

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 20952 (Application 29408)

City of Thousand Oaks

**AMENDED ORDER RENEWING
TEMPORARY URGENCY CHANGE ORDER
(WITH MODIFICATIONS DATED FEBRUARY 13, 2015)**

SOURCE: Conejo Creek tributary to Calleguas Creek thence Mugu Lagoon

COUNTIES: Ventura

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

The City of Thousand Oaks (right holder) requests that the State Water Resources Control Board (State Water Board) renew an Order approving a Petition for Temporary Urgency Change for Permit 20952 (Application 29408) pursuant to Water Code section 1435. The State Water Board provided public notice of the petition on January 16, 2015 and issued an Order renewing the July 21, 2014 Temporary Urgency Change Order (TUC Order) on January 21, 2015. This Order amends the January 21, 2015 Order in response to a request by the right holder. Amendments are shown using underline for additions and strikethrough for deletions. The right holder diverts a combination of treated wastewater and natural flows from Conejo Creek subject to a minimum bypass flow. The petition filed by the right holder proposes to continue to temporarily reduce the minimum bypass flow.

2.0 BACKGROUND

2.1 Water Rights

The right holder owns and operates Hill Canyon Waste Water Treatment Plant that discharges tertiary treated waste water to Conejo Creek. Permit 20952 authorizes the right holder to divert up to 21.7 cfs for a maximum of 15,683 acre-feet per year. The season of diversion is year-round, and the purposes of use are Fish and Wildlife Preservation and Enhancement within a Confluence Wetland, and Irrigation within the Camrosa Water District (Camrosa) and the Pleasant Valley County Water District (Pleasant Valley) service areas.

Term 5 of Permit 20952 provides the following:

The water appropriated shall be limited to the quantity that can be beneficially used for irrigation and fish and wildlife preservation and enhancement within the Confluence Wetland, and shall not exceed 21.7 cubic feet per second, up to a maximum of 15,683 acre-feet per annum. Permittee may take water by direct diversion on a year-round basis. Permittee's maximum rate of diversion at any time shall not exceed the sum of the following:

- a. *The real-time rate of discharge from the Hill Canyon Waste Water Treatment Plant (adjusted to account for flow time between the point of discharge and the point of diversion), less 2 cubic feet per second to account for channel losses, less an additional 2 cubic feet per second to account for the dedication of treated waste water for maintenance and protection of fish and wildlife under Waste Water Change Petition WW-6; and,*
- b. *An additional 4 cubic feet per second, by direct diversion from January 1 through December 31 of each year at all times that the minimum bypass flow at the point of diversion is 6 cubic feet per second or more (including the 2 cubic feet per second dedicated to fish and wildlife).*

Term 9 of Permit 20952 provides the following:

For the protection of fish, wildlife, southwestern pond turtles, and riparian habitat and vegetation, the Permittee shall bypass the following amounts of water at the point of diversion on Conejo Creek: (a) 2.0 cubic feet per second of treated waste water dedicated to fish and wildlife pursuant to Waste Water Change Petition WW-6, shall be bypassed at all times; (b) an additional 0.82 cubic feet per second shall be bypassed when the holder of License 12598 (Application 25247) is diverting water from Conejo Creek; and (c) a minimum flow of 6.0 cubic feet per second (including 2.0 cubic feet per second of treated waste water dedicated to fish and wildlife) shall be bypassed at all times that Permittee diverts any water which is not attributable to the portion of treated waste water discharged from the Hill Canyon Waste Water Treatment Plant which is available for diversion after accounting for 2.0 cubic feet per second for channel losses and the 2.0 cubic feet per second dedicated to fish and wildlife.

Under an agreement between the right holder, Camrosa, and Pleasant Valley, Camrosa diverts water under Permit 20952 at Point of Diversion 1 and provides the diverted water to customers within the service areas of Camrosa and Pleasant Valley for beneficial use.

On May 7, 2014, the right holder filed a Petition for Temporary Urgency Change requesting that the State Water Board temporarily reduce the bypass amount required by Permit 20952 from 6 cfs to 2 cfs. On July 21, 2014, the State Water Board issued the TUC Order approving the change subject to specific terms and conditions and subject to expiration on January 17, 2015.

2.2 Petition for Renewal of Temporary Urgency Change

On January 9, 2015, the right holder filed a Petition for Temporary Urgency Change requesting a renewal of the TUC Order for an additional 180 days. The petition further requests that the number of monthly pond turtle surveys required under the TUC Order be reduced from six to five, and that Term 7 of the TUC Order be modified to require the right holder to submit one summary report at the end of the renewal period for both the current TUC Order and any renewal thereof. The right holder proposes to submit the single report within approximately two weeks of the date that any renewal order expires.

