects the Licensee's metered 2006 diversions, during the authorized season of diversion.
- 3) Golden State agrees not to challenge revocation of License 2329 if Golden State fails to diligently pursue its change petition.
- 4) Miscellaneous:

Independent Judgment. Each party represents and declares that in executing this settlement agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.

Additional Documents. Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.

Entire Agreement. This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises, or representations, made by the other party other than those contained in this Settlement Agreement.

Mutual Agreement. The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

Reasonableness of Settlement. The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.

Section Headings. The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.

Effective Date. This Settlement Agreement shall become effective immediately on adoption of the State Water Board Executive Director's order approving the Settlement Agreement.

Choice of Law. This Settlement Agreement shall be interpreted and governed by the laws of the State of California.

Authorization. Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

Date: 3/09/09

Golden State Water Company

By Denise L. Kruger
Denise L. Kruger
Senior Vice President - Regulated Utilities

Eva G. Tang
Eva G. Tang
Senior Vice President - Finance
Chief Financial Officer, ~~Treasurer~~ and Corporate Secretary
et

Date: 3/10/09

Division of Water Rights

By James W. Kassel
James W. Kassel,
Assistant Deputy Director
for Water Rights