

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Conditional)	
Temporary Urgency Change Order)	
for License 11785)	ORDER: WR 95-15
(Application 17115))	
)	SOURCE: Old Creek
CALIFORNIA MEN'S COLONY,)	
)	COUNTY: San Luis Obispo
Licensee.)	
_____)	

ORDER VALIDATING THE ISSUANCE OF
CONDITIONAL TEMPORARY URGENCY CHANGE ORDER
CHANGING THE PLACE AND PURPOSE OF USE

BY THE BOARD:

1.0 INTRODUCTION

The planned primary source of water for irrigation of the El Chorro Regional Park is treated wastewater from the California Men's Colony's (CMC) wastewater treatment plant. A petition has been filed with the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1211 seeking approval for such use. The petition was noticed to the public and protests were filed by several parties. Final action on the petition will not be completed prior to September 1995 when water is needed to establish golf course turf at the El Chorro Regional Park.

On August 9, 1995, the California Men's Colony filed a petition for temporary urgency change pursuant to Water Code Sections 1435 et seq. with the SWRCB. The petitioner sought to temporarily add irrigation and industrial uses as purposes of use and also to add the El Chorro Regional Park to the place of use of License 11785 for a period of 180 days. License 11785 authorizes diversion and storage of water at Whale Rock Reservoir. The El Chorro Regional Park is located within Sections 6 and 7, T30S, R12E, MDB&M; and within Section 12, T30S, R11E, MDB&M.

SWRCB Resolution No. 95-36 delegates authority to individual Board Members to authorize temporary urgency change orders under

Water Code Section 1435. Water Code Section 1435(d) requires that within 30 days of the issuance of an order approving a temporary change, the SWRCB must validate the order. Acting pursuant to the delegation of authority in Resolution No. 95-36, Board Member James M. Stubchaer issued an order approving the temporary urgency change on August 28, 1995. On August 28, 1995, the SWRCB also prepared a notice and transmitted it to the County of San Luis Obispo for publishing in a local newspaper in accordance with Water Code Section 1438.

2.0 SUBSTANCE OF LICENSE 11785 (APPLICATION 17115)

License 11785 allows for direct diversion of up to 2.1 cubic feet per second (cfs) from January 1 to December 31 and storage of 1,450 acre-feet per annum (afa) from November 1 to June 30 in Whale Rock Reservoir. The water is used for domestic purposes at the California Men's Colony of the State Department of Corrections within Sections 9 and 16, T30S, R12E, MDB&M.

3.0 THE PETITION FOR CHANGE

The California Men's Colony filed a petition for a temporary urgency change seeking to add the El Chorro Regional Park to the place of use and to add irrigation and industrial uses as purposes of use to License 11785 (Application 17115). The temporary changes are to remain in effect for 180 days.

4.0 FINDING REQUIRED BY WATER CODE SECTION 1435

Water Code Section 1435(d) provides that prior to issuing a change order, the SWRCB shall make all of the following findings:

- "1. The permittee has an urgent need to make the proposed change;
- "2. The proposed change may be made without injury to any 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."

The section also requires that findings be made to support any conditions required to assure that a change is in the public interest and may be made without injury to any lawful user of the water and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

5.0 THE TEMPORARY URGENCY ORDER

The findings required by Section 1435(b) are made in the August 28, 1995 change order.

Having made the foregoing findings, the order approved the temporary change subject to conditions which include the following:

"1. The SWRCB shall, at a meeting held not later than 30 days following issuance, review and validate the order approving the temporary urgency change. Should the SWRCB fail or refuse to validate the temporary change, it shall stand revoked and be of no further force or effect.

* * *

"4. This order shall be effective beginning on the date of its issuance and shall automatically expire 180 days after the date of its issuance, without further action by the SWRCB.

"5. Licensee may temporarily use water under License 11785 for irrigation and industrial purposes at the El Chorro Regional Park within Sections 6 & 7, T30S, R12E, MDB&M; and within Section 12, T30S, R11E, MDB&M as shown on a map filed with the SWRCB.

"6. Licensee shall implement mitigation measures included in the final Environmental Impact Report (State Clearinghouse No. 93081108 dated December, 1994) as follows:

"Mitigation measures BR-1 through BR-9 as discussed in the Final Environmental Impact Report on pp. 1-4 to 1-5, 1-27 to 1-30, 1-40, and 5.5-22 to 5.5-27."

