

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287,)
Issued on Application 25002,)
CAMBRIA COMMUNITY SERVICES)
DISTRICT,)
Permittee,)
COASTAL RESIDENTS UNITED,)
INC.; JOHN PEDOTTI; CLYDE)
WARREN,)
Complainants)

ORDER: WR 88- 22
SOURCE: San Simeon Creek
COUNTY: San Luis Obispo

ORDER AMENDING PERMIT AND
DISMISSING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

The Board having issued Order WR 88-14 on July 21, 1988; Order WR 88-14 having amended the terms and conditions of Permit 17287; Cambria Community Services District having filed a petition for reconsideration of that order; and the petition having been duly considered; the Board finds as follows:

2.0 GROUNDS FOR RECONSIDERATION

Section 768 of Title 23 of the California Code of Regulations provides that reconsideration of a Board decision or order may be requested for any of the following causes:

- a. A procedural irregularity which has prevented the petitioner from receiving a fair hearing;
- b. The decision is not supported by substantial evidence;
- c. There is relevant evidence available which, in the exercise of reasonable diligence, could not have been produced at the hearing; or
- d. An error in law.

3.0

SUMMARY OF PETITION

Cambria Community Services District (CCSD or District) filed a petition for reconsideration of Order WR 88-14 on August 22, 1988. The petition requests revisions of two provisions of the order on the grounds that the provisions are not supported by substantial evidence.

The first revision requested is that the Board revise the definition of when the dry period diversion limitations specified in Permit Condition 5 come into force.¹ The sentence of Permit Condition 5 in question states:

¹ The references to permit conditions in this order refer to the permit conditions as added or amended by Order WR 88-14.

"The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre feet per annum."

CCSD requests that the word "first" be deleted from the foregoing provision of Permit Condition 5.

The second revision requested is that the Board delete part d of Permit Condition 21 which requires CCSD to take one of three specified actions to maintain a supply of water at well 11C1 operated by Jon Pedotti.

If the Board does not delete part d of Permit Condition 21, the District requests in the alternative that: (1) the Board add a phrase to part d of Condition 21 to clarify that well 11C1 is entitled to protection against interference from CCSD operations only if it becomes unusable "under reasonable methods of diversion", and (2) that the Board specify an additional alternative action which CCSD may take in order to maintain a supply of water to well 11C1. Part d of Permit Condition 21 presently requires CCSD to maintain a supply of water to the place of use served by well 11C1 through improvements to well 11C1, installation of a new well, or delivery of water from CCSD's point of diversion. The additional alternative

suggested in the petition for reconsideration is that CCSD be allowed to "provide a physical connection from well 10A3 or other downstream Pedotti well to the place of use served by well 11C1."

4.0 RESPONSES FILED IN OPPOSITION TO THE PETITION FOR RECONSIDERATION

Written responses opposing the petition for reconsideration were filed by Jon Pedotti, the Coastal Residents United, and Clyde Warren and Susan Keller. The responses all review evidence from the record² which supports the conclusions and requirements of Order WR 88-14 and all urge. that the petition for reconsideration be denied.

5.0 ANALYSIS OF ISSUES RAISED BY PETITION FOR RECONSIDERATION

5.1 Definition of Dry Period For Purposes of Permit 17287 Diversion Limitations

Water Right Order WR 88-14 provides that the quantity of water which may be diverted from San Simeon Creek underflow by CCSD during the "dry period" shall not exceed 370 acre-feet. Three hundred and seventy acre-feet is the maximum amount of water ordinarily available to the District during the annual dry period after the demands of upstream riparians are satisfied.

² Any references to factual matters which are not part of the evidentiary record were disregarded by the Board.

The dry period is defined in Permit Condition 5 as being the period "between the date surface flow first ceases at the Palmer Flats gaging station and October 31 of each year." The underlying assumption for the dry period diversion limitation is that at any time there is surface flow present at Palmer Flats, then recharge of the San Simeon Creek basin is occurring. When there is no surface flow at the Palmer Flats gaging station, all parties have assumed that there is little or no recharge of the quantity of water in channel storage. No evidence was presented at the hearing establishing a more accurate means of determining when the water in channel storage was being recharged. Consequently, Order WR 88-14 recognized the date when surface flow at Palmer Flats first ceases as triggering the beginning of the dry season diversion limitations. Different wording of Condition 5 was proposed in the Board's draft order, but the District objected. The present wording was adopted at the July 21 Board meeting with the consent of the District. Nevertheless the petition for reconsideration requests that the word "first" be deleted from the second sentence of Permit Condition 5. Condition 5 presently reads as follows:

