

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary )  
Permit 20366 (Application 29527 )  
OF )  
CITY OF WILLITS )  
Permittee, )  
CALIFORNIA DEPARTMENT OF )  
FISH AND GAME )  
Objector )

ORDER: WR 89-22  
SOURCE: Finney Valley Creek  
COUNTY: Mendocino

FINDINGS AND ORDER VALIDATING  
TEMPORARY PERMIT

The City of Willits having filed Application 29527 for a conditional temporary urgency permit to divert and use water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the State Water Resources Control Board (Board) having consulted with the California Department of Fish and Game (Department); Board Member Eliseo M. Samaniego, having reviewed available information, authorized issuance of a temporary permit; a temporary permit having been issued on September 6, 1989; the Board finds as follows:

Substance of the Application

1. On July 25, 1989, the City of Willits (City) filed for a temporary permit from the Board to divert 600,000 gallons per

day, not to exceed 75 acre-feet, from Finney Valley Creek for municipal use within the City's service area. Water will be diverted between September 6, 1989 and March 6, 1990. The San Francisco Bay Area Council of Boy Scouts of America (Council) has agreed to release 75 acre-feet of water from its upstream reservoir into Finney Valley Creek for diversion by the City.

2. The Council has an 800 acre-foot capacity reservoir (Scout Lake) at the Council's Boy Scout Camp in Finney Valley located approximately four miles east of the City. The water is stored in the reservoir under water right Licenses 8042 and 8043 (Applications 19415 and 19755).
3. Water released from the Council reservoir will be diverted from Finney Valley Creek at an 18-inch high concrete check dam located about 1½ miles downstream of Scout Lake. At the diversion point, the water will be pumped from the pool behind the check dam by a 10 horsepower sump pump and a 10 horsepower line pump through 11,200 feet of eight-inch steel pipeline placed on top of the ground. The pipeline connects to the City's existing East Road filtration plant located about two miles south of the check dam.

Temporary Urgency Need of Applicant to Divert and Use Water

4. Dry water conditions this year have resulted in a low water supply in the upper Coastal Range and consequently a critically low water supply for the City.
  
5. The City normally receives its water supply from a 730 acre-foot capacity reservoir at Morris Dam located on Davis Creek about four miles southeast of the City. The water is collected and stored in the reservoir under water right License 11311 (Application 4572) and Permit 17613 (Application 25666). This year, the reservoir is dangerously low due to dry water conditions. On August 23, 1989, the City Council declared an "Existence of a Local Emergency".
  
6. The City had planned to use its "Park" well as an emergency supply of water under similar circumstances in 1987; however, tests revealed that the water from the well exceeded drinking water standards for arsenic, iron, and manganese. The State Department of Health Services stated that use of this well would create unnecessary public health concerns and that use of the well should be avoided unless there is no feasible alternative that would provide drinking water meeting State standards.

7. The City has implemented a stringent water conservation ordinance. The City is also constructing another reservoir on Davis Creek upstream of Morris Reservoir to provide additional storage capacity for future years. On July 28, 1989, the Board issued the City a permit on Application 29205 for storage of 767 acre-feet per annum in the new reservoir.
8. Based on the above information, the Board concludes that the City has an urgent temporary need to divert and use water as authorized by Temporary Permit 20366.

Effect of the Diversion on Lawful Users of Water

9. Prior to issuance of Temporary Permit 20366, Application 29527 was noticed on August 4, 1989, in accordance with the Water Code. The notice was sent to all affected downstream diverters and to interested parties known to the Board. The only objection received by the Board was from the Department (see finding 10 below).

Since the water to be diverted will be made available by upstream releases of stored water, the Board concludes that water may be diverted and used under Temporary Permit 20366 without injury to any lawful user of water.

