

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0052-EXEC

In the Matter of Petition for Reconsideration of
LANGTRY FARMS LLC AND GUENOC WINERY, INC.

Regarding Order Denying Petitions for Extension of Time and Change
for Permit 16860C (Application 24296C)

ORDER GRANTING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

On March 20, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Order 2009-0019-DWR denying petitions for extension of time and change submitted by Magoon Estate Limited (Permittee) for Permit 16860C (Application 24296C). The petitions were denied for non-diligence. Permit 16860C has been transferred to Langtry Farms LLC and Guenoc Winery, Inc. (Petitioner), who filed a petition for reconsideration dated April 20, 2009. Petitioner requests that the State Water Board rescind Order 2009-0019-DWR and direct the Division to issue an order granting the petitions for change and extension of time, giving Petitioner until December 31, 2015 to complete construction and beneficial use of the water under Permit 16860C. For the reasons set forth below, the Executive Director grants Petitioner's petition for reconsideration in part.

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 a petition for reconsideration of an order denying change and time extension petitions falls within the scope of the authority delegated under Resolution No. 2002 - 0104. Accordingly, the Executive Director has the authority to refuse to reconsider the petition for reconsideration, deny the petition, or set aside or modify the order.

2.0 GROUNDS FOR RECONSIDERATION

Any person interested in any application, permit or license affected by a State Water Board decision or order may petition for reconsideration of the decision or order. (Cal. Code Regs., tit. 23, § 768.)² The legal bases for reconsideration are: (a) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (b) the decision or order is not supported by substantial evidence; (c) there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or (d) error in law.

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (§ 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board may deny the petition if the State Water Board finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

3.0 LEGAL AND FACTUAL BACKGROUND

The Division issued Permit 16860 to Magoon Estate Limited (Permittee) on January 21, 1977 pursuant to Application 24296. Permit 16860 was eventually divided into three permits. Permit 16860C authorizes storage of 5,350 acre-feet per annum (afa) in Ink reservoir located on Butcherknife Creek. The maximum rate of diversion from Bucksnot Creek to offstream storage is listed as 20 cubic feet per second (cfs). The permit authorizes irrigation of a net acreage of 1,380 acres for domestic, irrigation, frost protection and heat control purposes.

During the 1970s the State Water Board commenced adding conditions to permits in the Upper Putah Creek watershed, including Permit 16860, which stated, in part:

² All further regulatory references are to the State Water Board's regulations located in title 23 of the California Code of Regulations unless otherwise indicated.

Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision 869.

(Hereafter Condition 12.)

Permit 16860 originally required that construction work be completed by December 1, 1980, and that water be applied to the authorized use by December 1, 1981. Permittee requested, and on December 28, 1982, received an extension of time to complete construction by December 31, 1985 and to complete full beneficial use by December 31, 1986. Permittee requested, and on April 28, 1988, received an extension of time to complete construction by December 31, 1989 and to complete full beneficial use by December 31, 1990. Permittee requested, and on January 13, 1992, received an extension of time to complete construction by December 31, 1994 and to complete full beneficial use by December 31, 1995.

On May 14, 1992 the Division inspected the project covered by Permit 16860 because Permittee had requested that the permit be divided in such a manner that the finished portions of the project be considered for licensing. The inspection report documents that Ink Reservoir had not been built. On September 20, 1994 the Division split Permit 16860 into three parts – Permits 16860A, 16860B, and 16860C.

The March 10, 1995 Condition 12 Settlement Agreement (Agreement) states that signatories of the Agreement who request a Continuation Permit³ from the State Water Board shall pay the State Water Board an additional fee depending on the status of their existing permit. In addition to specifying the fee amounts, the Agreement states,

[T]his agreement authorizes permittees to obtain Continuation Permits only if all applicable fees required under this section are paid to the [State Water Board]. Requests or related [State Water Board] actions shall not be processed until the required fees are paid, and shall be dismissed if fees are not received within six months after notification by the [State Water Board].

Permittee is a signatory of the Agreement.

