

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
JANUARY 6, 2009**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED ORDER APPROVING PETITION FOR EXTENSION OF TIME FOR PERMIT AND AUTHORIZING ISSUANCE OF A WATER RIGHT LICENSE TO BIG BASIN WATER COMPANY, INC., AND FOREST SPRINGS IMPROVEMENT & MAINTENANCE ASSOCIATION IN THE SAN LORENZO RIVER WATERSHED IN SANTA CRUZ COUNTY

DISCUSSION

Big Basin Water Company, Inc., and Forest Springs Improvement & Maintenance Association (Permittees) have requested that the development schedule authorized by their water right permit be extended. The requested time extensions on this permit total 17 years. The requested time extension on Permit 17425 exceeds the delegated authority and thus requires State Water Board approval.

On August 10, 1978, the Division of Water Rights (Division) issued Permit 17425, currently held jointly by Permittees. Under terms of the permit, Permittees were to apply water to full beneficial use by December 1, 1982. However, water was not fully applied to beneficial use before the permit expired in 1982.

Between 1984 and 1990, Permittees filed for and were granted two time extensions to apply the water to beneficial use, the second time extension expiring on December 31, 1998. On October 10, 2001, Division staff conducted an inspection of the project and recommended licensing of the project based on a maximum beneficial use of water completed after December 31, 1998. On May 15, 2002, Permittees filed a petition for extension of time to allow the Division to issue a water right license based on use in 1999, the year of maximum use.

The Division has determined that this project is exempt from the California Environmental Quality Act, and the Division will file a Notice of Exemption if the State Water Board approves this order.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed order.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012, to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 6.2, to target consistency improvements in program delivery and to solicit input on consistency issues as they arise regarding water right permits for domestic or municipal use.

DRAFT

December 8, 2008

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2009-00XX

In the Matter of Permit 17425 (Application 24804)

**Big Basin Water Company, Inc. and
Forest Springs Improvement & Maintenance Association**

SOURCES: Four Unnamed Streams tributary to Jamison Creek and Boulder Creek thence
San Lorenzo River

COUNTY: Santa Cruz

ORDER APPROVING PETITION FOR EXTENSION OF TIME AND AUTHORIZING THE ISSUANCE OF A WATER RIGHT LICENSE

BY THE BOARD:

1. On August 10, 1978, the Division of Water Rights (Division) issued Permit 17425 pursuant to Application 24804 to Big Basin Water Company. The Permit specified the date to complete the beneficial use of water as December 1, 1982.
2. The Division record of ownership for Permit 17425 shows Big Basin Water Company, Inc., and Forest Springs Improvement & Maintenance Association (Permittees) as current holders of the permit.
3. Permit 17425 authorizes direct diversion of 0.52 cubic feet per second (cfs) and storage of 10 acre-feet (af) per year, to be collected from January 1 to December 31. The total amount of water to be taken from the source shall not exceed 335.25 af from October 1 of each year to September 30 of the succeeding year.
4. Permittees constructed a 4.6 af reservoir within the development period specified in Permit 17425. However, water was not fully applied to beneficial use before the permit expired in 1982.
5. On January 27, 1984, Permittees filed a petition for an extension of time to complete beneficial use of water, and on June 29, 1984, the Division issued an order extending the date to complete beneficial use of water until December 1, 1987.
6. On February 23, 1989, Permittees filed a second petition for extension of time, and on January 17, 1990, the Division issued an order approving a new completion date of December 31, 1998.

7. On October 10, 2001, Division staff conducted an inspection of the project authorized by Permit 17425 and recommended licensing of the permit based on a maximum beneficial use of water completed after December 31, 1998.
8. On March 29, 2002, the Division notified Permittees that unless they filed a petition for a one-year time extension, the project would be licensed based on the amount put to beneficial use prior to the expiration date of the previously granted time extension, i.e., December 31, 1998. The Division also notified Permittees that they were currently using water outside the authorized place of use. The Division notified Permittees that they would have to curtail such diversions or file a petition to change the authorized place of use.
9. On May 15, 2002, Permittees filed a petition for an extension of time in order to utilize the data collected during the 2001 inspection and license the project based on 1999 data, the year of maximum water use. Permittees also submitted a petition to change the place of use description.
10. The Department of Fish and Game (DFG) protested the petitions. Subsequently, Permittees withdrew their petition for change in place of use.
11. After Permittees withdrew the change petition, the Division notified DFG that unless it clarified whether its protest still applied to the petition for extension of time the Division would dismiss the protest. DFG did not respond. The protest was dismissed on November 5, 2008. There are no other outstanding protests to the requested petition for extension of time.
12. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay. (Cal.Code Regs., tit.23, § 844.)
13. Permittees have been diligent in applying water to beneficial use. Prior to the permit expiring on December 31, 1998, Permittees had stored a maximum of 4.6 af and diverted water at a rate of .35 cfs for a total annual diversion amount of 221 af. When the Division completed a compliance inspection in 2001, the inspection showed that Permittees' maximum year of water use actually occurred in 1999, the year after the expiration of the previously granted extension. Granting the time extension petition allows the Division to use one additional year of water diversion data to license the project based on a slightly higher year of maximum use. The 1999 diversion rate of .37 cfs and corresponding storage amount of 231 af is only 5 percent greater than what the Division would offer for license without granting the time extension petition.
14. Given that the project was essentially complete in 1998, and that Permittee seeks only a modest one-year time extension to obtain a license that reflects its maximum use in 1999, the Board finds that good cause exists to grant the petition for time extension. The project is ready for licensing upon approval of the petition.

15. The State Water Board has determined that granting this petition does not constitute an initiation of a new right and does not injure prior rights or the public trust resources of the State.
16. The project is exempt from the California Environmental Quality Act (CEQA) under California Code of Regulations, title 14, section 15061, subdivision (b)(2). The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this order.
17. The State Water Board's standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for a State Department of Fish and Game stream alteration agreement, are updated or added to the license.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the State Water Board hereby approves the petition for extension of time and authorizes the issuance of a water right license for this project.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 6, 2009.

Jeanine Townsend
Clerk to the Board