

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Request for)
Modification of Terms of)
Permits 16123 and 16601 by)
CITY OF SANTA CRUZ)

Decision 1464

DECISION TEMPORARILY MODIFYING PERMIT TERMS

BY BOARD MEMBER ADAMS:

On March 8, 1977, the State Water Resources Control Board held a public hearing in the above-entitled matter pursuant to Section 736.1 of Title 23, California Administrative Code. This hearing was held to determine whether the Board should exercise its continuing authority under Term 11 of Permits 16123 and 16601 to modify permit conditions regarding bypasses for preservation of fish and wildlife. The City of Santa Cruz, Department of Fish and Game and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Permittee's Water Supply System

1. Permittee's water system provides service to about 58,000 customers within and without the city limits. Permittee's major sources of water are the San Lorenzo River, coastal streams and wells.

2. Permittee holds Permits 16123 and 16601 which authorize diversion from San Lorenzo River at Felton diversion to offstream storage in Loch Lomond Reservoir. These permits together limit the total quantity diverted at the Felton diversion to 3,000 acre-feet per annum (afa). The annual safe yield estimate for the remaining components of permittee's water supply is as follows: Newell Creek, 2,300 afa; San Lorenzo River at Crossing Street, 6,190 afa; wells, 450 afa; and coastal streams, 1,360 afa. The total annual safe yield estimate for the City's system, including the Felton diversion, is 13,300 afa.

3. Evidence established the existence of a bonafide drought and that because of the existing drought conditions the City would have a deficiency of 2,832 acre-feet (af) in estimated total annual safe yield at the end of this year, assuming normal usage.

Water Conservation Measures

4. On March 1, 1977, the City of Santa Cruz adopted a water conservation ordinance (Ordinance No. 77-6) which declares the presence of a drought emergency, reduces water use, and prescribes penalties for violations. The water usage provisions are substantially as follows:

Residential usage:

<u>Persons per house</u>	<u>Bimonthly Amount</u>	<u>Equivalent Gallons per day</u>	<u>Equivalent Gallons per day per person</u>
1	900 cf	112	112
2	1500 cf	187	94
3	2000 cf	250	83
4	2400 cf	300	75
Each addi- tional person	400 cf	50	

All other uses, including commercial, industrial, and irrigation, are limited to 70 percent of use in 1975.

5. A priority system for water use based upon need was not established by the ordinance, and the ordinance is specifically found to be deficient in this respect. Moreover, testimony was presented, including that of a witness representing the County of Santa Cruz, generally critical of the daily per capita domestic water consumption allowed by the ordinance. One witness characterized the measure as a "water wasting" ordinance. Nevertheless, it is found that the measure does require a substantial reduction in "normal" water usage in the permittee's service area. The Board is reluctant to review the judgment of permittee's City Council, at this time, with respect to the specifics of its water conservation measures.

6. The water conservation measures noted above would, by permittee's estimate, reduce water consumption by 3,500 af by the end of this year. This saving in consumption, less the

deficit identified in paragraph 3 would result in a net savings of 700 af to permittee's system for use after 1977.

Availability of Alternative Supplies

7. Evidence established that the most likely source of an alternative water supply is increased use of groundwater. However, neither this source nor increased diversion from the San Lorenzo River at Crossing Street is available at this time. It is further found that permittee in the past has not diligently pursued development of alternative supplies.

Permittee's Request

8. By letter of February 9, 1977, permittee requested a temporary modification of Term 16 of Permit 16601. (Since the same restriction is imposed by Term 14 of Permit 16123, modification of that term was also considered at the hearing.) The effect of these terms relevant to this proceeding is to require bypass of 20 cubic-feet per second (cfs) or the natural flow, whichever is the less, until May 31, the end of the diversion season, for preservation of fish and wildlife. Permittee requested that this bypass requirement be reduced to 10 cfs.

9. Since the effect of the water conservation measures taken by permittee will be to achieve a net saving of 700 af this year for use next year, it is found that permittee's supply will not be exhausted this year. Therefore, the reason for the request to modify the bypass requirement is to further increase availability of water to the system should the

drought continue into 1978. The City estimates it can increase storage in Loch Lomond by 750-900 af by May 31, 1977, if its request to reduce the bypass flow is granted.

Impact on the Fishery

10. Evidence presented by the Department of Fish and Game established that the existing bypass requirement of 20 cfs is a minimum flow needed to provide transportation for migrating salmon and steelhead.