³ Under the Agreement, a Continuation Permit is essentially the same as an extension of time for an existing permit.

On July 19, 1995 the Division inspected the project for licensing of Permits 16860A and 16860B. The inspection report documents that Ink Reservoir had not been built.

On June 20, 1996 the Division received a Petition for Extension of Time seeking a 10-year extension. The petition states that the unsettled nature of water available for appropriation under the Condition 12 watershed reservation, and a lawsuit filed by the Solano County Water Agency and others in 1990, which was not resolved until 1996, created uncertainty about the feasibility of proceeding with the project.

On February 4, 1997 Permittee petitioned to change the project to store 1,690.5 afa in proposed Buckhorn Flat Reservoir and 1,660 afa in a proposed enlarged Upper Bohn Reservoir, and reserve the remaining 1,999.5 afa for the proposed Ink Reservoir. The place of use would be increased from 1,380 acres to 1,768 acres.

On August 2, 1999 Permittee withdrew the request for storage in Ink Reservoir pursuant to Permit 16860C as its construction was no longer being considered.

In a petition dated May 17, 2000, Permittee increased the proposed place of use to 4,611 acres, and identified the points of diversion listed below in the description of the 2001 Notice of Petition. The petition states that Ink Reservoir is no longer contemplated. Therefore, the amount of water remaining under the permit would be 3,355 afa, if the petition to redistribute water to Buckhorn Flat Reservoir and enlarge Upper Bohn Reservoir is approved.

The Division issued a Notice of Petition for the change and time extension petitions for Permit 16860C on March 16, 2001. The notice states that Ink Reservoir has not been built, and no water has been used under the permit. Permittee has abandoned the Ink Reservoir project. Instead, Permittee proposes to construct a 2,500 acre-foot (af) capacity Buckhorn Flat Reservoir, and to increase the existing Upper Bohn Reservoir by 1,000 af to a total capacity of 3,760 af. The petitions seek to redistribute 1,695 afa from the previously proposed Ink Reservoir to Buckhorn Flat Reservoir. The petitions also request redistribution of 1,660 afa from the previously proposed Ink Reservoir to the Upper Bohn Reservoir. The remaining 1,995 afa for Ink Reservoir is abandoned and the Ink Dam will no longer be a point of diversion.

Permittee petitioned to add five new points of diversion and redirection as follows: (a) Putah Creek Pump No. 2; (2) Upper Bohn Dam No. 1; (3) Upper Bohn Dam No. 2; (4) Bucksnot Creek; and (5) Buckhorn Flat Reservoir. Permittee also petitioned to enlarge the place of use from 1,380 acres to 4,611 acres.

The Department of Fish and Game (DFG) protested the petitions. On May 31, 2001, the Division accepted the protest insofar as it related to construction of the new Buckhorn Flat Reservoir and enlargement of the Upper Bohn Reservoir.

On July 9, 2001, the Division advised all Permittees in the Upper Putah Creek watershed that pursuant to the March 10, 1995 Agreement, there is a limited quantity of water remaining for assignment to new applications. The Division needs to maintain accurate data on the quantity of unappropriated water that is available for the new applications. Accordingly, the Division is evaluating whether projects have been timely developed under existing permits. Any water that is not required to meet the needs of existing permittees may be available for other uses. In this letter the Division advised the permittees that it intended to limit time extensions to five years in this watershed. The Division provided an opportunity to object to the proposed five-year extension limit and required that any objections be accompanied by information to support a finding that a longer time extension is appropriate. Permittee did not respond to the notification.

