

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0032-EXEC

In the Matter of Petition for Reconsideration of
WILLIAM SPEAR
Regarding Order Canceling Application 30059

ORDER REINSTATING APPLICATION

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

On November 25, 2008, the Division of Water Rights (Division) issued an order canceling Application 30059 held by William Spear (Petitioner). The application was cancelled for failure of Petitioner to submit information requested by the Division pursuant to Water Code section 1334. Petitioner filed a petition for reconsideration, which was received on December 23, 2008. Petitioner requests that the State Water Resources Control Board (State Water Board or Board) vacate the Division's order canceling Application 30059, and put Application 30059 on hold until (a) DFG issues conditions for Petitioner's proposed Small Domestic Use Registration (SDU Registration), (b) Petitioner has 30 days thereafter to file his SDU Registration with the Division, and (c) the Division has formally accepted the SDU Registration. Petitioner also requests that the Division contact the California Department of Fish and Game (DFG) and request that DFG promptly issue such conditions. In the alternative, Petitioner requests that the State Water Board vacate the Division's order canceling Application 30059, and schedule a hearing on Application 30059 and the pending protests to that application:

¹ State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of petitions for reconsideration of an order canceling an application falls within the scope of the authority delegated under Resolution No. 2002 - 0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, or set aside or modify the order.

Subterranean Stream tributary to Carmel River. The purposes of use were listed as domestic, irrigation and stockwatering.

The Division accepted Application 30059 on February 3, 1992. On January 15, 1995 the application was revised to delete stockwatering and add fire protection and recreational uses, and it was noticed on February 3, 1995. The Division received twelve protests to Application 30059. Division files reflect the fact that seven of the twelve protests were not accepted. The Division directed Petitioner to respond to the remaining five protests. Division files show that of the remaining five protests, only one, the Department of Fish and Game's protest, has been resolved.

With Petitioner's petition for reconsideration, Petitioner included copies of letters from the Division showing that two protests, those from Quail Lodge, Inc. and Hacienda Carmel Community Association, were in fact not accepted by the Division. Petitioner also included a copy of what appears to be Petitioner's response to the protest of Monterey Peninsula Water Management District, dated October 31, 1995.

4.0 DISCUSSION

Because Petitioner has presented evidence that shows he may in fact have responded in a timely manner to several of the protests, the Division should reconsider the issue of Petitioner's diligence in pursuing Application 30059.

Petitioner also contends that "if the Division of Water Rights was concerned about the delays in the processing of Application 30059, then, rather than canceling this application, the Division instead should send a letter to DFG's Fresno office...." This argument is flawed. It is not the Division's responsibility to contact other agencies on an applicant's behalf. It is the responsibility of the applicant. Moreover, the issue before the Division when it considered cancellation of Application 30059 was whether the Petitioner diligently pursued the application, not whether the Petitioner had diligently pursued its SDU Registration. If anything, Petitioner's arguments concerning delays in processing the SDU Registration would support the conclusion that the Petitioner was not diligently pursuing Application 30059, but was instead holding the application in reserve. Allowing parties to hold water right applications in reserve without diligently pursuing them unless and until they decide they need a permit would be inconsistent with the due diligence principles embodied in the statutory water rights system.

Petitioner relies on undated notes in the Division's file for Application 30059. These notes merely show that the Division considered several options before issuing its order canceling Application 30059, and do not provide any information related to the causes for reconsideration listed in Section 768. Furthermore, Petitioner's reliance on those notes as evidence that DFG is in part responsible for Petitioner's delays is misplaced, because if anything, those notes show that the Division already considered DFG's role in the Small Domestic Use Registration process in coming to its conclusion that cancellation is appropriate. And as discussed above, it is Petitioner's responsibility to pursue the required information from DFG, not the Division's.³

ORDER

The State Water Board finds that the decision to cancel Application 30059 should be reconsidered in light of new evidence showing that Petitioner may have timely submitted at least some of the requested information. Accordingly, Application 30059 is reinstated, and the Division is directed to reconsider whether cancellation is appropriate.

Dated: 5/01/09



Dorothy Rice
Executive Director

³ It is also unclear how these notes are supposed to show an abnormality in the Division's decision to cancel Application 30059, when the order canceling Application 30059 is dated November 25, 2008, and the one dated note is dated 11/31/08. It is not clear how a November 31 note could have had a direct influence on an order dated six days earlier, especially considering the informal nature of such communications.