

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application )	Order: 77-7
25339 of North Marin County )	Source: Bear Valley Creek
Water District for a Temporary )	County: Marin
<u>Permit to Appropriate Water )</u>	

ORDER APPROVING APPLICATION

BY BOARD MEMBER ADAMS:

On April 22, 1977, the North Marin County Water District (applicant) filed Application 25339 for a temporary permit to appropriate unappropriated water pursuant to Chapter 6.5, Part 2, Division 2 of the Water Code. Notice of the Application was posted in accordance with said Chapter 6.5, and no objections to the issuance of a temporary permit were received. After review of the administrative record in this matter, Board Member Adams finds as follows:

1. Bear Valley Creek flows generally northerly toward Tomales Bay; approximately one-half mile above its confluence with Lagunitas Creek it divides into two channels, an east branch and a west branch. Both branches flow through the coastal marsh adjacent to Tomales Bay and flow into Lagunitas Creek at separate points. Lagunitas Creek is tributary to Tomales Bay. During times of low runoff, there are generally no flows in the east branch.

2. Application 25339 is for a temporary permit to appropriate 0.2 cubic foot per second (cfs) from both branches of Bear Valley Creek during the period June 1, 1977, to November 28, 1977, for municipal use within the service area of the applicant. An additional 0.2 cfs would be diverted during the same season and stored behind the existing temporary dam constructed by Board

Licensee Giacomini in Lagunitas Creek. This water would be used for salt water intrusion prevention.

3. The applicant's water supply is normally obtained by pumping from two existing wells in the underflow of Lagunitas Creek. The applicant does not have a permit or license for this diversion, but claims a pre-1914 right to the use of such water. However, the applicant has not filed any statements of water diversions and use in accordance with Part 5.1, Division 2, of the Water Code.

4. The applicant has blocked with a plywood flashboard an existing culvert in the west branch of Bear Valley Creek to form a pond which will cover about 34 acres of marsh with a maximum depth of two feet and with an average depth of about one foot. The ponded water spills over into the east branch of Bear Valley Creek, which is tributary to Lagunitas Creek just downstream from the existing Giacomini dam. The applicant has also blocked a culvert in the east branch of Bear Valley Creek by construction of a temporary earthen dam. This dam is raising the level of the spilled water in the east branch of Bear Valley Creek. Water will be conveyed by gravity in an eight-inch pipe through the earthen dam and discharged into Lagunitas Creek immediately upstream of the existing Giacomini dam. The applicant will redivert the water by pumping from its two existing wells approximately one mile upstream from the Giacomini dam in the alluvium of Lagunitas Creek. The water conveyed into Lagunitas Creek through the eight-inch pipe thus serves two purposes: it provides a source of recharge to applicant's existing wells and the pool created behind

the Giacomini dam provides a freshwater hydraulic gradient to prevent saltwater intrusion above the dam.

5. On March 15, 1977, the applicant executed an agreement with the Department of Fish and Game (Department) concerning the implementation and operation of the subject temporary water diversion. While this agreement does not contain any specific conditions concerning bypass of flows in Bear Valley Creek or any restrictions on the rate of diversion, the agreement provides that the Department may add such provisions upon review of current environmental conditions. The Department has not yet requested any modification of the project pursuant to the agreement.

6. On April 28, 1977, the North Central Coast Regional Commission approved the applicant's proposed water diversion subject to a number of conditions which are restated in Exhibit A. Condition 1 of Exhibit A states:

"Construction pursuant to this permit shall be commenced by May 30, 1977, and the diversion must be removed and streams returned to their natural flows by November 1, 1977. The streams will be restored to the satisfaction of the Executive Director upon the advise of the Department of Fish and Game."

#### Existence of Unappropriated Water

7. Bear Valley Creek presently contains low flows of approximately 0.4 cfs. There are no known users of water downstream of the proposed point of diversion on Bear Valley Creek or Lagunitas Creek. The proposed diversion will not cause injury to any lawful user of water.

The Applicant Has An Urgent and Temporary Need to Appropriate Water

8. As previously mentioned, the water supply of the applicant normally consists of water pumped from two existing wells in the alluvium of Lagunitas Creek. During normal years the applicant provides about 185 acre-feet of water for the municipal needs of Inverness Park, Point Reyes Station, and Olema. During the drought last year the applicant purchased stored water from the Marin Municipal Water District to supplement its existing supplies. This water was delivered by release of stored water from the reservoirs of the Marin Municipal Water District and rediverted by the applicant's existing wells. The applicant has also purchased stored water from the Marin Municipal Water District this year. Presently, the applicant has only fifty acre-feet of this purchased water left.