"The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

CCSD contends that the evidence shows a record of erratic surface flow in San Simeon Creek which could result in an early cessation of surface flow shortly after the first of the year followed by a resumption of surface flow after spring rains. By starting the dry period diversion limitations when surface flow first ceases, the existing wording of Permit Condition 5 could result in a period during which the 370 acre-feet limitation would apply even in years in which later rains substantially recharge the quantity of water in channel storage. Deleting the word "first" from Condition 5, as requested by the District would avoid this problem.

This change by itself, however, would create another problem. For example, if season runoff ended early,

then any subsequent diversion of water by CCSD or riparian users would deplete the quantity of water remaining in channel storage. If a lengthy period of no flow were followed by a brief resumption of surface flow several weeks later, it would be unreasonable to conclude that the brief resumption of surface flow has fully recharged the storage capacity of the basin.

In order to address the concern of the District regarding intermittent flows and to meet the objective of beginning the dry season diversion limitations when channel storage is at full capacity, the Board concludes that Condition 5 should be amended to read as follows:

"The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow ~~first~~ ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. As used in this permit, 'the date when surface flow ceases' refers to the date of cessation of seasonal runoff during the winter or spring months. Any question regarding the date of cessation of seasonal run-off in a particular year shall be resolved by the Chief of the Division of Water Rights upon request of any legal user of water from San Simeon Creek. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the

permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

The evidence in the record is insufficient to establish more exact criteria for determining the date when the dry season diversion limitations should start each year. AS amended, Permit Condition 5 will give the District the benefit of the right to use water made available by any resumption of seasonal runoff following an early cessation of surface flow after the first of the year. Under the amended language, however, it is clear that a brief period of intermittent flow which occurs after the cessation of seasonal runoff will not change the date used in determining when the 370 acre-foot limitation commences.

5.2. Basis For Requiring CCSD To Maintain Supply of Water To Area Served by Well 11C1

The District makes several arguments in support of its contention that it should not be required to maintain a supply of water to the place of use served by well 11C1. The arguments can be divided into two categories. First, the District argues that well 11C1 is not a reasonable method of diversion. Second, CCSD argues that its use of water does not adversely affect

water levels at well 11C1 because: (1) factors other than District pumping "control" water levels at well 11C1; (2) Wells 10M2, 10A2 and 10A3 are located closer to the District's wells, but they have never gone dry or become unpumpable; (3) the lowest static water level at well 11C1 was reached in 1977 before CCSD pumping began rather than in 1985 as stated in Order WR 88-14; (4) there is no "direct correlation" between changes in low water levels in the CCSD wells and the change in the low water level in 11C1 for the same period of time; and (5) there was still standing water in well 11C1 in 1985 when the well became unpumpable. Each of these contentions is addressed below.

Beginning with the assertion that well 11C1 is not a reasonable method of diversion, we note that the record establishes that well 11C1 is a relatively new well drilled as a replacement well for well 11B1 in 1977. The well bottoms in bedrock and Mr. Pedotti testified he had no problems with the well until the fall of 1985 at the time when CCSD conducted its yield test. Contrary to the inferences in the District's petition, it is not necessary to drill test holes, do geologic logging, conduct geophysical surveys, or to perform aquifer pumping tests at various rates in order to

qualify as using a reasonable method of diversion. To the contrary, as stated in Order WR 88-14, a water user "cannot be compelled to divert according to the most scientific methods" available. (Erickson v. Queen Valley Ranch Co. (1971) 22 Cal.App.3d 378, 584, 99 Cal.Rptr. 446).

Moreover, in this instance, the District introduced no evidence establishing that any alternative location of well 11C1 or any other method of operation would be better suited to meet the riparian water demand in the area served by the well. Mere speculation that there may be some method to improve operation of the well does not lead to the conclusion that the well is an unreasonable method of diversion. In view of the facts that the well is relatively new, it bottoms in bedrock, and it had experienced no problems prior to 1985, the Board sees no reason to reconsider its prior determination that well 11C1 provides a reasonable method of diversion.