11. Department of Fish and Game evidence further established that a flow of 14.1 cfs existed on March 1 and flows immediately prior to the date of hearing were about 10.4 cfs, all of which flows, pursuant to the relevant permit terms, were being bypassed. As a result of these low flows, the San Lorenzo River fishery has been and will continue to be damaged. Such flows do not allow migration, but will only serve to keep a small population of fish alive in pools in which they are stranded.

12. Department of Fish and Game evidence further established that modification of the relevant terms to require bypass of 10 cfs for the remainder of the diversion season will not have a significant additional adverse impact on the already damaged fishery, but that any significant storm flows occurring between now and the end of the diversion season at the Felton diversion should be bypassed through the diversion to allow temporary fish movement to mitigate the drought's adverse impact upon the fishery.

13. The Board should, upon any request of Permittee for modification of bypass terms to be effective when the diversion season resumes next fall, hold further hearing to consider the suitability of permittee's water conservation measures and pursuit of alternate supplies.

14. The Department of Fish and Game also recommended that the fishery be given a "credit" in the form of a right to release from storage in a normal water year within five years, at a rate specified by the Department, the amount of water diverted to storage as the result of any modification. The record in this matter discloses considerable concern over the adequacy, in normal years, of the existing fish and wildlife preservation conditions of the permits governing the Felton diversion. Moreover, the record also discloses the existence of an on-going joint local-state program to develop a Waterway Management Plan for the San Lorenzo River. Accordingly, rather than acting upon the Department's recommendation to establish a "credit" for the diversions allowed by the modification, the Board announces its intention to review the adequacy of these existing permit terms in the light of the completed Waterway Management Plan and with the aid of further input by the Department of Fish and Game, permittee, and other interested parties. The Board may, on its own motion or upon request of any interested party, hold a hearing at the appropriate time to conduct such review.

DETERMINATION OF ISSUE

Cause exists for modification of the relevant permit terms regarding minimum bypass flows, upon suitable conditions, in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of water.

ORDER

1. Condition 14 of Permit 16123 is temporarily modified to read:

"14. Permittee shall bypass 10 cubic feet per second or the natural flow, whichever is less, from September 1 through May 31 for the preservation of fish and wildlife; provided, that diversion shall be made only during such times as flow at the diversion exceeds 12.5 cubic feet per second."

2. Condition 16 of Permit 16601 is temporarily modified to read:

"16. For the protection of fish, no diversion shall be made during the month of October which depletes the flow of the stream to less than 25 cubic feet per second nor to less than 10 cubic feet per second during the period November 1 to the succeeding May 31. No water shall be diverted until permittee has installed in the stream immediately below its point of diversion a staff gage, or other device satisfactory to the State Water Resources Control Board, showing the water levels which correspond

to the above-mentioned flows in cubic feet per second. As a condition of continuing diversion, said measuring device shall be properly maintained. Diversion shall be made only during such times as flow at the diversion exceeds 12.5 cubic feet per second."

3. The following additional condition, appropriately numbered, is added to Permits 16123 and 16601:

"The duration of the modification of Condition (14/16) authorized by State Water Resources Control Board Decision 1464, and of this condition shall be from March 17, 1977, through May 31, 1977, and shall thereafter be of no force or effect. From and after June 1, 1977, said condition (14/16) shall be as it existed immediately prior to the effective date of such modification. In addition, the following conditions shall be observed during the effective period of the modification of condition (14/16):

- a. During any period when flow at the diversion exceeds 20 cfs, permittee shall bypass 20 cfs for the preservation of fish and wildlife. When, following any such period, such flow recedes to 20 cfs or less but is greater than 18 cfs, permittee shall make no diversion until such flow recedes to 18 cfs or less, whereupon permittee may divert in accordance with modified condition (14/16).

b. Approval of permittee's gage system and rating table was required by State Water Resources Control Board Decision 1459. Interim approval thereof until March 31, 1977, as granted by letter from the Chief, Division of Water Rights, dated November 18, 1976, (333:MLS:22318), is hereby extended through May 31, 1977."

Dated: MAR 17 1977

WE CONCUR:

W W Adams
W. W. Adams, Member

John E. Bryson
John E. Bryson, Chairman

W Don Maughan
W. Don Maughan, Vice Chairman

Roy E. Dodson
Roy E. Dodson, Member

Jean Auer
Jean Auer, Member