

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 9038	}	Order No.: WR 73-46
Issued on Application 16162		Source: Unnamed Spring (South Fork San Pedro Creek)
NORTH COAST COUNTY WATER DISTRICT		County: San Mateo
Licensee		

ORDER AMENDING LICENSE

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER AUER:

License 9038 confirms a right to divert 0.47 cubic foot per second (cfs) from December 1 to May 31 from an unnamed spring tributary to South Fork San Pedro Creek. Information in the file of the application indicates that the description of the source as an unnamed spring is incorrect as the diversion facilities are located in South Fork San Pedro Creek and are capable of intercepting any flow in the creek. The license authorizes use of water for municipal purposes within the service area of North Coast County Water District.

On August 16, 1973, a hearing was held by the State Water Resources Control Board for the purpose of determining whether the terms and conditions of License 9038 have been violated and, if so, the circumstances surrounding such violation.

The District acknowledges that violations of the conditions of the license with regard to both rate of diversion during

the authorized season and diversion outside that season have occurred and are continuing. This is clearly indicated by the District's own records of diversions from South Fork San Pedro Creek (licensee's Exhibit 9).

The District decreased its unauthorized diversions for a time following a hearing in late 1971 on its pending Application 23733. At that hearing the violations of the conditions of License 9038 were discussed. However, by January 1973 the pattern of earlier excess diversions had been reestablished.

The rationale presented by the District to justify these violations of the license conditions has varied from time to time. Some of the reasons presented by the District for making diversions in violation of the license include: at times, in the opinion of the District's management, more water is available than is needed to remain in the stream; diversions before and after the authorized diversion season have been made to prepare or flush the filter system; some diversions after May 31 and before December 1 that have been made are authorized under the license since it reads "from about December 1 of each year to about May 31 of the succeeding year;" diversions were made in June 1972 at the request of College of San Mateo, in conjunction with studies of effects of diversions on San Pedro Creek; excess diversions were made in January and February 1973 to assist in controlling floods in San Pedro Creek; diversions in excess of the

licensed rate and beyond the authorized season are now necessary due to breaks in the distribution system caused by mudslides in March 1973 which have restricted the capability for serving parts of the area with imported water.

With regard to the unauthorized diversions in the spring and summer of 1973, the record does not indicate that the District has proceeded with maximum effort to repair or bypass the damaged pipe section nor does it show that the District gave full consideration to alternate means of temporarily increasing the capability for transferring imported water around the damaged pipe section, such as a temporary booster pump at the Royce tank.

The record does show that there is an economic benefit to the District of about 12 cents per 100 cubic feet of water (RT 46) resulting when water is diverted from South Fork San Pedro Creek rather than purchased from City of San Francisco. This economic benefit may account for the lack of apparent effort to find other means to maintain service to the affected areas during the emergency, or to complete the repairs and terminate the unauthorized South Fork San Pedro Creek diversion as soon as possible. The economic benefit to the District resulting from unauthorized diversions made during the period March through June 1973 is more than \$9,000. In view of its past record and the economic stimulus to continue the unauthorized diversions, the District's argument that the present unauthorized diversion is necessary and has been made only as an emergency measure is not persuasive.

The District's witnesses testified that the large excess diversions in January and February 1973 were made to assist in controlling floods. The District's representatives consider the removal of 1.6 cfs (the District's diversion capability) of a flood flow of between 800 and 1,600 cfs (about 0.1 to 0.2 percent) to be a significant amount (RT 48-49). However, they also consider excess diversions in a low flow month of 628,700 gallons in excess of an authorized diversions of 9,112,000 gallons (6.9 percent) to be within the tolerance for error (RT 4). In any event, flood control is not one of the purposes of use covered under the District's license, and if it were, the flow diverted for such purpose would be limited to the rate allowed in the license.

Based on the record of the diversions listed (licensee's Exhibit 9) and the 12 cents per 100 cubic foot savings which results from diverting from South Fork San Pedro Creek, the District's unauthorized diversions have resulted in a savings to the District of about \$60,000 from January 1968 through February 1973 in addition to the more than \$9,000 benefit since March 1, 1973.

If the Board were to condone either out-of-season diversions or excessive diversions during authorized seasons even when there is an abundance of water in the stream, it would, in effect, do violence to the permit system and render Board permits

meaningless. It would mean every permittee (or anyone without any color of right) could decide himself what or when to divert. This is the direct opposite of what the Water Commission Act was designed to accomplish. The integrity of the permit system in California must be maintained. The January and February 1973 diversions by the District in excess of the license were made intentionally and without a valid excuse.