Effects of the Diversion on Fish, Wildlife and Other Instream

Uses

10. The Department filed an objection stating that Finney Valley Creek supports viable runs of steelhead trout and nongame fish species, and contains a riparian corridor which is important for fish and wildlife species. The Department determined that the proposed diversion and method of diversion could adversely impact fish and wildlife resources. However, the Department concluded that with proper design, maintenance, and operation of the diversion facilities, the potential for adverse impacts could be minimized. The Department withdrew its objection when the applicant agreed to comply with terms 14, 15 and 16 in the temporary permit.

Term 14 of the temporary permit requires erosion control measures and provides operational criteria to protect and preserve fishlife and maintain the riparian habitat of Finney Valley Creek. Term 15 requires the installation of a device to measure the flows required by conditions of the temporary permit. Term 16 mandates that the applicant enter into a Stream Alteration Agreement with the Department prior to any diversion under the temporary permit.

As the Department's objection has been resolved, the Board concludes that water may be diverted and used under the

temporary permit without any unreasonable adverse effect upon fish, wildlife, or other instream beneficial uses.

#### Findings Concerning the California Environmental Quality Act

11. The project is an emergency project and is therefore exempt from the California Environmental Quality Act pursuant to Title 14, California Code of Regulations, Section 15269(c) (emergency exemption).

