

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Water Right Application T032649

**Coastside County Water District**

**ORDER DENYING TEMPORARY PERMIT APPLICATION**

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SOURCE: Pilarcitos Creek

COUNTY: San Mateo

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF TEMPORARY PERMIT APPLICATION**

On March 30, 2016, Coastside County Water District (District) filed a temporary permit application (T032649) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to Chapter 6.5 of Part 2 of Division 2 of the Water Code. The application requests the direct diversion of 119 acre-feet from Pilarcitos Creek at a maximum rate of 1.0 cubic feet per second between April 1 and May 31, 2016. Water diverted under the temporary permit would be used for municipal purposes within a portion of the District's existing San Mateo County service area that includes the City of Half Moon Bay and the community of El Granada. The proposed diversion would occur at four existing offset wells covered under water right License 10598 (Application A016498), which was issued to the District on March 10, 1976. Supplemental information was provided by the District in April and May 2016 to better establish the basis for the urgent need, public interest, injury, and fish and wildlife findings required by Water Code section 1425, subdivision (b).

**2.0 BACKGROUND**

The subject temporary permit application was filed one day prior to expiration of the authorized diversion season for water right License 10598, which authorizes 360 acre-feet (1.5 cubic feet per second) of direct diversion from six offset wells located adjacent to Pilarcitos Creek from November 1 of each year to March 31 of the succeeding year. Other known sources of municipal water supply for the District include water right Permit 15882 (Application A022680), which authorizes the direct diversion of up to 2,490 acre-feet from Denniston and San Vicente Creeks, and water purchased under contract with the San Francisco Public Utility Commission (SFPUC), which is used to supplement local supplies.

**3.0 NOTICE**

Water Code section 1428 grants the State Water Board discretionary authority over the timing of public notices for temporary permit applications. The State Water Board may issue a public notice of application either before or after a temporary permit is issued. The Division did not formally notice the temporary permit application subject to this order.

#### 4.0 REQUIRED FINDINGS OF FACT

The State Water Board must make certain findings before issuing a temporary permit. These include a finding that the applicant has an urgent need for the water proposed to be diverted and used (Wat. Code, § 1425 subd. (b)(1).) "Urgent need" means the existence of circumstances from which State Water Board may, in its judgment, conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented (Wat. Code § 1425 subd. (c).)

The subject temporary permit application was filed one day prior to expiration of the authorized diversion season for water right License 10598, and two days prior to the beginning of the diversion season requested in the temporary permit application. By letter dated April 15, 2016, the District explained that its need for the temporary permit was urgent because the requested diversion season had already begun, indicating that the alleged urgent need was created by circumstances stemming from mistimed and inexpedient filing of the temporary permit application, and did not exist until after the application was filed. Unfortunately, circumstances created by mistimed and inexpedient filing of a temporary permit application do not in and of themselves constitute an urgent need as defined in the Water Code.

In early May 2016, the District submitted additional information in support of its argument that its need for temporary permit was urgent, citing certain provisions of a long term wholesale water agreement with SFPUC that took effect in July 2009. The agreement requires the District and other wholesale water customers to diligently pursue local sources of water to reduce demand on SFPUC's Hetch Hetchy water system. Absent the subject temporary permit application, there is no evidence on record that would indicate that the District is actively planning for or pursuing the development of new local sources of municipal supply in order to fulfill this contractual obligation. Division records show that the District has not filed an appropriate water right permit application that would allow it to divert water from Pilarcitos Creek during the late season timeframe (April-May) requested in the subject temporary permit application. This indicates that the District has not exercised due diligence in making application for a permit to further develop the late season water resources of Pilarcitos Creek, which is a factor that the State Water Board must consider when making urgency findings for the subject temporary permit application. (Wat. Code, § 1425 subd. (b)(1).)

When contacted by phone regarding the subject temporary permit application, District representatives confirmed that they were not currently experiencing or projecting any near term shortages in municipal water supply. Similarly, SFPUC indicated that the Hetch Hetchy water system is experiencing above average inflow in response to higher than normal snow pack, and that it was not experiencing or projecting any near term shortages in water supply that would warrant implementation of additional conservation measures. Despite the local source provision of the aforementioned wholesale water agreement, the Division has verified that the District's contract water supply is available from SFPUC this year.

The District's request for a temporary permit may be based at least in part on a desire to take advantage of above average stream flows in Pilarcitos Creek during April and May of 2016. However, although the stream gage record indicates that flows upstream of the District's points of diversion were slightly above normal in early April, flows have receded to levels at or below normal since that time.

In support of its request for temporary permit, the District cited Temporary Permit 21159, issued to Hot Spring Valley Irrigation District (HSVID) in August 2003. That temporary permit provided the legal basis for the diversion of up to 5,000 acre-feet to capture unexpected heavy rainfall in May 2003, which was outside of HSVID's licensed diversion season at the time. The decision to issue Temporary Permit 21159 was clearly predicated on the existence of water shortages created by the drought conditions that

prevailed in the northeastern part of the state during the 2003 water year—circumstances that do not exist in connection with the subject temporary permit application.

Based on the above information, the District does not have an urgent need for the water proposed for diversion and use.

## **5.0 STATE WATER BOARD DELEGATION OF AUTHORITY**

Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to act on applications for temporary water right permits. (Resolution No. 2012-0029, section 4.2.14.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated July 6, 2012.

## **6.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation and findings required by Chapter 6.5 of Part 2 of Division 2 of the Water Code (Wat. Code, § 1425 subd. (b)(1); Wat. Code § 1427). Based on available information, the applicant does not have an urgent need for the water proposed for diversion and use.

**THEREFORE, IT IS ORDERED THAT APPLICATION T032649 IS HEREBY DENIED.**

Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107, subdivision (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: JUN 01 2016