

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31647

Anthony J. Freitas, et al.

ORDER CANCELING APPLICATION

SOURCE: Johntown Creek tributary to Dutch Creek thence South Fork American River

COUNTY: El Dorado

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:


WHEREAS:

1. Anthony J. Freitas, Jacqueline Hoepfner-Freitas, Janet Cohen, Lawrence J. and Patricia K. Pombo, Ralph L. and Carolyn L. Friend, Michael P. and Rebecca S. Murphy, Garden Valley Estates Association, Brian and Jennifer Paxton, Clifton Batchelder, Paul and Susan Buchanan, John D. and Laurel S. Smith, Jerry M. and Patricia M. Vanderbeek, and Roman and Terry Reed (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on December 19, 2006, requesting the right to collect 43.1 acre-feet per annum (afa) to storage. Water would be diverted from November 1 of each year through June 1 of the succeeding year from Johntown Creek tributary to Dutch Creek thence South Fork American River in El Dorado County.
2. Application 31647 was filed as a result of the Division's licensing inspection for Permit 20482 (Application 29219). Permit 20482 authorizes storage of 21.2 afa, but the reservoir has a capacity of 43 af with three 1-foot high flashboards installed in the spillway.
3. The Division issued public a notice of the application on October 10, 2008. William J. Rothaus and Michael J. Houlihan submitted protests against the application. The protests remain unresolved.
4. On February 4, 2009, the Division requested that Applicants submit a water availability analysis (WAA) that evaluates the project's effects on public trust resources and beneficial uses of water. The analysis must also evaluate water required to remain instream to serve prior rights.
5. On April 25, 2009, the Applicants submitted a WAA. On June 29, 2009, the Division informed the Applicants that the WAA did not evaluate the project's effects on public trust resources and beneficial uses of water as required by Water Code section 1375(d). The June 29 letter provided a 60 day extension for the Applicants to submit an adequate WAA. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276.
6. On August 21, 2009, the Applicants requested a 180-day extension to submit the WAA.
7. On September 25, 2009, the Division did not approve the requested 180 day extension to submit the WAA. The Division allowed the Applicants an extension to November 16, 2009 to produce the required showing of water availability.

8. On November 12, 2009, the Division received notice from the Applicants requesting cancellation of Application 31647. The Applicant's indicated that the WAA could not be completed at that time because the creek was dry and flow could not be measured.
9. The State Water Board has delegated the authority to cancel applications to the Deputy Director of the Division pursuant to Resolution No. 2007-0057. The Deputy Director has redelegated this authority to the Assistant Deputy Director and Program Managers, pursuant to redelegation order dated October 4, 2007.
10. As noted in the Division's June 8, 2007 letter, the Applicants will need to adjust their annual operations to ensure that annual diversions do not exceed 21.2 af and will also need to comply with the bypass flow requirement stated in Permit 20482. Failure to comply with the diversion limit may result in issuance of administrative civil liability of up to \$500 per day without further notice, pursuant to Water Code section 1052. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

THEREFORE, IT IS ORDERED THAT APPLICATION 31647 IS HEREBY CANCELED.

STATE WATER RESOURCES CONTROL BOARD


for Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JAN 03 2011