On July 23, 2001, Division staff discussed with Permittee the proposed alternate project described in the March 16, 2001 petition notice to build a 2,500 af Buckhorn Flat Reservoir and increase the existing Upper Bohn Reservoir by 1,000 af. During the meeting, Permittee's abandonment of Ink Reservoir was also discussed. Permittee was advised during this meeting of the need to proceed diligently with preparation of a California Environmental Quality Act (CEQA) document. A work plan was requested by September 21, 2001 with the following: (a) a timeline for completing the CEQA document; (b) a timeline for obtaining the county grading and use permits for reservoir construction and vineyard planting; (c) a timeline for completion of the development and construction activities, including: (i) documentation of total project cost and evidence that project funding has been obtained, (ii) the date when clearance from the Department of Water Resources, Division of Safety of Dams for Buckhorn Flat Reservoir and Upper Bohn Reservoir enlargement would be obtained, and (iii) the date when construction contracts would be signed; (d) a timeline for obtaining a streambed alteration agreement from DFG; and (e) a timeline for obtaining an Army Corps of Engineers section 404 permit (see

33 U.S.C. § 1344) or information to document that a 404 permit is not needed. Permittee was warned that failure to provide the documentation would be considered a lack of due diligence, and the permit would be subject to revocation.

The October 23, 2001 response states that enlargement of Upper Bohn Reservoir will cost \$500,000. The cost for development of the additional 3,231 acres of vineyard averages about \$10,000 per acre (roughly \$32 million). Buckhorn Flat Reservoir is no longer contemplated. Accordingly, Permittee informed the Division that the CEQA lead agency would switch from Lake County to the State Water Board. A streambed alteration agreement and most other permits would not be obtained until the CEQA document was completed. The other issues identified in the July 23 letter were also addressed. There was no estimate when construction contracts would be signed.

On June 27, 2002, Permittee filed an amendment to the petition to change Permit 24296C. The amended petition states that Buckhorn Flat Reservoir is abandoned. 3,355 afa will be stored in Upper Bohn Reservoir and the remaining 1,995 afa under this right is abandoned.

On July 19, 2002, Division management and legal staff met with Permittee's legal and engineering representatives due to concern about the due diligence criteria in the Division's July 23, 2001 correspondence. The Division advised Permittee that diligence is based on diligence during the period when the permit was in effect (prior to December 31, 1995) and the likelihood of completion should an extension be granted. Permittee stated that water availability issues and watershed litigation clouded development during the life of the permit.

On August 30, 2002, the June 27, 2002 amendment to the Petition for Change was withdrawn. The letter states: "We understand that your office has expressed some concern, in connection with the Applicant's diligence in proceeding under this Application, in having another change of mind on its project as evidenced by its filing the amendment on June 27, 2002."

On October 1, 2002, Division staff confirmed the withdrawal of the 2002 petition, and expressed concern that all of the authorized sources of water under Permit 16860C had been withdrawn. The petitioner seeks to add three new sources to the permit. The proposed new points of diversion are all located in a different part of the Putah Creek watershed than the originally proposed points of diversion. Documentation that there would be no change in water

availability, or the dates when water is available, as a result of moving the points of diversion from Butcherknife and Bucksnot Creeks to the three new sources was requested.

On November 15, 2002, Permittee provided documentation regarding water availability as it related to moving the points of diversion.

During a December 4, 2002 telephone conversation Permittee agreed to utilize only one point of diversion on Putah Creek. All other points of diversion were eliminated.

A May 12, 2004 letter from the Division clarifies several of the project elements that Permittee was seeking to develop. That letter explains that when Permit 16860 was split into Permit 16860A, 16860B and 16860C, there was an error in assigning the rate of diversion to offstream storage. Permit 16860 originally authorized offstream diversion at a rate of 50 cfs. When the permit was split, 20 cfs was assigned to Permit 16860A, and 20 cfs was assigned to Permit 16860B. Consequently, only 10 cfs remains for assignment to Permit 16860C, not the 20 cfs identified in the permit. Accordingly, Division staff proposed to correct the error in assigning the rate of offstream storage for Permit 16860C when the pending petitions are processed.