2.3 Compliance with the Temporary Urgency Change Order

The right holder has substantially complied with all conditions of the July 21, 2014 TUC Order. The primary conditions of the TUC Order were to: 1) monitor the effects of the amended bypass flow on western pond turtles and their habitat in accordance with the Monitoring Plan dated June 17, 2014 (Term 3); 2) limit Pleasant Valley customers to an instantaneous pumping limit of 2.4 cfs or less (Term 4); 3) operate in accordance with a Water Demand Reduction Plan satisfactory to the Deputy Director for Water Rights (Term 5); 4) record the rate of water diverted from Conejo Creek and the rate of water supplied to Pleasant Valley to ensure that additional water diverted as a result of the Order and used by Pleasant Valley is used for irrigation purposes (Term 6); and, 5) submit a written report no later than

February 1, 2015 to the Deputy Director for Water Rights that summarizes all activities conducted to ensure compliance with the requirements of the TUC Order (Term 7).

The right holder's substantial compliance with the conditions is summarized below.

Term 3

The right holder has implemented provisions of the western pond turtle Monitoring Plan dated June 17, 2014. The right holder conducted surveys on August 8, September 4, October 6, November 19 and December 23. Following each survey, the right holder timely filed a report with State Water Board and provided a copy to the California Department of Fish and Wildlife (CDFW). Based on the survey results, none of the survey thresholds described in Term 3 were triggered during the period of the TUC Order. In fact, the Habitat Suitability Index significantly increased with the November and December surveys as compared to the October survey. The right holder observed dry gaps in various survey reaches during the August, September, and October surveys and consistently discussed these dry gaps with CDFW staff. CDFW staff did not express any particular concern about the dry gaps due to their relatively limited extent.

Term 4

Pleasant Valley customers are limited to an instantaneous pumping limit of 1.0 cfs, which is well below the 2.4 cfs limit. The right holder, through Camrosa, has submitted monthly reports summarizing their compliance with the Water Demand Reduction Plan reports to the State Water Board, and these reports have demonstrated compliance with Term 4.

Term 5

The right holder has submitted a Water Demand Reduction Plan to the State Water Board that has ensured that Pleasant Valley implements actions to reduce water demand by at least 20% compared to baseline conditions. Pleasant Valley has continued to implement a mandatory water rationing program. Specifically, Pleasant Valley imposes a 1 cfs limit on deliveries, a prohibition on extractions for 12 hours one day a week, and adheres to Fox Canyon Groundwater Management Agency's schedule of stepped-down extraction limitations. As documented in the right holder's monthly reports, to date, these measures have resulted in an aggregate water demand reduction of 37% during the term of the TUC Order. The right holder has seen monthly water demand reductions of 20-60% as compared to baseline conditions. Renewal of the TUC Order will enable the right holder to continue to achieve the 20% demand reduction target.

Term 6

Throughout the term of the TUC Order, Camrosa has consistently recorded diversions from Conejo Creek by means of a magnetic flow meter located at the diversion site. Camrosa has measured deliveries to Pleasant Valley by means of a magnetic flow meter dedicated to the delivery of water to Pleasant Valley. Measuring total diversions from Conejo Creek and deliveries to Pleasant Valley with the reduced bypass flow rate in place has allowed Camrosa to determine that all additional water diverted due to the reduced bypass flow rate has either been delivered to Pleasant Valley customers or temporarily stored by Pleasant Valley for subsequent delivery to customers. Pleasant Valley only serves water for irrigation purposes. Therefore, any additional water diverted as a result of the TUC Order and used by Pleasant Valley is used for irrigation purposes.

Term 7

The right holder is required to submit a written report by February 1, 2015 that summarizes all activities conducted to ensure compliance with the TUC Order. The right holder has requested that, should the TUC Order be renewed, only one overall summary report will be required no later than two weeks after the date that the TUC Order, or any renewal order, expires.

