

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition)	ORDER: WR 94-3
for Temporary Urgency Change)	
for License 4324)	SOURCE: Lagunitas Creek
(Application 13965))	
WALDO GIACOMINI, Licensee)	COUNTY: Marin
)	
)	
)	

ORDER APPROVING TEMPORARY URGENCY CHANGE
ADDING TWO POINTS OF DIVERSION TO LICENSE 4324
TO DEFER SUMMER DAM INSTALLATION

BY THE BOARD:

1.0 INTRODUCTION

Waldo Giacomini having filed a Petition for Temporary Urgency Change pursuant to Water Code Section 1435 et seq. with the State Water Resources Control Board (SWRCB) on April 1, 1994; notice to all interested parties having been given on April 6, 1994 pursuant to Water Code Section 1438(b); available records, files, and decisions which relate to the rights of other legal users of water having been reviewed pursuant to Water Code Section 1437; consultation with representatives of the California Department of Fish and Game (DFG) having occurred on April 18, 1994, pursuant to Water Code Section 1437; the SWRCB having adequate information in its files to make the findings required by Water Code Section 1435(b); the SWRCB finds as follows:

2.0 SUBSTANCE OF PETITION

The proposed change would temporarily add two points of diversion to License 4324 during the May 4, 1994 through October 31, 1994 period. The additional points of diversion are upstream of Giacomini's authorized point of diversion on Lagunitas Creek and are wells controlled by the North Marin Water District (District). The wells are located behind the U.S. Coast Guard Housing Facility (0.9 miles upstream of the authorized point of diversion) and at the "Old Downey" site (1.5 miles upstream of the authorized point of diversion) near Point Reyes Station.

The proposed change would defer for approximately one month the need to install a summer-time salinity barrier dam in Lagunitas Creek to protect Giacomini's irrigation supply from salinity intrusion. The water is used for pasture irrigation. The proposed change would also allow the unimpeded outmigration of salmonid smolts.

3.0 SUBSTANCE OF LICENSE 4324 (APPLICATION 13965)

The authorized point of diversion under License 4324 is located on Lagunitas Creek tributary to Tomales Bay, in Marin County within the SW¼ of the NW¼ of projected Section 36, T3N, R9W, MDB&M; California Coordinate System, Zone 3, N 578,000, E 1,335,200.

License 4324 authorizes the diversion of up to 2.67 cubic feet per second (cfs), from May 1 to November 1, to irrigate up to 175 acres of land, described as follows: 115 acres within projected Section 35, T3N, R9W, MDB&M; and 60 acres within projected Section 36, T3N, R9W, MDB&M.

4.0 REASON FOR DEFERRING INSTALLATION OF SUMMER DAM

On May 11, 1987, the U.S. Army Corps of Engineers (Corps) issued to Waldo Giacomini a five year permit (Permit No. 16700N63) to construct a summer dam across Lagunitas Creek. The Corps permit authorizes the dam to be installed on May 15 of each year. Mr. Giacomini is now in the process of reapplying for a Corps permit for the summer dam. Concerns have been raised that the dam may have an adverse impact on the salmon population of Lagunitas Creek if it is constructed before the end of the smolt outmigration period.

The proposed change involves temporary above-ground installation of approximately 1 mile of 8-inch pipe connecting the existing Giacomini Ranch irrigation system headworks to the District's existing upstream wells. The proposed project would provide a temporary alternative means of delivering irrigation water to the existing Giacomini Ranch irrigation system so that installation of the annual Giacomini summer dam can be deferred to allow

outmigrating salmonid smolts to pass downstream to Tomales Bay unimpeded by the dam.

5.0 OBJECTIONS TO THE PETITION

On April 6, 1994, notice of the petition for the temporary urgency change was mailed to interested parties. The final date for filing objections to the petition was April 18, 1994.

