

2005 DEC 19 PM 12:41

DIVISION OF WATER RIGHTS
SACRAMENTO

PETITION FOR EXTENSION OF TIME
WATER USERS: (John P. Wick/Peggy Rathmann)
Application A028971 Permit 20884

Water Code section 1396 requires an applicant to exercise due diligence in developing a water supply for beneficial use. The State Water Resources Control Board (SWRCB), in considering requests for extension of time, will review the facts presented to determine whether there is good cause for granting an extension of time to complete the project. Where diligence in completing the project is not fully substantiated, the SWRCB may set the matter for hearing to determine the facts upon which to base formal action relating to the permit. Formal action may involve:

1. Revoking the permit for failure to proceed with due diligence in completing the project.
2. Issuing a license for the amount of water heretofore placed to beneficial use under the terms of the permit.
3. Granting a reasonable extension of time to complete construction work and/or full beneficial use of water.

The time previously allowed in your permit within which to complete construction work and/or use of water has either expired or will expire shortly.

Please check below the action you wish taken on this permit.

- The project has been abandoned and I request revocation of the permit.
- Full use of water has been made, both as to amount and season, and I request license be issued.
- The project is not yet complete. I request the SWRCB's consideration of the following petition for an extension of time.

PETITION FOR EXTENSION OF TIME
IF START of construction has been delayed

Complete Items 1, 2, and 3.

1. What has been done since permit was issued toward commencing construction?

See attached letter of counsel, pg 1.

2. Estimate date construction work will begin. Within the 2006 construction season upon issuance of grading permit.
3. Reasons why construction work was not begun within the time allowed by the permit.

See attached letter of counsel - pp 1-3.

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demands and cut your energy costs, see our web-site at: <http://waterrights.ca.gov>."
Additional copies of this form and water right information can be obtained at www.waterrights.ca.gov.

PET-EXT (3-01)

Continued on next page

12/19/05
11000.00
DC

PETITION FOR EXTENSION OF TIME
If construction work is proceeding

N/A

If construction work and/or use of water is proceeding but is not complete, an extension of time may be petitioned by completing items 4 through 16. Statements must be restricted to construction or use of water only under this permit.

10-12-07
JDM

- 4. A 14 ~~X~~ - year extension of time is requested to complete construction work and/or beneficial use of water. (Indicate a period of time less than or equal to 10 years. Must be consistent with the time frame allowed in (California Code of Regulations sections 840 through 844) 12/29/05
per cover letter
kdm
- 5. How much water has been used? 0 acre-feet/year _____ cfs 12/29/05
Not built, per cover letter
kdm
- 6. How many acres have been irrigated? 0 kdm
- 7. How many houses or people have been served water? _____
- 8. Extent of past use of water for any other purpose. _____
- 9. What construction work has been completed during the last extension? Not built, per cover letter 12/29/05
kdm
- 10. Approximate amount spent on project during last extension period. \$ _____
- 11. Estimate date construction work will be completed. after County grading permit is issued, per kdm
- 12. Estimated year in which water will be fully used. 4 yrs cover letter
kdm
- 13. Reasons why construction and/or use of water were not completed within time previously allowed. see cover letter kdm

If the use of water is for municipal (including industrial) and irrigation supplies and is provided or regulated by public agencies and use of the water has commenced, but additional time is needed to reach full use contemplated, the following information must be provided.

- 14. What water conservation measures are in effect or feasible within the place of use?

- 15. How much water is being conserved or is it feasible to conserve using these conservation measures?
_____ acre-feet per annum.
- 16. How much water per capita is used during the maximum 30-day period? _____ gpd.

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated: 12-14 2005, at SAN FRANCISCO, California
Peggy Rathmann Signature(s) John P. Wick Telephone No. 415 662-9820
PEGGY RATHMANN JOHN P. WICK P.O. Box 825
 PLEASE PRINT YOUR NAME AND ADDRESS MICASIO, CA 94946

NOTE: A \$1,000 filing fee, for each Application listed, made payable to the State Water Resources Control Board must accompany a petition for an extension of time. An \$850 fee made payable to the Department of Fish and Game must accompany all but the first petition for an extension of time.

✓ check for 1000⁰⁰ attached.

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

ENVIRONMENTAL INFORMATION
FOR PETITIONS

Petition for Change

Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. ~~DESCRIPTION OF PROPOSED CHANGES OR~~ WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

See attached letter of counsel pp 1-4,
plus exhibits 8 and 9 attached.

(Exh 8 - Ag Reservoir Grading & Drainage Map - Erickson Engineering,
(Exh 9 - Proposed Ag Use Plans - J. Creque consultant)

See Attachment No. _____

ENVIRONMENTAL INFORMATION FOR PETITIONS

2. COUNTY PERMITS

a. Contact your county planning or public works department and provide the following information:

Person contacted: Patrick Faulkner Esq Date of contact: 4/19/05
 Department: Marin County Counsel Telephone: (415) 499-6117
 County Zoning Designation: AGO (Williamson Act)

Are any county permits required for your project? YES NO If YES, check appropriate box below:

- Grading permit Use permit Watercourse Obstruction permit Change of zoning
 General plan change Other (explain):

→ See attached letter of counsel (pp 2-3)
 Will file for permit following SWRCB grant of time extension

b. Have you obtained any of the required permits described above? YES NO

If YES, provide a complete copy of each permit obtained.