3.0 PUBLIC NOTICE OF THE PETITION

On January 16, 2015, the State Water Board issued a notice of the right holder's petition to renew the TUC Order pursuant to Water Code section 1438, subdivision (a). The notice was mailed or electronic copy of the notice was provided to the interested parties who have requested notice of proposed temporary urgency changes and to other known interested parties. The notice, petition, and accompanying materials have been posted on the State Water Board's website. Pursuant to Water Code section 1438, subdivision (b)(1), the right holder is required to publish the notice in a newspaper having a general circulation and that is published within the counties where the points of diversion lie.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act (CEQA), the right holder filed a Notice of Exemption (NOE) on January 9, 2015. The right holder has determined that the change is exempt from the CEQA because it is an emergency project, it is carried out consistent with a state of emergency proclaimed by the Governor on January 17, 2014, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, § 15269, subd. (a) & (c), 15301.) The right holder's basis for claiming the exemptions is that local surface water and groundwater supplies remain severely limited and the right holder's access to additional Conejo Creek supplies continues to be necessary to mitigate the effects of the drought and to prevent worsening of the local water supply conditions.

The State Water Board has reviewed the information submitted by the right holder and has made its own independent finding that the change is consistent with multiple exemptions under the CEQA. The proposed change is exempt from the CEQA because it is an emergency project that is being carried out consistent with a state of emergency as proclaimed by the Governor on January 17, 2014, and expanded upon in an April 25, 2014 proclamation, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, §§ 15269, subd. (a) & (c), 15301.) The basis for claiming the exemption is that the surface and groundwater supplies within the Pleasant Valley Basin are at serious risk due to the effects of the current drought on over drafting and seawater intrusion, and the project will provide an alternative source of water to reduce groundwater pumping. The State Water Board will issue a Notice of Exemption for the proposed change.

5.0 CRITERIA FOR RENEWAL OF THE TEMPORARY URGENCY CHANGE ORDER

Water Code section 1441 authorizes the State Water Board to renew a temporary urgency change order in accordance with the Water Code provisions for temporary urgency changes. Water Code section 1435 provides that a right holder who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the water right may file a Petition for Temporary Urgency Change with the State Water Board. The State Water Board's regulations set forth the filing and other procedural requirements applicable to a Petition for Temporary Urgency Change. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a Petition for Temporary Urgency Change or a renewal thereof, the State Water Board must make the following findings (Wat. Code, § 1435, subd. (b).):

1. The right holder has an urgent need to make the proposed change;

2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.

A discussion of each finding and the information necessary to support each finding is provided below.

5.1 Continued Urgent Need for the Change

Pleasant Valley urgently needs the State Water Board to renew the TUC Order because Pleasant Valley does not have access to the surface water supplies that it typically relies on to serve its customers.

The United Water Conservation District (United) provides surface water to Pleasant Valley. On January 5, 2015, United released the December 2014 Hydrologic Conditions Report. United's boundaries include portions of the Santa Clara River and Calleguas Creek watersheds. According to this report, precipitation for Water Year 2015 within the District's boundaries is 103% of the historical average as of the end of December, a condition driven largely by precipitation in December that was 180% of the historical average. However, if the average monthly amount of precipitation had fallen in December, the Water Year 2015 precipitation total for the year as of the end of December would have been only 63% of the historical average. In addition, on January 15, 2015, the National Weather Service's Climate Prediction Center released a seasonal drought outlook that indicates drought conditions will remain in the Ventura River and Calleguas Creek watersheds through April 30, 2015.

From Conejo Creek, Camrosa typically delivers about 5,000 acre-feet of water per year to Pleasant Valley. In 2014, with the TUC Order in place, Camrosa delivered 2,055 acre-feet of surface water to Pleasant Valley, which is about 41% of normal. The limited deliveries are entirely drought driven. With less natural and return flow in Conejo Creek, Camrosa is not able to divert as much water under Permit 20952. Given the continuing drought in western Ventura County, the right holder anticipates that Conejo Creek surface supplies will remain limited. A continued reduction in the bypass flow requirement would allow Camrosa to divert more water more often than it would otherwise be able to during the drought.

From the Santa Clara River, United typically delivers about 10,000 acre-feet of water per year to Pleasant Valley. In 2014, United did not deliver any water to Pleasant Valley, and because of the drought, it appears highly unlikely that United will be able to deliver water to Pleasant Valley over the period of any renewal order.

To the extent that Pleasant Valley does not receive surface water from Conejo Creek and United, Pleasant Valley turns more heavily to groundwater, thereby potentially exacerbating groundwater level and quality problems in the area. Local groundwater supply and quality problems remain acute because of the severely dry water year. Fox Canyon Groundwater Management Agency's Ordinance E remains in effect. Ordinance E requires all groundwater producers to reduce pumping by 20% to extend the availability of existing groundwater supplies. Pleasant Valley is subject to Ordinance E, and will be better able to comply with Ordinance E to the extent additional Conejo Creek's supplies are available to offset Pleasant Valley's groundwater use.