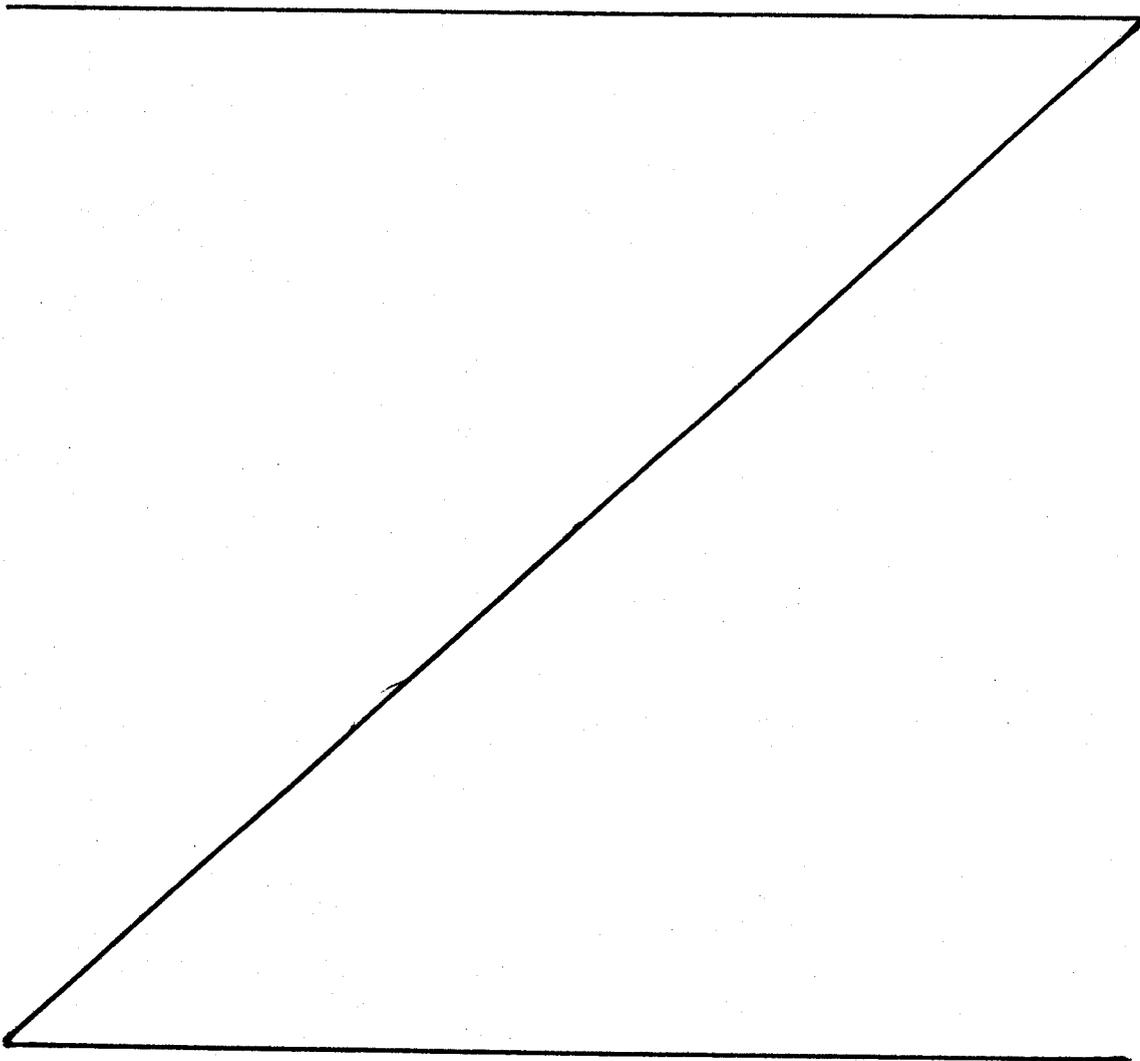
#### Public Interest

12. The Board concludes that diversion and use of water under Temporary Permit 20366 is in the public interest and in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

#### Issuance of Temporary Permit

13. Water Code Section 1425 provides for delegation of the authority to issue temporary permits. The Board has delegated this authority to each Board Member. Section 1425 further requires that when the delegated authority is exercised, the Board shall, not later than 30 days following issuance, review and validate any temporary permit so issued.

Board staff explained the foregoing situation to Board Member Samaniego and recommended approval of the temporary permit. Board Member Samaniego concurred with the staff recommendation, and on September 6, 1989 authorized issuance of the temporary permit. On September 6, 1989, Walter G. Pettit, Chief of the Division of Water Rights, issued Temporary Permit 20366.



ORDER

NOW, THEREFORE, IT IS ORDERED THAT issuance of Temporary Permit 20366 is validated subject to the conditions specified in the permit.

CERTIFICATION

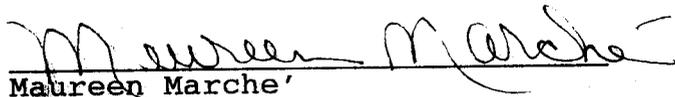
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on OCTOBER 1 1987

AYE: W. Don Maughan  
Edwin H. Finster  
Danny Walsh

NO: None

ABSENT: Darlene E. Ruiz  
Eliseo M. Samaniego

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board

STATE OF CALIFORNIA  
 WATER RESOURCES CONTROL BOARD  
 DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**TEMPORARY PERMIT** 20366

Application 29527 of City of Willits

111 East Commercial Street, Willits, CA 95490

filed on July 25, 1989, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source: Tributary to:
- |   |                            |
|---|----------------------------|
| <u>Finney Valley Creek (aka Rowe Creek)</u> | <u>Berry Creek thence</u>  |
|   | <u>Davis Creek thence</u>  |
|   | <u>Outlet Creek thence</u> |
|   | <u>Eel River</u>           |
|   |                            |
|   |                            |

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridan
NORTH 53°30'WEST 2,700 FEET FROM SE CORNER OF SECTION 16	NW $\frac{1}{4}$ OF SE $\frac{1}{4}$	16	18N	13W	MD

County of Mendocino

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridan	Acres
MUNICIPAL	WITHIN THE CITY OF WILLITS SERVICE AREA AS SHOWN ON A MAP					
	FILED WITH THE STATE WATER RESOURCES CONTROL BOARD.					