See Attachment No. _____

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

a. Check any additional state or federal permits required for your project: N/A

- Federal Energy Regulatory Commission U.S. Forest Service Bureau of Land Management
 Soil Conservation Service Dept. of Water Resources (Div. of Safety of Dams) Reclamation Board
 Coastal Commission State Lands Commission Other (specify) _____

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

See Attachment No. _____

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? YES NO

If YES, explain:

See Attachment No. _____

ENVIRONMENTAL INFORMATION FOR PETITIONS

d. Have you contacted the California Department of Fish and Game concerning your project? YES NO
If YES, name and telephone number of contact: CDF has issued a De minimis Impact Finding
See Exhibit 3 attached.

4. ENVIRONMENTAL DOCUMENTS

a. Has any California public agency prepared an environmental document for your project? YES NO
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: SWRCB
b. If NO, check the appropriate box and explain below, if necessary:
 The petitioner is a California public agency and will be preparing the environmental document.*
 I expect that the SWRCB will be preparing the environmental document.**
 I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: _____

→ See Exhibits 1, 2, 5(a) & (b), 6, 7 attached

See Attachment No. _____

* Note: When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted. See exhibits 5(a), 2 attached

** Note: CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

N/A 5. WASTE/WASTEWATER

a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?
 YES NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

See Attachment No. _____

b. Will a waste discharge permit be required for your project? YES NO

Person contacted: _____ Date of contact: _____

c. What method of treatment and disposal will be used? _____

See Attachment No. _____

N/A 6. ARCHEOLOGY

a. Have any archeological reports been prepared on this project? YES NO
b. Will you be preparing an archeological report to satisfy another public agency? YES NO
c. Do you know of any archeological or historic sites located within the general project area? YES NO

ENVIRONMENTAL INFORMATION FOR PETITIONS

N/A

If YES, explain: _____

See Attachment No. _____

7. ENVIRONMENTAL SETTING

Attach three complete sets of color photographs, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- Along the stream channel immediately downstream from the proposed point(s) of diversion.
- Along the stream channel immediately upstream from the proposed point(s) of diversion.
- At the place(s) where the water is to be used.

3 sets of required photos attached
(behind exhibits)

8. CERTIFICATION

We ^{we} hereby certify that the statements ^{we} have furnished above and in the attachments are complete to the best of ~~my~~ ^{our} ability and that the facts, statements, and information presented are true and correct to the best of ~~my~~ ^{our} knowledge.

Date: 12.14.05

Signature: *J.P. Ward*
Perry Rathwan

Harvey M. Freed
Attorney at Law
759 Fourteenth Avenue
San Francisco, CA 94118
(415) 666-0133 fax (415) 666-0134

28971 KAM
December 14, 2005

State Water Resources Control Bd.

Division of Water Rights

Attn: Kathy Mrowka-
Permit Extensions Unit
P. O. Box 2000
Sacramento, CA 95812-2000

Re: Petition for 4 Year Extension of Time
Application to Appropriate Water -
App. No. A028971, Permit No. 20884
John P. Wick and Peggy Rathmann

Dear Ms. Mrowka:

This Petition relates to the limited collection of water into a 47 acre-foot onstream reservoir to be created by an agricultural dam across a tributary to Nicasio Creek in Marin County. The reservoir surface area is estimated to be 3.5 acres. The stored water will be used for the irrigation of a 10 acre apple and pear orchard. It will also include irrigated hay and pasture beneath the trees for the finishing of grass-fed beef cattle. (See Exhibit 7).

Almost all of the preparations essential to the start of construction have now been completed. For example, these include:

1. The SWRCB, as well as other affected state and federal agencies, have already favorably reviewed the project and completed the required environmental analyses; (See Exhibits 1, 2, 4, 5(a) & (b), 6).
2. our civil and agricultural engineer has developed for us reservoir grading, drainage and erosion control plans; (See Exhibit 8).
3. detailed mapping and project site surveys have been performed;
4. a thorough geotechnical investigation of the proposed dam, including test borings and soil sample analyses, has been completed, and the engineer's report is being finalized;
5. a Consulting Agricultural Ecologist has been engaged and a description of the proposed agricultural use has been drafted; (See Exhibit 9).
6. The fields within the designated place of use have been graded, imported soil amendments have been applied and cover crops planted in anticipation of the proposed water use.

The extensive project preparations over the past several years have thus far caused the applicants to incur expenses of in excess of \$100,000.

2005 DEC 19 PM 12:10

STATE WATER RESOURCES
CONTROL BOARD

John Wick and Peggy Rathmann plan to promptly proceed with construction following Marin County project review and issuance of the required grading permit. The County's processing is **not** anticipated to trigger further environmental review as the SWRCB, in its capacity as lead agency, has already completed a multi-year, intensive environmental review of the proposed diversion of water and the construction of the onstream reservoir. (See Exhibits 1, 2, 5, 6).