With respect to the District's contention that District use of water does not adversely affect water levels at well 11C1, the Board finds that the evidence shows that District use of water clearly can have an adverse effect on water levels at well 11C1. CCSD argues that

other factors "control" water levels at well 11C1. The Board agrees that water use from other riparian wells and the length of the dry season do have an effect on water levels at well 11C1, but that is not the issue. The issue is whether CCSD's pumping under a junior right adversely affects the availability of water to serve the senior riparian use at well 11C1.

The evidence of CCSD's adverse effect on well 11C1 is convincing. In 1985, the water level in well 11C1 was within several feet of its historic high level at the beginning of the dry period; the length of the dry period was about average (165 days) for the period of record; and the quantity of water pumped from well 11C1 was less than the previous year. Yet, by the end of the dry period, the water level in well 11C1 was similar to that recorded during the 1976-1977 drought. The only identified change in conditions on San Simeon Creek which explains the low water level in well 11C1 is that 1985 was the year of the District's "yield test" in which District water diversions increased to a new high.

The District's petition next contends that the fact that wells 10M2, 10A2, and 10A3 have never become dry or unpumpable supports the conclusion that District

pumping does not adversely affect well 11C1 which is located even further upstream from the District well field. While it is true that wells 10M2, 10A2 and 10A3 have not gone dry or become unpumpable, the hydrographs for well 10A3, well 11C1 and almost all hydrographs in the record (CCSD, 15) show that the static water levels of the wells are affected by CCSD pumping. Wells 10M2 and 10A3, however, are located in an area of having a thicker water bearing zone than is present at well 11C1. Well 10A2 is used for domestic and stockwatering purposes and, therefore, it would not be expected to have as high a demand for water as well 11C1 which is used for irrigation. As was explained in Order WR 88-14, each of the wells has to be examined on an individual basis. Evidence that certain other wells in the basin have not been rendered inoperable does not undermine the conclusion that the District's use of water adversely affects water levels at well 11C1.

CCSD's petition for reconsideration does identify one minor error in Order WR 88-14. The order mistakenly states that the static water level at well 11C1 reached an all time low in October of 1985. In fact, as CCSD points out, at the end of the severe two year drought of 1976 and 1977, the water level in well 11C1 was slightly below the 1985 water level. The District

provides no citation to the record for the specific water level elevations referred to in the petition, but the relative elevations in 1977 and 1985 can be seen on the hydrograph of well 11C1. (CCSD, 15.) The significant point is that while the lowest water levels in 1985 and 1977 were very similar, the hydrologic conditions were very different. In 1977, the dry period lasted 309 days and the total annual flow at Palmer Flats was 636 acre-feet. In 1985, the dry period was only 165 days and the total annual flow at Palmer Flats was 6,822 acre feet.

As explained in Order WR 88-14, the only plausible explanation for the low water level in 1985 was the increase of underflow pumping in the basin. The District diverted 366 acre-feet or nearly 70 percent of the total dry season diversions of San Simeon Creek underflow in 1985. Thus, the evidence in the record supports the conclusion that, as the principal dry season diverter, CCSD did affect the water level in well 11C1. The fact that the water level was slightly lower in 1977 does not contradict this conclusion.

The low water level in well 11C1 recorded in 1977 shows that there is a possibility that well 11C1 could become un-pumpable in some years even in the absence of CCSD

pumping. It should be stressed, however, that the low water level in 1977 came at the end of a severe two-year drought when the runoff at the Palmer Flats gaging station was a small fraction of the average amount. In all years of record except 1977 and 1985, the record shows the water level in well 11C1 has remained sufficiently high to meet the present level of demand.

If conditions occur in the future which are similar to the 1976-1977 drought, and if CCSD can produce convincing evidence showing that well 11C1 would be unpumpable even in the absence of CCSD diversions, then CCSD would be free to request authorization to divert water without having to maintain a supply of water to satisfy the riparian rights served by well 11C1. Such a request could be made pursuant to Water Code Section 1425 et seq.

CCSD's next argument is that there is no "direct correlation" between the changes in low water levels in the CCSD wells and changes in the low water levels in well 11C1 for the same period of time. In response, we note that Order WR 88-14 recognizes that the heterogeneity of the water bearing material in the San Simeon alluvium may affect the amount of water available in the area upstream of the well field. In

view of the heterogeneous material in the alluvium, one would not expect to find a one-to-one (or a foot-to-foot) correlation between changes in low water levels in District wells and well 11C1. The point is that as District dry season water use increases, the record shows that water levels in well 11C1 and other wells in the basin decline.