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water diverted and used shall be limited to the quantity which can be beneficially used and shall not exceed 600,000 gallons per day to be diverted from September 6, 1989 to March 6, 1990. The maximum amount diverted under this temporary permit shall not exceed 75 acre-feet. (0000005)
6. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this temporary permit, 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 temporary permit with a view to eliminating waste of water and to meeting the reasonable water requirements of the permittee without unreasonable draft on the source. (0000012)
7. This temporary permit is issued and permittee takes it subject to California Water Code, Division 2, Chapter 6.5, Section 1425 et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the State Water Resources Control Board. (0510800)
8. The State Water Resources Control Board shall supervise diversion and use of water under this temporary permit for the protection of legal users of water and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the State Water Resources Control 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 temporary permit. (0510600)
9. Issuance of this temporary permit shall not be construed as indicating State Water Resources Control Board approval of water right permits requested under other pending applications. (0510999)
10. The State Water Resources Control Board shall within 30 days review and validate this temporary permit, including the findings upon which it was issued, and should the Board fail or refuse to validate this temporary permit, it shall stand revoked as of the date of said Board meeting and shall be of no further force and effect. (0530999)
11. This temporary permit shall automatically expire on March 6, 1990, without further action by the State Water Resources Control Board, or when water from Centennial Dam is available for use by permittee, whichever is sooner. (0510700)
12. Permittee shall report to the State Water Resources Control Board by March 17, 1990 the maximum rate of diversion and the total amount of water diverted under this temporary permit. (0100700)
13. This temporary permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)
14. For the protection and preservation of fishlife and the maintenance of riparian habitat, permittee shall comply with the following:
- (1) A minimum bypass flow of 0.09 cubic foot per second or the total natural streamflow, whichever is less, shall be maintained. (0050060)
  - (2) The water pool immediately below the diversion dam shall be maintained at a depth of no less than 2.5 feet whenever there is continuous hydraulic continuity between the point of diversion and Davis Creek. (0400500)

(3) Whenever permittee is diverting stored water released from an upstream reservoir for that specific purpose, bypass of such storage releases shall not establish continuous hydraulic continuity between the point of diversion and Davis Creek or otherwise lure fish into Finney Valley Creek. (0150400)

(4) Permittee shall place and maintain riprap on the bottom of the water pool immediately below the diversion dam, and on the upstream side of the diversion dam adjacent to the "V"-slot in a manner satisfactory to the California Department of Fish and Game. (0400500)

(5) All work in and around Finney Valley Creek shall be accomplished in a manner that will minimize degradation to riparian vegetation and siltation of flowing water. (0400500)

(6) All observations of dead or stranded fish shall immediately be reported to the following staff of the California Department of Fish and Game:

Rick Macedo (707) 279-2904 and  
Wendy Jones (707) 462-0642  
or  
Larry Week (707) 944-5526 (0390500)

15. No water shall be diverted under this temporary permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this temporary permit. Said measuring device shall be properly maintained. (0060062)

16. In accordance with Section 1601 and 1603 of the Fish and Game Code, no water shall be diverted under this temporary permit until permittee has entered into a Stream Alteration Agreement with the California Department of Fish and Game. (0000063)

Based upon the record in this matter, I find:

- A. That the application being considered herein was filed under the provisions of Chapter 6.5 commencing with Section 1425, Part 2, Division 2 of the Water Code.
- B. That the applicant has an urgent but temporary need to divert and use water under a temporary permit.
- C. That water is available for diversion and use by the applicant and may be diverted and used without injury to any lawful user of water and without unreasonable effect on fish, wildlife or other instream beneficial uses.
- D. That the proposed diversion and use of water under this temporary permit are in the public interest.
- E. That the project has been declared an emergency project and a Notice of Exemption has been prepared in accordance with Title 14, California Code of Regulations, Section 15269(c) (emergency exemption).

Accordingly, issuance of the within temporary permit is hereby authorized.

Dated: Sept. 6, 1989

Eliseo M. Samaniego

In accordance with the foregoing, the temporary permit is hereby issued.

Walter B. Pettit Sept 6, 1989  
Chief, Division of Water Rights Date

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

Section 1390. A permit 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 1391. Every permit 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 permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, 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 permit 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 permittee 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 permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RESOURCES CONTROL BOARD

Chief, Division of Water Rights