In the late 1980's, the SWRCB, after discussing with and providing due notice to Marin County and other interested parties, opted to serve as the lead agency under CEQA for this project. Following many years of administrative process, technical review and analysis, in September 1996 the Board issued a Negative Declaration, pursuant to Pub. Res. Code Sec. 21080(c). It declared that the proposed dam project will not have a significant effect on the environment. Its comprehensive study considered 16 separate categories of potential environmental impacts and found none to be significant. The first category reviewed was "Geological Problems", which included evaluation of the effects of dam excavation, grading and fill. Under CEQA and its Guidelines, given the above facts, there is a strong presumption against any further environmental review being required by a responsible agency such as Marin County. (See Exhibits 3 (a - c), 5(b) geological issues - SWRCB Initial Study, pg. 3, Item 1; pg. 5, item 6 (erosion/soil/ excavation, grade).

In September 1996, the SWRCB issued its Staff Analysis of protests filed against the proposed project and the staff recommendation that the application be approved and a permit issued. The concerns of three protestants, including Marin Municipal Water District, had been resolved years earlier in 1987 and 1990 pursuant to stipulated agreements. The contentions of two remaining protestants were deemed to be not supported by any evidence that the project would have an adverse impact.

Following the Negative Declaration issuance, in November 1996 the California Dept. of Fish & Game completed its evaluation of the onstream dam project and made a De Minimis Impact Finding. Its action was based on the findings of fact of the lead agency as well as the initial study and public record. It concluded that " there is no evidence that the proposed project will have potential for adverse effect on wildlife resources or the habitat upon which the wildlife depends." (See Exhibit 2).

A Permit for Diversion & Use of Water was issued by the SWRCB in December 1996. It allows the diversion and appropriation of water, not to exceed 47 acre feet per annum, to be collected during four specified winter months. It authorized dam construction to be completed by December 31, 2001. This time period was later extended by Board staff to December 31, 2005. (See Exhibit 7).

The permit also provides that complete application of the water to the authorized use shall be made by December 31, 2005.

In September 2002, the Chief of the Regulatory Branch of the Army Corps of Engineers issued a finding, following an on-site inspection, that the project is not subject to regulation under Sec. 404 of the Clean Water Act.

It is clear that where a negative declaration has already been certified, a responsible agency (e.g. -Marin DPW) is faced with CEQA's strong presumption against requiring any further environmental review. Under Pub. Res. Code Sec. 21166, once an EIR has been completed, a responsible agency may not require a subsequent or supplemental EIR unless:

- (1) substantial changes are proposed in the project that will require major EIR revisions;
- (2) substantial changes occur relating to the circumstances under which the project is being undertaken that will require major EIR revisions; or
- (3) new information of substantial importance to the project, which was not known and could not have been known at the time the EIR was certified, becomes available.

The CEQA Guidelines (14 Cal Code Regs. Sec. 15162) extend these exceptions to negative declarations. Further, under applicable case law, the age of the original negative declaration is irrelevant to the determination. It is clear that none of the above exceptions pertain to this project.

A few other background facts are important to achieving a sound understanding of the unusual aspects of this matter. This project was originated 18 years ago by the prior owner, James Austin (dba Nicasio Farms) with a filing at the SWRCB in 1987. It then took 10 years to finally achieve Board approval. A major reason for delay was the SWRCB's decision to defer final review and approval until it first resolved pending proceedings involving water rights permits held by MMWD for Lagunitas Creek. Conditions were finally established to protect fishery resources in this watershed.

John Wick and his wife acquired this ranch several years ago and initially evaluated and funded engineered studies and variations on the original Soil Conservation Service dam design on which Austin had relied. These variations ultimately were determined to be economically infeasible, and the project was deferred as they considered their farming alternatives.

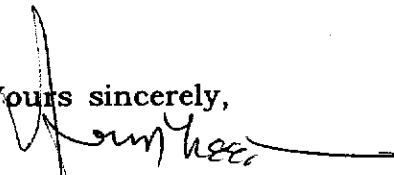
The Wicks have now formed a partnership with a local rancher who is the first to be certified as a Marin County producer of organic grass-fed beef. They plan to coordinate in utilizing the reservoir waters to irrigate pasture for finishing grass-fed beef. Adhering closely to the original Soil Conservation Service concept, they also plan to use the irrigated area for orchard farming.

In order to implement the agricultural objectives outlined above, John Wick and Peggy Rathmann are now seeking a four year extension of time in which to achieve the complete beneficial application of the water to its authorized use.

Attached are copies of the principal relevant documents, duly identified and tabbed, pertaining to the above actions. After you have initially reviewed this matter, I would appreciate your calling my office at your earliest convenience so I can have an opportunity to discuss with you the length of the proposed time extension and the limits on the projected water usage.

Thank you for your consideration.

Yours sincerely,



Harvey M. Freed
Counsel for John P. Wick
and Peggy Rathmann

Enc: As stated

[Cover List of Exhibits - attached]

cc: clients