9. Because the severity of the drought has increased and because purchased water may not be available in sufficient quantities, the applicant adopted, by Ordinance No. 8, on March 15, 1977, a water rationing program. Among other things, this mandatory program reduces residential water use by 30% to about 78 gallons/day/person and restricts lawn watering and car washing. The applicant has also provided free to residents water conservation devices such as flow restrictors, toilet dams, and water-saving shower heads.

Findings Concerning the California Environmental Quality Act of 1970

10. The water year from October 1, 1975, to September 30, 1976, was the third driest year of record. The water year from October 1, 1976, to September 30, 1977, is now

projected to be substantially below the driest year of record - 1924. The sequential occurrence of two such dry years is unprecedented and unexpected from the existing meteorological data. The applicant did not anticipate the full impact of the present drought on its water supply until late January 1977, when saline intrusion began to occur.

11. The sudden and unexpected impact of the drought on the applicant's water supply constitutes an emergency as defined in Public Resources Code 21060.3 and the proposed project constitutes an action necessary to mitigate such emergency. For these reasons, Board Member Adams concurs with the conclusion of the applicant that this project is an emergency project exempt from Division 13 of the Public Resources Code.

NOW, THEREFORE, IT IS ORDERED that a temporary permit be issued on Application 25339 subject to the following conditions:

1. The Water appropriated shall be limited to the quantity which can be beneficially used. It shall not exceed 0.2 cfs by direct diversion for municipal use and 0.2 cfs by direct diversion for the prevention of saltwater intrusion. The period of diversion shall be June 24, 1977, to November 1, 1977, provided, however, that the period of diversion shall be June 24, 1977, to the date of the next regular Board Meeting, should the Board fail or refuse to validate the permit, pursuant to its Resolution 77-16.

2. This permit is subject to the agreement dated March 15, 1977, and to any amendments thereto, between permittee and the Department to the extent such agreement covers matters within the Board's jurisdiction. The applicant shall promptly notify the Board in writing of any modifications in the project required by the Department in accordance with this agreement.

3. The temporary dam in the east branch of Bear Valley Creek and the temporary flashboard in the west branch of Bear Valley Creek shall be removed at such time as is prescribed in provisions by entitlements for use issued by other agencies and pursuant to removal requirements contained in any such entitlements. If such facilities have not been removed within fifteen days following expiration of the authorized period of diversion, the applicant shall submit a report specifying the reasons such facilities have not been removed.

4. Permittee shall notify the Board in writing that the diversion works have been removed within two weeks of their removal.

5. The maximum amount of water diverted under this temporary permit shall not exceed 103 acre-feet. Permittee shall submit a report on or before December 15, 1977, showing the quantities of water diverted by months under this permit.

6. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the Board 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 said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee

without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreato-phytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

7. The quantity of water diverted under this permit is subject to modification by the Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. Permittee shall allow representatives of the Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

9. No water shall be diverted under this permit until permittee has installed in the diversion pipeline devices, satisfactory to the Board, which are capable of measuring, restricting, and controlling the flows diverted.

10. In accordance with the requirements of Fish and Game Code Section 5946, this permit is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

11. On or before August 1, 1977, permittee shall file a report of waste discharge with the California Regional Water Quality Control Board, San Francisco Bay Region, pursuant to Water Code Section 13260, for the removal of all the project facilities installed by the applicant. The applicant shall not remove such project facilities until the Regional Board or the State Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. No discharges of pollutants from a point source to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board, in accordance with Chapter 5.5, Division 7, of the Water Code. Any other discharge without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:



- a. The Regional Board issues a waiver pursuant to Section 13269, or
- b. The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

12. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

IT IS HEREBY FURTHER ORDERED:

1. Pursuant to Section 2713(c), Title 23, California Administrative Code, the staff shall file a notice of exemption with the Secretary of the Resources Agency.

Dated: June 24, 1977

W W Adams

W. W. Adams, Member

E X H I B I T A

CONDITIONS FROM  
NORTH CENTRAL COAST REGIONAL COMMISSION PERMIT 80-77  
APPROVED APRIL 28, 1977

1. Construction pursuant to this permit shall be commenced by May 30, 1977, and the diversion must be removed and streams returned to their natural flows by November 1, 1977. The streams will be restored to the satisfaction of the Executive Director upon the advise of the Department of Fish and Game.
2. That work within the creek bed will be held to the minimum necessary and that every effort will be made to avoid removal of bank stabilizing vegetation.
3. Be reference, the requirements of the California Department of Fish and Game 1601 Agreement, dated March 15, 1977, are incorporated as conditions of this permit.