

State Water Resources Control Board

2001-8



Winston F. Hickox
Secretary for
Environmental
Protection

Division of Water Rights

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Gray Davis
Governor

AUG 24 2001

In Reply Refer
to:333:GFW:26306

California State
Department of Fish and Game
c/o Donald B. Koch
601 Locust Street
Redding, CA 96001

Dear Mr. Koch:

PETITION FOR EXTENSION OF TIME FOR PERMITTED APPLICATIONS 26306 AND 26307 LOCATED IN SISKIYOU COUNTY

The Division of Water Rights (Division) has received and reviewed your protest to the petition for extension of time filed under Permits 19164 and 19165 (Applications 26306 and 26307). Your protest alleges that the petitioner has not shown due diligence in developing their project and that the approval of this petition could result in adverse impacts on fish resources in the Shasta River. Your dismissal terms were presented as follows:

1. The California state Department of Fish and Game (DFG) requested that a field meeting be conducted to clarify an existing term contained in both Permits 19164 and 19165. Term 15 in both permits states that "no water shall be diverted under this permit at any time unless the watermaster has determined that excess water exists in the Shasta River and authorizes the permittee to divert water." DFG requested the petitioner and the watermaster attend this field meeting, with the objective of the meeting being to "develop suitable methods and documentation to determine when there is excess water available in the Shasta River system which be available for appropriation under this permit."
2. DFG requests a 90-day period following the field meeting proposed above be allowed for DFG to work with both the watermaster and the State Water Resources Control Board (SWRCB) to develop permit language for season of diversion restrictions.
3. DFG recommends that the existing minimum bypass under Permits 19164 and 19165 be increased from 1.0 cubic feet per second (cfs) to 5.0 cfs.
4. DFG recommends the addition of a term to Permits 19164 and 19165, which would allow DFG reasonable access to the project's diversion works for the purposes of verifying that the required bypass flows are being released.
5. DFG recommends the addition of a term to Permits 19164 and 19165, which would require the petitioner to comply with Term 17 (as stated in the existing permits) prior to any diversion of water under Permits 19164 and 19165.
6. DFG recommends the permittee be required to install an adequate fish passage facility suitable for providing passage upstream and downstream for all fish age classes. The facility would be designed and built in consultation with DFG.

Emmerson
Exhibit 61

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7. The SWRCB should include "a number" of its "standard environmental terms" in any order approving this petition. DFG recommends the addition of standard permit terms regarding the continuing authority over the public trust doctrine, protection of endangered species, etc. DFG requested Division staff to contact them to discuss these terms.


With respect to your allegation that the petitioner has not shown due diligence in developing the project, the Division notes that (based on a field inspection conducted by Division staff on October 1, 2000) the diversion works and bypass works for the project have been constructed and diversions have been made under the Permits. The petitioner has requested an extension of time only to develop accurate records of their water use for licensing purposes. Thus, the Division concludes that the petitioner has been diligent in developing the project authorized by Permits 19164 and 19165. Accordingly, that portion of your protest alleging a lack of due diligence on the part of the petitioner is not accepted.

DFG also stated that the proposed extension of time will have an adverse environmental impact. This alleged impact would be the result of a reduction in flows in the Shasta River caused by the petitioner's diversions during "critical periods." However, DFG also states in its protest that "The applicant proposes to divert from a fully appropriated stream system. Surplus water is available only in extremely wet years." Therefore, if the petitioner only diverts surplus water, available during "extremely wet years," the petitioner would only be diverting (and thus be able to cause adverse impacts) during these "extremely wet years."

Unless DFG can provide to the Division (within 30 days of the date of this letter) a written statement of facts supporting your allegation that the proposed extension of time will have adverse environmental impacts (considering that the petitioner will only be allowed to divert water during "extremely wet years"), that portion of your protest will not be accepted (and accordingly your recommendations/dismissal terms will not be applied to the subject permits).

If you have any questions regarding this letter, please contact Greg Wilson, the staff person assigned to this project, at (916) 341-5427.

Sincerely,

for 
Edward C. Anton, Chief
Division of Water Rights

cc: Emmerson Investment Inc. ✓
c/o Jack G. Frost
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