The Division advised Permittee in the May 12, 2004 letter that three time extensions had previously been granted for Permit 16860C, and if the current time extension was not approved the permit would be revoked because there are no project facilities and no beneficial use of water has occurred. The Division explained that petitions for extension of time are granted only upon such conditions that the Board determines to be in the public interest and upon showing to the Board's satisfaction that diligence has been exercised. (Cal. Code Regs., tit. 23, § 844.) When evaluating diligence, the State Water Board would evaluate all relevant information, including information regarding any diversion and storage facilities built or enlarged pursuant to Permittee's rights during the time interval covered by Permit 16860C. Permittee was requested to document whether: (1) it had a need for additional water supplies to serve the authorized place of use for the permit, after taking into consideration all other rights held by Permittee, and (2) the additional quantity of water needed to serve the authorized place of use for the permit. The information was requested to cover the last authorized time extension period, which ended on December 31, 1995. The Division also advised Permittee that the petitions could not be addressed until a CEQA document was completed.

On July 7, 2004, Permittee responded to the Division's request for information on additional water supplies needed to serve the existing place of use. The authorized place of use is 1,380 acres. Of this acreage, 785 acres is not covered by other water rights of Magoon. The Division determined that Permittee has already developed 367 acres of vineyard within the authorized place of use. (Draft Environmental Impact Report (DEIR), July 2006, p. 1-1.)

On February 9, 2005, Permittee filed another petition for extension of time. This petition states that no construction was completed under Permit 16860C during the last extension period and no money was spent on the project during the last extension period. Permittee requested a time extension of eight years after issuance of an Order on the change petitions. No water had been used under the permit.

On March 4, 2005, the Division advised Permittee that the petition was not acceptable because the \$850 DFG fee had not been submitted, the petition had not been served on DFG and the Environmental Questionnaire was not submitted. Permittee disagreed with the Division's March 4, 2005 findings. The Division responded with an August 17, 2005 letter addressing the disputed items, but also requiring that Permittee state the length of time extension requested and identify the year when full beneficial use will occur.

On October 17, 2005, Permittee filed an amended Petition for Extension of Time. The estimated date for completion of construction and full beneficial use of water in the amended petition is December 31, 2015. The petition confirms that water use has not begun and attributes the non-use to the fact that the change and time extension petitions have not been approved.

On March 24, 2006, the Division issued public notice of the 2005 petition for extension of time and re-notice of the change petition. Permittee sought the right to redistribute 1,660 afa from the previously proposed Ink Reservoir to Upper Bohn Reservoir storage. The proposal to store water in Buckhorn Flat Reservoir had been abandoned. Thus, Permittee requested to add one point of diversion and two points of rediversion. The place of use would be expanded to 4,611 acres. Permittee requested an extension to December 31, 2015 to complete construction and beneficial use of water.

DFG protested the petitions and the protest has not been resolved. In addition to raising environmental issues, the DFG protest raises the issue of whether Permittee exercised due diligence in development of its project. Specifically, DFG states that a key requirement for granting an extension of time is a showing that the "failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided." (Cal. Code Regs., tit. 23, § 844.)

Permittee's July 17, 2006 response to DFGs protest states that the Permittee had previously addressed the due diligence issue in its report on diligence to the State Water Board.

On December 15, 2008, Permittee changed the ownership of the project to Langtry Farms LLC and Guenoc Winery, Inc (Petitioner).

On March 20, 2009, the Division issued Order WR 2009-0019-DWR denying the petitions for extension of time and change petitions.⁴

On April 20, 2009, Petitioner timely submitted a petition for reconsideration of Order WR 2009-0019-DWR.

4.0 DISCUSSION

Petitioner suggests that there was abuse of discretion by the Division, by which Petitioner was prevented from having a fair hearing, and also that the Division's order is not supported by substantial evidence.

As Petitioner correctly observes, Order WR 2009-0019-DWR does not clearly state the basis for denying the extension. The Order begins with an extensive recitation of facts, with relatively little in the way of explanation to bridge the analytic gap between these basic facts and the ultimate conclusion that Petitioner has not shown good cause for an extension. In addition, as

⁴ The State Water Board is directed to order or deny reconsideration on a petition within 90 days from the date on which the State Water Board adopts the decision or order. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; SWRCB Order WQ 98-05-UST at pp. 3-4.)

discussed below, some of the conclusions in the Order concerning the legal effect of prior actions by the State Water Board appear to be erroneous. Absent a clear statement of the basis for the Order, it is difficult to determine to what extent it was based on those erroneous conclusions, or to determine whether the denial of the extension can be upheld for other reasons. Accordingly, this order grants the petition for reconsideration and remands to the Division to review its action and issue a new order that includes adequate findings and conclusions to explain the action being taken.

