

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2007-0034-DWR

In the Matter of Permit 19895 (Application 28473)
Chino Basin Watermaster

ORDER DENYING PETITION FOR EXTENSION OF TIME

SOURCES: (1-4) Day Creek tributary to the Santa Ana River
(5) Etiwanda Creek tributary to the Santa Ana River
COUNTIES: San Bernardino and Riverside

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 19895 to the Chino Basin Watermaster Board and County of San Bernardino on October 3, 1986, pursuant to Application 28473, and subsequently assigned the permit to Chino Basin Watermaster (Permittee) on April 6, 2005. The permit authorizes storage of 15,000 acre-feet (af) per annum to underground storage at a maximum rate of 179 cubic feet per second (cfs) from November 1 through April 30 of the succeeding year from Day Creek and Etiwanda Creek as follows:
 - Spreading Area "A" – 63 cfs
 - Spreading Area "B" – 59 cfs
 - Spreading Area "C" – 29 cfs
 - Spreading Area "D" – 28 cfsThe purposes of use include irrigation, industrial and municipal. The service area is located within the Day Creek Water Project located within T3S to T1N, R5W to R9W, SBB&M.
2. The permit requires that construction work be completed by December 1, 1989, and that the water be applied to the authorized use by December 1, 1990.
3. Division records show that Permittee has failed to commence or complete construction work and complete application of water to beneficial use within the time provided under the permit.
 - a. 1986 Progress Report by Permittee (Progress Report) states that 100 percent of the work remains to be done.
 - b. 1987 Progress Report states that 75 percent of the work remains to be done.

- c. 1988 to 1990 Progress Report states initial phase of construction is complete, including construction of watershed debris dam, development of spreading grounds, basins and approximately three miles of outlet channel works. The Permittee indicated that water was being conserved, not used. Construction has not been fully completed.
- d. 1991 Progress Report states four of the five phases are complete.
- e. 1992 Progress Report states construction of the project completed in January 1993. The Progress Report states the project controls storm water runoff and flood flows, using a debris dam and concrete channel works. Low flows are recharged in conservation basins. Storm water runoff is recharged into the Chino Groundwater Basin to be used by others. The Permittee states that it made no beneficial use of water.
- f. 1993 Progress Report states that Permittee appropriates water for flood control and water conservation purposes. The low flows and residual flood flows are directed into conservation basins for recharge of the Chino Groundwater Basin. The Permittee states that it has no storage rights once the water is put into the groundwater basin, therefore it is not entitled to use of any of the water it puts into the groundwater basin.
- g. March 21, 1994 Division memorandum states water from the Chino Basin Conjunctive-Use Demonstration Project is brought into the Chino Basin by way of the Rialto Feeder and Upper Feeder pipelines. It appears that the water source for groundwater storage is primarily water purchased from Metropolitan Water District (MWD) and from the State Water Project.
- h. 1996 and 1997 Progress Reports states that 100 percent of construction work remains to be done. The 1997 Progress Report estimates completion in 2006. The Permittee has not started construction. Improvements to be constructed are primarily for flood control purposes.
- i. Beginning with the 1997 Progress Report, the Permittee altered the complete use date on the Progress Report form prior to submitting the Progress Report to the State Water Board. The Permittee altered the complete use dates on the 1997, 1998, 2001, 2002 and 2005 Progress Reports. The State Water Board has not approved a time extension for this project.
- j. 1998 Progress Report states that construction work has not started and no water has been beneficially used.
- k. December 1, 1999 – Petition for Extension of time erroneously filed for Permit 19895 (Application 28473). Permittee intended to file Petition for Extension of Time for Permit 20753 (Application 28996). (March 15, 2000 contact report.)
- l. On March 15, 2000, Permittee informed Division staff that the project was completed in 1992. (March 15, 2000 contact report).
- m. 2001 Progress Report states the project is for flood control and water conservation purposes.
- n. 2002 Progress Report states that the project is complete. The Permittee states that the permit is used to control flood flows and for water conservation purposes. The Permittee has no storage rights in the Chino Groundwater Basin and, consequently is not entitled to make beneficial use of water percolated to the basin.