5.2 No Injury to Any Other Lawful User of Water

Permit 20952 is subject to the prior right under License 12598. As such, Permit 20952 requires the right holder to bypass 0.82 cfs when the holder of License 12598 is diverting water from Conejo Creek. The right holder is not requesting any change in this permit condition. If the State Water Board grants the right holder's petition to renew the TUC Order, the right holder will still be required to bypass 0.82 cfs for the holder of License 12598.

In Decision 1638, the State Water Board concluded that riparian water users are protected by the fact that the 4 cfs that the right holder is authorized to divert, in addition to the available waste water, is water that is attributable to return flows from imported water. Riparian water users cannot claim a right to imported supplies, and therefore they cannot be injured by the right holder's diversion of return flows.

Absent a change to the bypass flow condition for the holder of License 12598, and with the right holder's 4 cfs diversion constituting water that is attributable to return flows, renewal of the TUC Order will not injure any other legal user of water.

5.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

There has been no unreasonable effect on fish, wildlife, or other instream beneficial uses during the period of the TUC Order. Surveys performed under the Monitoring Plan have been positive, with habitat suitability increasing during the months of November and December. Steelhead trout (*Oncorhynchus mykiss*) or trout like species have not been observed at any of the survey reaches, nor has there been evidence of predation on western pond turtles during the period of the TUC Order.

The right holder's petition to renew the TUC Order does not request any changes to the substance of the terms of the TUC Order. The right holder's proposal to modify the Monitoring Plan so as to reduce the number of western pond turtle surveys from six to five will not operate to compromise the overall effectiveness of the Monitoring Plan.

All other terms and conditions of the TUC Order requiring that the right holder monitor the effects of the amended bypass flow on western pond turtles and their habitat and to take all reasonable steps to avoid harm to western pond turtles or other aquatic resources in Conejo Creek, will continue in effect. These efforts will ensure that a continued bypass flow reduction does not result in an unreasonable effect upon fish and wildlife.

On February 10, 2015, the right holder notified the State Water Board that the right holder had revised the Monitoring Plan in collaboration with the CDFW staff. The right holder and CDFW requested that the State Water Board issue an Order amending the January 21, 2015 Order to include a reference to the Monitoring Plan with revisions dated February 9, 2015.

5.4 The Proposed Change is in the Public Interest

Renewal of the TUC Order is in the public interest. Since the issuance of the TUC Order by the State Water Board on July 21, 2014, Pleasant Valley has received 1,082 acre-feet of Conejo Creek water that it would not have otherwise received absent the TUC Order. This has helped Pleasant Valley manage during severe water shortage conditions. A renewal of the TUC Order will continue to provide drought relief to Pleasant Valley by making additional Conejo Creek water available.

A renewal of the TUC Order will also continue to limit local demand for State Water Project (SWP) supplies. SWP supplies remain severely limited for the foreseeable future. On December 1, 2014, the California Department of Water Resources issued an initial 2015 SWP allocation of ten percent (10%). If this initial allocation holds, almost no water will be delivered from the Sacramento-San Joaquin River Delta to the Metropolitan Water District and from there to Calleguas Municipal Water District (Calleguas), Ventura County's SWP wholesaler. Renewal of the Order would continue to make additional local surface supplies available, thereby improving groundwater conditions and limiting local municipal demand for SWP supplies from Calleguas.

6.0 STATE WATER BOARD AUTHORITY

Resolution 2012-0029 delegates to the Deputy Director for Water Rights the authority to act on temporary urgency change petitions, and the Deputy Director for Water Rights has redelegated the authority.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435, subdivision (b).

Based on the available information, the State Water Board finds that:

1. The right holder has an urgent need to make the proposed change;
2. The change may be made without injury to any other lawful user of water;
3. The change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses;
4. The change is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the Temporary Urgency Change Order issued by the State Water Board on July 21, 2014 is renewed and effective until 180 days from ~~the date of this Order~~ January 21, 2015.

All existing terms and conditions of Permit 20952 and the July 21, 2014 Order shall remain in effect, except as provided below:

1. Term 3 of the July 21, 2014 Order shall provide for monitoring in accordance with the terms of the revised Monitoring Plan dated ~~January 14, 2015~~ February 9, 2015.
2. Term 7 of the July 21, 2014 Order shall be modified to read as follows:

By August 1, 2015, the right holder shall submit to the Deputy Director for Water Rights a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order. The report shall, at a minimum, include the following:

- a. *The results of the surveys required in the Monitoring Plan; and,*
- b. *A description of the right holder's efforts to comply with the requirements of this Order.*

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: FEB 13 2015