

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2010 – 0012 - EXEC

In the Matter of the Diversion and Use of Water by
West Side Irrigation District

**ORDER APPROVING SETTLEMENT AGREEMENT
AND PARTIAL REVOCATION**

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a Notice of Proposed Partial Revocation to the West Side Irrigation District (West Side or Licensee). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights prosecution team (Prosecution Team) and West Side have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

The State Water Board issued License 1381 on September 29, 1933. Division records show West Side as the owner of License 1381. The license authorizes the Licensee to divert 82.5 cubic feet per second (cfs) from about April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.

On July 18, 1985, the Division conducted a field inspection of the project served by License 1381. Division staff observed that the place of use had been reduced from 11,993.8 acres to 9,413 acres. Division staff recommended that the authorized direct diversion rate be reduced to

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

64.75 cfs. The field engineer calculated that the maximum monthly diversion should not exceed 4,900 acre-feet (af) ($82.5 \text{ cfs} \times 1.98 \text{ af/cfs} \times 30 \text{ days} = 4,900 \text{ af}$). The reduction in the licensed direct diversion rate was calculated based on a pro-rata reduction in service area. Subsequently, further lands were de-annexed from West Side and the reported water use declined.

On August 5, 2004, the Division advised Licensee that License 1381 may be amended to reflect the maximum recent use, which is lower than authorized under the terms of the license. The Division requested that Licensee submit a statement of facts documenting recent use of 82.5 cfs and the maximum annual use by September 4, 2004. Licensee did not submit the requested statement of facts.

On September 7, 2004, Licensee informed the Division that it has experienced low water levels in Old River, particularly in the spring months, for several years, which have inhibited its pumping capacity. Licensee did not identify which years had low water levels.

A June 20, 2006 letter from the Division requested that Licensee submit its triennial Report of Licensee for 2001, 2002, 2003 by July 20, 2006. Licensee submitted these reports on July 11, 2006.

Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."

On January 25, 2008, the Division issued a Notice of Proposed Partial Revocation to West Side. West Side submitted a hearing request on February 8, 2008, pursuant to Water code section 1675.1.

West Side and the Division Prosecution Team agree to settle the matters identified in the Notice of Proposed Partial Revocation through this Settlement Agreement in lieu of a hearing on said matters.

3.0 SETTLEMENT AGREEMENT

West Side and the Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Settlement Agreement that is attached hereto. The general terms of the settlement are:

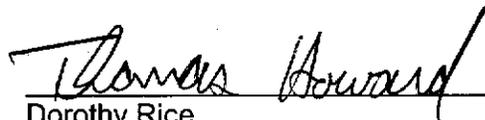
- (1) West Side filed a petition for change of purpose of use for License 1381 on November 15, 2001 to add municipal, domestic and industrial uses. The Division agrees to promptly process West Side's petition for change in purpose of use, based upon the previously noticed petition.
- (2) Concurrent with issuance of the Order approving West Side's petition for change in purpose of use, the State Water Board will amend License 1381 to reflect a maximum annual diversion limit of 27,000 af. The maximum diversion rate will remain 82.5 cfs.
- (3) West Side dismisses its request for hearing regarding the Notice of Proposed Partial Revocation.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and West Side is approved and is incorporated by reference into this Order.

Dated: _____

3/9/10



Dorothy Rice
Executive Director

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the West Side Irrigation District (West Side or Licensee) and the Division of Water Rights (Division) Prosecution Team. The parties enter into this Settlement Agreement because it is their collective desire to settle the issues raised in the Notice of Proposed Partial Revocation issued to West Side, dated January 25, 2008. This Settlement Agreement will be submitted to the Executive Director of the State Water Resources Control Board (State Water Board) for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director issues an order approving the Settlement Agreement. This Settlement Agreement, if approved and adopted by the Executive Director, is intended to resolve all issues raised by the Notice of Proposed Partial Revocation for License 1381.

BACKGROUND

The Division and West Side stipulate to the following facts:

1. The State Water Board issued License 1381 on September 29, 1933. Division records show West Side as the owner of License 1381. The license authorizes the Licensee to divert 82.5 cubic feet per second (cfs) from about April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.
2. On July 18, 1985, the Division conducted a field inspection of the project served by License 1381. Division staff observed that the place of use had been reduced from 11,993.8 acres to 9,413 acres. Division staff recommended that the authorized direct diversion rate be reduced to 64.75 cfs. The field engineer calculated that the maximum monthly diversion should not exceed 4,900 acre-feet (af) ($82.5 \text{ cfs} \times 1.98 \text{ af/cfs} \times 30 \text{ days} = 4,900 \text{ af}$). The reduction in the licensed direct diversion rate was calculated based on a pro-rata reduction in service area.

The license inspection results were provided to Licensee on October 8, 1986. Licensee was requested to provide a new engineered map and a petition to change the place of use for the reduced place of use. Licensee did not agree that the diversion rate should be reduced based on pro-rata reduction in service area and did not provide a revised map.