6.0 THE NOTICE

Water Code Section 1438 provides, in pertinent part, that:

"(a) The board may issue a temporary change order in advance of the notice required by this section. In all cases, whether or not a temporary change order has been issued, the board shall, as soon as practicable after the receipt of a petition, issue and deliver to the permittee or licensee a notice of the change order which includes the information required by the rules of the board.

"(b) Publication or posting of the notice shall be as follows:

"(1) If the permit or license is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the change order is to remain in effect for more than 30 days, the notice shall be published by, and at the expense of, the permittee or licensee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication."

On August 28, 1995, the SWRCB prepared a notice and transmitted it to the County of San Luis Obispo for publishing in a local newspaper. An affidavit was filed with the SWRCB confirming that the notice was published in accordance with statutory requirements. In addition to the foregoing, the SWRCB sent the notice by ordinary mail to 147 persons who SWRCB records indicate may be interested in the temporary change.

The notice provided that objection to validation of the temporary urgency change must be filed by 4:00 p.m. on September 11, 1995. A fax number was provided to facilitate the filing of objections. The notice also provided that objections to validation of the order must be based on allegations that there is no urgency; that the change would injure lawful users of water; is not in the public interest; would have an unreasonable effect on fish, wildlife, or other instream beneficial uses; would have an adverse environmental impact; would be contrary to law; or is not within SWRCB jurisdiction.

7.0 RESPONSE TO NOTICE

7.1 Objection

As noted above, the period for filing objections to the petition ended on September 11, 1995. An objection was filed by Robert J. Williams, Jr., and Harriet L. Williams on September 8, 1995.

Mr. and Mrs. Williams own a farm through which Chorro Creek flows. The reasons stated for the objection are:

1. Use of water for irrigation of a golf course is a convenience and "not an urgency."
2. The use is not a temporary condition. Rather, it establishes a permanent need for water.
3. If the use of water decreases the flow in Chorro Creek in any manner, it would vitally affect fish, turtles, heron habitat and the Morro Bay estuary because flow in the stream is already very low and stream life is very fragile.

7.2 Response to Issues Raised by Objection

The criteria for determining if there is an urgent need for water under Water Code Section 1435 are set forth in subsection (c) of that statute as follows:

"'Urgent need', for purposes of this chapter, means the 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 order entered on August 28, 1995 concluded that there was an urgent need to use the water as requested by the petitioner within the meaning of Water Code Section 1435(c). The SWRCB agrees that the statutory requirements are met. Use of the water from Whale Rock Reservoir to irrigate the golf course on a temporary basis would promote the constitutional policy of putting water resources of the state to the fullest extent of which they are capable. As stated earlier in this order, petitioner previously requested authorization to use reclaimed waste water to irrigate the land involved. There is no basis in the record for concluding that petitioner has not exercised diligence in pursuing that request. Therefore, we affirm the finding of the August 28, 1995 order that, within the meaning of Water Code Section 1435, petitioner has an urgent need to use the water in question.

In response to the second issue raised in the Williams' objection, it is true that continued irrigation of the El Chorro Regional Park will require a permanent source of water. The record shows that petitioner has initiated steps to obtain a long-term supply of reclaimed waste water which would replace the need for water from Whale Rock Reservoir. Approval of a temporary urgency change petition under Water Code Section 1435 et seq. is not limited to situations where there is no long-term need for water to meet a proposed use. Rather, approval of a

temporary urgency change means that authorization to use water from a specific source for an identified use is limited to a temporary period of time, not to exceed 180 days. The August 28, 1995 order which is presently before the SWRCB for validation limits the authorized use of water to 180 days.

The third issue raised in the Williams' objection concerns potential impacts of the temporary urgency change on fish and wildlife in Chorro Creek. The August 28, 1995 order authorized temporary use of water which was diverted from Old Creek to storage in Whale Rock Reservoir. The water is delivered to the El Chorro Regional Park through a pipeline. Thus, the temporary change does not involve any diversion of water from Chorro Creek and will not result in adverse effects to fish and wildlife in the creek.

In summary, the SWRCB finds that the issues raised in the objection do not provide a basis for disapproval of the temporary urgency change.

8.0 SUMMARY AND CONCLUSIONS

Based upon the findings set forth in the August 28, 1995 Temporary Order and in the preceding sections of this order, the SWRCB finds that the issuance of the August 28, 1995 Temporary Order should be validated.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the issuance of the August 28, 1995 Temporary Order is validated.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 21, 1995.

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

NO: None

ABSENT: None

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board