CCSD's final argument regarding the District's alleged lack of effect on well 11C1 is that even after the well became un pumpable there was standing water in the bottom of the well. We respond that the problem with well 11C1 is not that CCSD diversions entirely dried up the well. Rather; the problem was that CCSD diversions lowered the static water level to the point where the alluvium could not provide water at the well's operable rate of pumping. Since the well bottoms in bedrock, deepening the well would not overcome this problem.

5.3. Alternative Means of Providing Water To Place of Use Served By Well 11C1

CCSD also suggests that if part d of Permit Condition 21 is retained, it should be revised to allow CCSD an additional way to supply water to well 11C1. The additional alternative which the District suggests is to "provide a physical connection from well 10A3 or other downstream Pedotti well to the place of use served by well 11C1."

Pedotti's response to this suggestion is that:

(1) there is no evidence in the record regarding this proposed method of mitigation; and (2) the practical effect of using well 10A3 to serve the place of use of well 11C1 would be to reduce the amount of water available for use in the area surrounding well 10A3.

Pedotti suggests, however, that he has no objection to the District using various alternative means to supply water to the area of well 11C1, provided that use of water from his other wells is not compromised in the process.

The Board agrees that there has been no showing that well 10A3 provides a feasible means of providing water to the area served by well 11C1. If well 10A3 does provide a feasible means of supplying water to well 11C1 without other adverse effects to Pedotti, the Board has no objection to proceeding in that manner. The three mitigation actions identified in part d of Condition 21 were specified based on the evidence in the record. If the District and Mr. Pedotti can agree on some other method of providing water to well 11C1 then the Board has no objection to use of such method. Part d of Condition 21 should be amended accordingly.

Finally, the District suggests that part d of Condition 21 should be amended to state that the District must maintain a supply of water to well 11C1 only when the well is rendered unusable "under reasonable methods of diversion." Since Order WR 88-14 has already found that well 11C1 provides a reasonable method of diversion, the requested revision is unnecessary and potentially confusing.

6.0

CONCLUSION

The petition for reconsideration states that the District recognizes the "soundness and necessity" of Order WR 88-14 and "accepts the restraints it imposes on the District" with two exceptions. The District's first objection concerns the definition of when the dry season diversion limitations apply. Although all parties previously agreed to the existing wording, the Board concludes that revising the definition of the dry season as discussed in Section 5.1 above will assist in maximizing the beneficial use of water in accordance with Article 10, Section 2 of the California Constitution.

The District's second objection concerns part d of Permit Condition 21. For the reasons discussed in

Section 5.2, the Board concludes that part d of Permit Condition 21 is supported by the evidence in the record. In order to allow for the broadest possible range of actions to protect the prior riparian rights in the area served by well 11C1, however, the Board concludes that part d of Condition 21 should be amended to read as specified in the order which follows.

With the exception of the changes described above, the Board concludes that Order WR 88-14 is well supported by the evidence. Consequently, the petition for reconsideration should be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Permit Condition 5 of Permit 17287 is amended to read as follows :

"The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. As used in this permit, "the date when surface flow ceases" refers to the date of cessation of seasonal run-off during the winter or spring months. Any question regarding the date of cessation of seasonal run-off in a particular year

shall be resolved by the Chief of the Division of Water Rights upon request of any legal user of water from San Simeon Creek. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

2. Part d of Permit Condition 21 of Permit 17287 (as added by Order WR 88-14) is amended to read as follows:

"d. At such time as permittee is diverting water authorized under this permit and the water level in well 11C1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 11C1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

- (1) Make improvements to well 11C1;
- (2) Install a new well;
- (3) Deliver water from its point of diversion to the riparian place of use served by well 11C1;
- (4) Such other action as is mutually agreeable to the permittee and Pedotti or his successors in interest."

3. Except as modified, herein, the provisions of Order WR 88-14 are affirmed.

4. The petition for reconsideration filed by Cambria Community Services District is dismissed.

CERTIFICATION

The undersigned, Administrative Assistant 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 October 20, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to
the Board