3. In the Division's April 9, 1992 letter, staff again notified Licensee of the Division's opinion that a revised engineered map was needed.
4. Licensee advised the Division on June 4, 1992 that the Local Agency Formation Commission had detached lands from the district. Licensee advised the Division that it was premature to submit a new engineered map because its service area was undergoing change.
5. On July 27, 1992, Division staff advised Licensee that the Division needs more specific details on its planning effort. The matter of updating the license and maps had been outstanding since 1986, but Licensee had not yet submitted revised maps.
6. Licensee informed the Division by letter dated September 21, 1998 that it would not be taking any action to amend the place of use. Licensee confirmed that the district

boundaries have been reduced over time as land is annexed into the City of Tracy for municipal development. Land is routinely detached from the district for this purpose.

7. On September 19, 2001, the State Clearinghouse circulated an Initial Study and Negative Declaration (ND) for change in purpose of use of License 1381 of West Side. The ND states that the district consists of approximately 6,161 acres.
8. Licensee's November 21, 2001 letter states that approximately 5,800 acres of land have changed from agricultural to urban uses, and have detached from the district. The district is now comprised of 6,161 acres.
9. On May 28, 2004, the U.S. Bureau of Reclamation advised the Division that it appears that a portion of License 1381 appears to have been abandoned or forfeited through non-use.
10. On August 5, 2004, the Division advised Licensee that License 1381 may be amended to reflect the maximum recent use lower than authorized under the terms of the license. The Division requested that Licensee submit a statement of facts documenting recent use of 85 cfs and the maximum annual use by September 4, 2004. Licensee did not submit the requested statement of facts.
11. On September 7, 2004, Licensee informed the Division that it has experienced low water levels in Old River, particularly in the spring months, for several years, which have inhibited its pumping capacity. Licensee did not identify which years had low water levels.
12. In a May 10, 2005 letter, Division staff restated the information regarding lower-than-authorized recent use. The May 10 letter documents that the Division did not receive the requested statement of facts showing: (a) use of 85 cfs or (b) a lack of available water, and advised Licensee that the Division may consider amending the license to limit the use to the documented amounts.
13. A June 20, 2006 letter from the Division requested that Licensee submit its triennial Report of Licensee for 2001, 2002, 2003 by July 20, 2006. Licensee submitted these reports on July 11, 2006.
14. Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."
15. The Division asserts, and Licensee disputes, that Licensee has not applied its full licensed amount of water to beneficial use pursuant to License 1381 for at least five consecutive years when water was available to Licensee.
16. On January 25, 2008, the Division issued a Notice of Proposed Partial Revocation to West Side.

17. West Side submitted a hearing request on February 8, 2008, pursuant to Water code section 1675.1.

18. The Division's Prosecution Team and Licensee met several times to discuss potential settlement.

AGREEMENT

Both the Division and West Side agree to settle this matter, in lieu of proceeding to hearing on the Notice of Proposed Partial Revocation, on the following terms:

- 1) West Side filed a petition for change of purpose of use for License 1381 on November 15, 2001 to add municipal, domestic and industrial uses. The petition complies with Water Code section 1701 and has been accepted by the Division for processing. Processing of the petition was delayed by the U.S. Bureau of Reclamation's (Reclamation) May 28, 2004 assertion that increased diversion pursuant to the petition would require Reclamation to make increased releases from project reservoirs for the Delta when the Delta is in balance. Reclamation did not object to continued diversion of established quantities of water. This Settlement Agreement establishes the quantity of water previously put to use by West Side and resolves Reclamation's concern. Consequently, the Division agrees to promptly process West Side's petition for change in purpose of use, based upon the previously noticed petition.
- 2) Concurrent with issuance of the Order approving West Side's petition for change in purpose of use, the State Water Board will amend License 1381 to reflect a maximum annual diversion limit of 27,000 af. The maximum diversion rate will remain 82.5 cfs.
- 3) West Side dismisses its request for hearing regarding the Notice of Proposed Partial Revocation on the effective date of this Settlement Agreement. West Side also waives its right to request reconsideration by the State Water Board of the Order Approving the Settlement Agreement between the Division and West Side provided no additional requirements are included in that order beyond the requirements of this Settlement Agreement.
- 4) Miscellaneous:

Independent Judgment. Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.

No Precedent. This Settlement Agreement involves unique facts and legal issues and shall not be deemed a precedent decision of the State Water Board.

Additional Documents. Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.

Entire Agreement. This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements,

promises, or representations, made by the other party other than those contained in this Settlement Agreement.

Mutual Agreement. The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

Reasonableness of Settlement. The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.

Section Headings. The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.

Effective Date. This Settlement Agreement shall become effective immediately on adoption of the State Water Board Executive Director's order approving the Settlement Agreement.

Choice of Law. This Settlement Agreement shall be interpreted and governed by the laws of the State of California.

Authorization. Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

Date: 2-1-2010

West Side Irrigation District

By Jack Alvarez
Jack Alvarez
President

ATTEST:

By Barbara Kleinert
Barbara Kleinert
Secretary

Date: 2/1/10

Division of Water Rights

By James W. Kassel
James W. Kassel,
Assistant Deputy Director
for Water Rights