On April 18, 1994, Ronald L. Johnson, General Manager of Marin Municipal Water District (MMWD) filed a letter which stated that although MMWD does not object to the proposed change, it suggests that the proposed change should be made permanent or should at least remain in effect until the studies concerning the impacts of the timing of dam placement are complete. MMWD believes that the practice of issuing temporary urgency change orders each year is not a reasonable or logical approach to addressing conditions on lower Lagunitas Creek.

The SWRCB agrees with MMWD's suggestion that issuing temporary urgency change orders each year for the same change is not appropriate. This is the second year that a temporary urgency change order will be approved for the addition of two points of diversion to License 4324. While the SWRCB does not believe that this petition should be denied, continuing to approve the same change

on an urgency basis in future years, in the absence of a petition for a permanent or long-term change, would not be appropriate. Water Code Section 1435(c) requires that Mr. Giacomini exercise due diligence in petitioning for a permanent change under the circumstances present in this case. This order requires that if there is a substantial likelihood that Mr. Giacomini will want to use these two points of diversion in future years, Mr. Giacomini must file a petition to add these two points of diversion to License 4324 permanently.

No other comments or objections were received.

6.0 COMPLIANCE WITH WATER CODE SECTION 1435(b)

To approve a petition for temporary urgency change the SWRCB must find that:

1. The licensee 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.

6.1 **URGENT NEED FOR THE PROPOSED CHANGE**

"Urgent need" is defined in Water Code Section 1435(c) to mean:

"[T]he existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change."

The summer dam is installed every year on approximately May 15. Mr. Giacomini has an urgent need to change the point of diversion specified in License 4324 if he is to proceed with his proposed project and defer installation of the summer dam at this time. Timing is critical to the success of the emigration of smolts.

6.2 **EFFECT ON OTHER LAWFUL USERS OF WATER**

Harold F. Genazzi is the only known lawful user of water between the proposed points of diversion and the existing

point of diversion. He appears to have a riparian right and diverts water year round for stockwatering and domestic use (Statement of Water Diversion and Use No. S009542). He was notified by certified mail of the proposed change and did not object to it.

Mr. Giacomini's temporary alternative water distribution system to utilize water diverted from the proposed points of diversion is capable of diverting a maximum of approximately 1.4 cfs from Lagunitas Creek. Mr. Genazzi has a shallow offset well adjacent to Lagunitas Creek that can divert up to 0.67 cfs. However, according to the only record of Mr. Genazzi's use of water from this well, the 1977 Statement of Water Diversion and Use (No. S009542), his maximum use was only nine acre-feet for the year, or about 0.012 cfs on a daily basis. Therefore, the average daily demand from the Giacomini and Genazzi diversions would impact Lagunitas Creek by 1.41 to 2.07 cfs.

The following table identifies the flows in Lagunitas Creek as recorded by the U.S.G.S. streamflow measuring gage "Lagunitas Creek near Point Reyes Station" (locally known as "Gallagher Gage"). The record shows that the lowest flow of record for the May - June period during the last ten years was 5.9 cfs, recorded in June of 1987. Further, on April 14, 1994, Division of Water Rights

staff obtained the instantaneous flow measurement for Lagunitas Creek which was 14.0 cfs. This flow is higher than the flows of April 14, 1987 (11 cfs) and April 14, 1988 (13 cfs) and equal to the flows of April 14, 1990 and 1991, which indicates that the flow in Lagunitas Creek this year should be in the range of flows seen during 1990 and 1991.

U.S.G.S. Streamflow Gage
Lagunitas Creek Near Point Reyes Station
(CFS)

Year	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
May	19	9.8	9.0	7.5	7.5	8.1	9.2	9.0	11.0	9.7	**	04/14/94 14.0
June	12	5.5	6.9	6.5	5.9	6.8	7.3	8.5	9.0	7.2	**	

** -- Published records not available.

According to the streamflow data, the proposed change will not affect Mr. Genazzi's use of water under his riparian right because there is sufficient water available in Lagunitas Creek in the vicinity of Mr. Genazzi's point of diversion to accommodate the maximum diversions of both Mr. Genazzi and Mr. Giacomini.

