

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2011-0004-EXEC

In the Matter of Petition for Reconsideration of
LANGTRY FARMS LLC AND GUENOC WINERY, INC.

Regarding Order Denying Petitions for Extension of Time and Change

ORDER GRANTING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:¹

On March 20, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued State Water Board Order (Order) WR 2009-0019-DWR, denying petitions for extension of time and change submitted by Magoon Estate Limited (Permittee) for Permit 16860C (Application 24296C). The petitions were denied for non-diligence. Permit 16860C has been transferred to Langtry Farms LLC and Guenoc Winery, Inc. (Petitioner), who filed a petition for reconsideration dated April 20, 2009. The State Water Board granted reconsideration by Order WR 2009-0052-EXEC, ordering that Order WR 2009-0019-DWR be set aside and remanding the issue to the Division. On December 21, 2009, the Division issued Order WR 2009-0064-DWR, again denying the petitions for extension of time and change. Petitioner filed a petition for reconsideration dated January 19, 2010. Petitioner requests that this matter be considered by the Board.

¹ State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration of an order denying change and time extension petitions falls within the scope of the authority delegated under Resolution No. 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider the petition for reconsideration, deny the petition, or set aside or modify the order.

An interested person may petition the State Water Resources Control Board (State Water Board) for reconsideration of a decision or order on any of the following grounds: (1) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (2) the decision or order is not supported by substantial evidence; (3) there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced; (4) error in law. (Cal. Code Regs., tit. 23, § 768.)

After review of the record, the State Water Board may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C); see also subd. (a)(1) [providing that State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues].) Before taking final action, the State Water Board has the discretion to hold a hearing for the purpose of oral argument, the receipt of additional evidence, or both. (*Id.*, § 770; Wat. Code, § 1123.)

Petitioner contends that Order WR 2009-0064-DWR fails to explicitly state the bases for its denial of the petitions for extension of time and change in violation of Order WR 2009-0052-EXEC. Order WR 2009-0052-EXEC directed the Division to explain “how the basic facts recited in its order relate to the ultimate conclusions regarding whether the requirements for an extension have been satisfied,” and to “address any factual disputes raised by the petition.” (*Id.*, p.13.) Likewise, there remains some dispute regarding the appropriate water duty for calculating Petitioner's needs.

Petitioner also takes issue with paragraph 31 of Order WR 2009-0064-DWR, suggesting that the Division is ignoring recently issued approvals for several change petitions Petitioner submitted for other water rights it holds. Petitioner suggests that these approvals increase the place of use for Petitioner's water rights, necessitating full use under Permit 16860C.

There still appears to be a dispute as to whether Permittee paid the required fees pursuant to the Condition 12 Settlement Agreement.

The State Water Board has not delegated to the Deputy Director for Water Rights the authority to grant an extension of time where there are outstanding protests or where the extension is for greater than ten years or the period of the extension in combination with all extensions

previously granted under delegated authority exceeds fifteen years. In light of the outstanding evidentiary issues, and due to the fact that there is an outstanding protest to these petitions, the State Water Board must conduct a public hearing on the time extension before approving Petitioner's petition for reconsideration. This grant of reconsideration does not reflect a determination as to whether the issues raised in Petitioner's petition for reconsideration are substantial and should not be construed as a judgment on the merits of those issues.

ORDER

IT IS ORDERED that Petitioner's petition for reconsideration of Order WR 2009-0094-DWR, which denies the time extension, is granted, subject to further action of the State Water Board after a hearing to receive evidence on whether the Division's order should be set aside, modified, or upheld, or other appropriate action should be taken. The portion of Order WR 2009-0064-DWR that denies an extension of time is suspended pending the State Water Board's issuance of an order after the hearing.

Dated: **JAN 31 2011**


Thomas Howard
Executive Director