- o. 2003 Progress Report states Permittee has not completed construction. However, planning for construction of diversion structures, basin configuration, and required flow measuring devices is underway. The estimated completion date is 2010.
 - p. 1986 through 2003 Progress Reports show no water being put to beneficial use.
 - q. 2004 Progress Report shows 143 af put to beneficial use.
 - r. 2005 Progress Report shows 2,822 af to be credited as water conserved towards the water use authorized under this permit in accordance with Water Code section 1011.
4. Division staff conducted a licensing inspection on June 3, 2003, and found the project is not complete. The permit authorizes construction of four infiltration basins: Basins A, B, C and D. Wineville Basin (Basin C) and Riverside Basin (Basin D) do not appear to percolate and are just water retention basins. Permittee is implementing a court-ordered Chino Basin Improvement Project on the Supervisory Control and Data Acquisition System. The project includes expansion of 18 existing percolation basins and construction of two new basins. Of the four basins covered by this permit, Basins A and B (Day Creek Water Project) are part of the expansion project. Basins C and D may not be part of the improvement project if percolation cannot be achieved.
- Permittee has not maintained records of water diversion and use as required by permit condition 15. The Permittee could not provide any information on the rate of diversion to underground storage and the total quantity diverted to storage. The inspection report recommends that any extension of time be deferred until a monitoring plan is implemented. Division staff requested Permittee submit a time schedule and plan for implementing the required monitoring. Permittee did not submit the requested information.
5. The Division's March 30, 2004 letter advised the Permittee that required measuring devices had not been installed, nor was there documented use of water. It appears that additional expansion will be taking place at some of the basins within the Day Creek Water Project. Therefore, a license cannot be offered at this time. The Division requested that the Permittee submit a plan for installation of recording or monitoring equipment by May 29, 2004. No response was received within the requested timeframe.
6. On May 4, 2004, Permittee filed a petition for extension of time requesting a six-year extension within which to commence or complete construction work or apply water to beneficial use. The appropriate fees were paid. The petition estimated construction work began in March 2003. The reason given for filing the petition was because Permittee lacks funding for plans, environmental documentation and construction. The Division has not noticed the petition for extension of time.
7. On April 20, 2006, Division staff contacted the Permittee regarding the 2004 petition. Division staff explained that normally, lack of funds would not be accepted as good cause for delay. (Cal. Code of Regs., tit. 23, section 844).

Permittee stated Basins A and B were built around 1970 to 1980 by the San Bernardino Flood Control District and were operated by retaining water for only 24 hours. Within the past two years, Basins A and B have also been used for recharge purposes in addition to flood control.

Permittee stated the monitoring devices requested as a result of the Division's June 2, 2003 inspection have been installed and are operational for Basins A and B. Basins C and D do not percolate, and monies are not available to make the basins operable. During the conversation, Permittee requested that the Division proceed with licensing Basins A and B. (April 20, 2006 contact report).

8. 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.
9. Permittee has not shown that due diligence has been exercised. Progress Reports submitted by Permittee from 1986 through 2003 show that water was not put to beneficial use. Permittee stated Basins A and B were built around 1970 to 1980, were operated for flood control only, and water was not held in the basins for more than 24 hours. It has only been within the past two years that the basins have been operated differently. The time to complete beneficial use ended in 1990. The Permittee has no records documenting that storage occurred prior to December 31, 1990. (April 25, 2006 contact report.)
10. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. The Permittee states that it cannot put water to beneficial use under the permit because it has no right to store water in the Chino Groundwater Basin (1993 Progress Report). Therefore, the Permittee is not entitled to use any of the water it puts in the groundwater basin. Permittee failed to install the required measuring devices pursuant to the conditions of the permit. Permittee failed to document beneficial use of water within the authorized time stated in the permit.
11. The petition cites lack of finances as the reason the project has not been completed. Permittee states in the petition that it lacks funds to proceed with the project. Lack of funds is not normally grounds for granting an extension of time in accordance with California Code of Regulations, title 23, section 844.
12. Permittee has not shown that satisfactory progress will be made if a time extension is granted. The permit requires Permittee to complete construction by December 1, 1989, and to apply the water to the authorized use by December 1, 1990. Permittee has failed to do so. The Permittee requested a six-year extension of time. If approved, the requested extension would have ended on December 31, 1996. No beneficial use of water occurred during the requested extension period. In the 16 years since the time to complete use ended, the Permittee has not put water to beneficial use because Permittee has no rights to withdraw water from the Chino Groundwater Basin.
13. Permittee requested that the Division issue a license for Basins A and B. (April 20, 2006 contact report.) The Division is unable to license the project because there was no documented use of water within the timeframe allowed under the permit, and the Permittee has not met the requirements for approval of a time extension to take into consideration any recent water use.

14. Permittee has not shown good cause for the time extension.
15. The Division will issue a Notice of Proposed Revocation for Permit 19895.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY DENIES THE PETITION FOR EXTENSION OF TIME.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: October 9, 2007