Therefore, the proposed change will not injure any lawful user of water.

6.3 EFFECTS ON FISH, WILDLIFE, OR OTHER INSTREAM BENEFICIAL USES

The purpose of the proposed change is to allow outmigrating salmonid smolts passage downstream to Tomales Bay unimpeded by the dam. On April 18, 1994, Bill Cox, DFG Biologist, was consulted about effects of the proposed change on fish and wildlife. According to Mr. Cox, the delayed installation of the summer dam and the change in point of diversion will not adversely affect fish, wildlife, or other instream beneficial uses and may be beneficial to the salmon fishery of Lagunitas Creek. Further, the pipeline will not destroy any wetlands or riparian habitat.

The SWRCB finds that the delayed installation of the summer dam may be beneficial to the salmon fishery of Lagunitas Creek and that there are no unreasonable effects on fish, wildlife, or other instream beneficial uses caused by the proposed change.

6.4 PUBLIC INTEREST OF THE PROPOSED CHANGE

The summer dam may delay the emigration of salmonid smolts from Lagunitas Creek to Tomales Bay. By delaying the installation of the summer dam, the proposed temporary change will allow the smolts unimpeded passage

to Tomales Bay. The proposed temporary change is in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. Therefore, it is in the public interest to make the proposed change.

7.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

In accordance with the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.), the District prepared and circulated a Negative Declaration. The CEQA documents prepared by the District state that the duration of the project may be four years (1993-1996). The District approved and certified the Negative Declaration on May 4, 1993. A Notice of Determination was filed with the Marin County Clerk.

The SWRCB is a responsible agency for the proposed project. It has considered the Negative Declaration adopted by the District. No significant environmental effects were identified for the project.

8.0 CONCLUSIONS

1. Mr. Giacomini has an urgent need to make the proposed change.
2. The proposed change will not injure any other lawful user of water.

3. The proposed change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. The proposed change is in the public interest and should be approved.

9.0 ORDER

NOW, THEREFORE, IT IS ORDERED THAT the Petition for Temporary Urgency Change to add two points of diversion is approved and is subject to the following terms and conditions:

1. Mr. Giacomini may temporarily divert water from two points of diversion from Lagunitas Creek tributary to Tomales Bay in Marin County. The points of diversion are described as follows:
 - a. The "Coast Guard Well" located within the SW 1/4 of SE 1/4 of Section 25, T3N, R9W, MDB&M; and
 - b. The "Downey Well" located within the SE 1/4 of NE 1/4 of Section 25, T3N, R8W, MDB&M.
2. This temporary change order is issued, and the licensee takes it subject to California Water Code, Division 2, Chapter 6.6, Section 1435 et seq. The temporary urgency change shall not result in creation of a vested right, even of a temporary nature, and shall be subject at all

times to modification or revocation at the discretion of the SWRCB.

3. This order shall be effective beginning on the date of its issuance and shall automatically expire 180 days after the date of its issuance.
4. Except as expressly provided herein, all terms and conditions of License 4324 shall remain in effect.
5. The place of use is limited to 175 acres of land, described as follows: 115 acres within projected Section 35, T3N, R9W, MDB&M; and 60 acres within projected Section 36, T3N, R9W, MDB&M.
6. If there is a substantial likelihood that Mr. Giacomini will be requesting this change in future years, he shall file a petition on or before August 1, 1994, to permanently add these two points of diversion to License 4324.
7. Pursuant to California Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this order with a view to minimize waste of water and to meeting the reasonable water requirements of the licensee without unreasonable draft on the source.

CERTIFICATION

The undersigned, Administrative Assistant to the SWRCB, 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 May 4, 1994.

AYE: John Caffrey
James M. Stubchaer
Marc Del Piero
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to
the Board