In order to approve an extension of time the Division must determine whether "due diligence has been exercised, [and whether] failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided..." (Cal. Code Regs., tit. 23, § 844.) As Petitioner notes, and as the Division specifically advised Permittee, diligence is analyzed during the period when a permittee is actually authorized to construct its diversion works and put water to beneficial use pursuant to its permit.⁵

In regards to Permittee's diligence during the extension period ending December 31, 1995, Petitioner states that it "was prohibited from completing the project . . . due to litigation . . . to declare the Putah Creek watershed fully appropriated." Petitioner does not reference or provide a copy of any court order prohibiting construction, however, and concedes that during the period when the litigation was pending it completed construction on two smaller reservoirs. Rather, Petitioner's argument focuses on the claim that it would have been unwise to make a major investment in a reservoir in the face of uncertainty as to whether there would ultimately be water available for appropriation using the reservoir.

Petitioner's argument that pending litigation raising concerns about the availability of water for appropriation is an adequate basis for deferring construction poses problems. With many streams fully appropriated, and the likelihood that new or increased diversions under riparian rights or previously issued but not fully developed permits will reduce amounts of water available under more recently issued permits, excusing a failure of diligence based on

⁵ Evidence concerning action or inaction after the periods specified in the permit may have some relevance to this inquiry. For example, if a permittee claims that lack of progress is due to specific obstacles that arose during the periods specified in the permit, but the permittee failed to diligently pursue approvals and activities needed to complete the project even after those obstacles were removed, that evidence would tend to contradict the claims that the obstacles were the cause of the delay. In general, however, evidence concerning action or inaction after the expiration of the periods specified in the permit is relevant to the issue whether "satisfactory progress will be made if an extension of time is granted." (Cal. Code Regs., tit. 23, § 844.)

uncertainty of water availability would undermine the due diligence requirements of the Water Code. Indeed, to the extent that uncertainty over availability of unappropriated water is caused by the existence of permits that authorize appropriations that have not been developed, granting permit extensions based on that uncertainty would nullify the purpose of the due diligence requirement. Instead of providing greater certainty by preventing water supplies from being held in "cold storage," extensions in these circumstances would simply add to the uncertainty cited as the basis for granting them. (See generally State Water Board Order WR 2008-0045 at pp. 3-4 [explaining the due diligence requirement].) In addition, while the pendency of litigation may highlight the risk that there may be insufficient water to fully develop a project, it may also highlight the need to complete development promptly. This was particularly true on Putah Creek where, at the time of the litigation, the availability of water for permits with a priority date after October 29, 1945 was contingent upon development of the permitted projects before a license was issued for the Solano Project, the Bureau of Reclamation had applied for a license in 1992, and it was anticipated that a license could be issued in 1996. (See Order WR 96-002 at pp. 4-5.)

While Petitioner's argument that litigation excuses a failure to commence construction is problematic, the Division's treatment of the issue has problems too. In 1996, the State Water Board observed that Condition 12 had been in effect 39 years, and upstream permittees have had a reasonable period to develop and put water to reasonable beneficial use. (See State Water Board Order WR 96-002 at p. 6, n. 14.) Based on that observation the Division concludes: "Since the State Water Board has determined that adequate time was provided to construct facilities, failure to timely construct is construed as a lack of diligence." It does not necessarily follow from the general observation that upstream permittees have had sufficient time to perfect their rights that each and every permittee who had not completed construction and put water to full beneficial use by that time had failed to exercise due diligence. In fact, the State Water Board approved the issuance of continuation permits as part of the same order in which it made the general observation that upstream permittees had been given a reasonable period. (See State Water Board Order WR 96-002 at pp. 7-8, 15.) There would have been no justification for issuing continuation permits, thereby allowing a permittee additional time to complete work to construct its project and put water to beneficial use, if there was no excuse for any permittee's failure to have completed the project already. Of course, the observations made by the State Water Board in Order WR 96-002 may be relevant to the due diligence issue, as well as to the issue whether issuance of an extension is in the public interest. (See Cal.