Therefore, to insure compliance with both the quantitative and seasonal limits of the license, this order will impose further specific conditions. Also, the District is placed on notice that any further violations of the license conditions will result in the matter being referred to the Attorney General for action pursuant to Water Code Section 1052 which reads:

"The diversion or use of water subject to the provisions of this division other than as authorized in this division is a trespass, and the Board may institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined."

NOW, THEREFORE, IT IS ORDERED that licensee cease violation of license terms forthwith, and License 9038 is amended as follows:

1. The source of water shall be South Fork San Pedro Creek.
2. The season of diversion shall be from December 1 of each year to May 31 of the succeeding year.
3. Licensee shall install prior to December 1, 1973 and maintain a division box or weir to divide the flow of South

Fork San Pedro Creek so that not more than 0.47 cubic foot per second of water enters the licensee's intake pipe at the point of diversion.

4. Licensee shall submit to the State Water Resources Control Board not later than the 15th day of each month following the date of this order a certified copy of the daily record of diversions made from South Fork San Pedro during the preceding month.

Dated: October 4, 1973

We Concur:

Ronald B. Robie
Ronald B. Robie, Vice Chairman

W. W. Adams
W. W. Adams, Chairman

Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member

Roy E. Dodson
Roy E. Dodson, Member

W. Don Maughan
W. Don Maughan, Member

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 16162 PERMIT 11806 LICENSE 9038

ORDER CORRECTING DESCRIPTION
FOR POINT OF DIVERSION

WHEREAS:

1. License 9038 was issued to North Coast County Water District on March 3, 1969 pursuant to Application 16162, and filed with the County Recorder of San Mateo County on March 5, 1969 in Volume 5607, Page 449, Document No. 17958AC.
2. A October 16, 1989 staff inspection for companion Permit 16962 (Application 23733) having the same Point of Diversion (POD) as License 9038 found the POD for License 9038 had been incorrectly described in the license.
3. The USGS (7.5') Quadrangle Map - Montara Mtn. - shows the point of diversion as being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24, T4S, R6W, MDB&M.
4. The Board has determined that said correction will not initiate a new right nor operate to the injury of any other lawful user of water and that good and sufficient cause has been shown for said correction.
6. The license condition pertaining to the continuing authority of the Board should be updated to conform to the current common law public trust doctrine contained in Title 23, California Code of Regulations, Section 780(a).

NOW, THEREFORE, IT IS ORDERED THAT:

1. The description of the point of diversion under this license be corrected to read:

North 3,350 feet and East 250 feet from SW corner of projected Section 24, T4S, R6W, MDB&M, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 24, also described as California Coordinate System, Zone 2, N 396,700 and E 1,427,400.

2. The continuing authority provisions of this license be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license 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.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: FEBRUARY 14 1990


Walter G. Pettit, Chief
Division of Water Rights



STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 16162

PERMIT 11806

LICENSE 9038

THIS IS TO CERTIFY, *That*

NORTH COAST COUNTY WATER DISTRICT
P. O. BOX 1035, PACIFICA, CALIFORNIA 94044

HAS made proof as of JUNE 17, 1968 *(the date of inspection)*
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
AN UNNAMED SPRING IN SAN MATEO COUNTY

tributary to SOUTH FORK SAN PEDRO CREEK THENCE SAN PEDRO CREEK THENCE PACIFIC OCEAN

for the purpose of MUNICIPAL USE
under Permit 11806 *of the Board and that the right to the use of this water has been perfected in*
accordance with the laws of California, the Regulations of the Board and the permit terms; that the priority of
this right dates from DECEMBER 1, 1954 *and that the amount of water to which this right is*
entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall
not exceed FORTY-SEVEN HUNDREDTHS (0.47) CUBIC FOOT PER SECOND TO BE DIVERTED FROM
ABOUT DECEMBER 1 OF EACH YEAR TO ABOUT MAY 31 OF THE SUCCEEDING YEAR.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

SOUTH 38° 18' WEST 1,550 FEET FROM CENTER OF SECTION 24, T4S, R6W, MDB&M,
BEING WITHIN NE1/4 OF SW1/4 OF SAID SECTION 24.

A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

WITHIN THE SERVICE AREA OF NORTH COAST COUNTY WATER DISTRICT AND BEING WITHIN
PROJECTED SECTIONS 10, 11, 13, 14 AND 15, T4S, R6W, MDB&M, AS SHOWN ON MAP
FILED WITH STATE WATER RESOURCES CONTROL BOARD.

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

All rights and privileges under this license 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.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: MAR 3 1968

STATE WATER RESOURCES CONTROL BOARD

K. L. Woodward

Chief, Division of Water Rights

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