Code Regs., tit. 23, § 844.) But Order WR 96-002 should not be treated as having established a rule that no extensions will be granted after 1996.

Accordingly, Division's findings on remand should explain whether Petitioner has exercised due diligence based on the facts and circumstances relating to the specific permit involved without treating Order WR 96-002 as establishing a blanket rule that an upstream Putah Creek permittee could not have been diligent. In making this determination, the inquiry should not be focused exclusively on the period since the most recent extension was granted, but properly should consider the entire period authorized to complete construction and put water to beneficial use. The issuance of a prior extension does not make evidence concerning progress or lack thereof in the period before the extension was granted irrelevant to the issue whether the permittee has exercised due diligence. And the fact that multiple extensions have been granted already obviously may be relevant to the issue whether satisfactory progress will be made if another extension is granted.

On the issue whether the permittee will make satisfactory progress if an extension is granted, the Division may also have treated a general observation as a blanket rule. The Division's July 9, 2001 letter advised permittees in the Upper Putah Creek watershed that the Division intended to limit any time extensions for any of their permits to five years. Although the letter properly informed permittees of the limited availability of water under their permits and the need to promptly complete their projects, that statement that extensions would be limited to five years is merely a statement of intent, and does not have the effect of a binding rule or precedential decision. Moreover, the letter does not specify how the five year permit would be computed – whether extensions would be limited to five years from the completion dates specified in the permits, or five years from when the extensions were issued. Although Order 2009-0019-DWR is not entirely clear on this issue, it appears that the Division may have assumed that any extension would be limited to five years from the dates currently specified in the permit, meaning that the date to complete putting water to beneficial use would be extended from December 31, 1995 to December 31, 2000. Obviously, Permittee would not make progress towards putting water to beneficial use if the extension were limited to the five years from the expiration date currently in the permit. An evaluation of whether Petitioner will make satisfactory progress if an extension is granted should be based on whether Petitioner will make adequate progress if given an extension for a reasonable period, not to exceed the December 31, 2015

completion date requested in the petition, and not on the assumption that any extension would cover only the already expired five years following the completion dates currently in the permit.

In acting on petitions for reconsideration, the Board, or the Executive Director acting under delegated authority, may take any appropriate action. (Cal. Code Regs., tit. 23, § 770, subd. (a)(2)(C).) Thus, in appropriate cases, where the order under review failed to make a necessary finding, or appears to have been based on erroneous assumptions as to the legal effect of prior actions of the State Water Board, the order on reconsideration may make the necessary finding or revise the analysis accordingly. In this case, however, it would be better to remand to the Division, so that the Division can issue a new order that more fully explains the basis for its action, and thereby provide a better basis for review.⁶ In addition to explaining how the basic facts recited in its order relate to the ultimate conclusions regarding whether the requirements for an extension have been satisfied, the Division's findings should address any factual disputes raised by the Petition. In particular there appears to be a dispute over whether the required fees were paid, and Order 2009-0019-DWR does not address whether Petitioner had been notified of the requirement to pay the fees.

ORDER

IT IS THEREBY ORDERED THAT Petitioner's petition for reconsideration is granted. Order 2009-0019-DWR is set aside and the issue is remanded to the Division for further action consistent with this order.

Dated: JUL 30 2009



Dorothy Rice
Executive Director

⁶ If, after review of the issues and preparation of findings to support its proposed action, the Division issues a new order denying the petitions, Petitioner may again seek reconsideration. If the Division concludes that an extension should be granted, it should draft an order for consideration by the Board at a Board meeting. The Division has not been delegated the authority to grant a petition for extension of time for the amount of time requested in this case, and so State Water Board approval will be needed if the Division determines on remand that granting these petitions is warranted.