

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING – DIVISION OF WATER RIGHTS
MAY 6, 2008**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED ORDER GRANTING AN EXTENSION OF TIME TO APPLY WATER TO FULL BENEFICIAL USE UNDER PERMIT OF DIETER SIEGEMUND/SIEGEMUND FAMILY TRUST

DISCUSSION

The State Water Board issued Permit 20316 on April 3, 1989. Dieter Siegemund/Siegemund Family Trust currently holds the permit. Permit 20316 authorizes storage of 6.4 acre-feet per year to be collected from October 1 of each year to April 30 of the succeeding year.

Under terms of the permit, the permittee was to apply water to full beneficial use by December 31, 1993. The 6.4 acre-foot reservoir was constructed within the development period specified in Permit 20316. However, water was not fully applied to beneficial use before the permit expired. On November 18, 1998, permittee's predecessor filed a petition for an extension of time within which to apply water to beneficial use. The Division of Water Rights (Division) issued a public notice of the petition, and Trout Unlimited of California (TUC) submitted a protest. Division staff conducted a field investigation to view the project and discuss TUC's concerns. Protest issues were resolved by agreement to add terms to the amended permit, including terms regarding fish passage, a bypass flow for the protection of fish and wildlife, and permittee's agreement not to use water under the basis of riparian right on the place of use authorized by the permit.

The project is exempt from CEQA, and the Division will file a Notice of Exemption if the State Water Board approves this order.

Pursuant to State Water Board [Resolution No. 2007-0057](#), section 4.2.7, the State Water Board Deputy Director for Water Rights only has delegation authority to grant extensions when the period of extension, in combination with all extensions previously granted under delegated authority, does not exceed 15 years. The requested extension, from December 31, 1993 to December 31, 2010, exceeds that delegated authority and therefore requires Board approval.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2008 – 00XX

In the Matter of Petition for Extension of Time

DIETER SIEGEMUND/SIEGEMUND FAMILY TRUST

Permit 20316 (Application 29327)

SOURCE: Unnamed Stream tributary to Icaria Creek thence Russian River

COUNTY: Sonoma County

**ORDER APPROVING PETITION FOR EXTENSION OF TIME
AND ISSUANCE OF AMENDED PERMIT**

BY THE BOARD:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 20316 to Bruce Reuser (Permittee) on April 3, 1989, pursuant to Application 29327, and subsequently assigned the permit to Dieter Siegemund/Siegemund Family Trust on October 28, 1999. Permit 20316 authorizes storage of 6.4 acre-feet per year, to be collected from October 1 of each year to April 30 of the succeeding year.
2. The permit required that construction work be completed by December 31, 1992, and that the water be applied to the authorized use by December 31, 1993.
3. Division records show that Permittee has failed to complete the application of water to beneficial use within the time provided under the permit. Permittee states in the 1989 Progress Report by Permittee that construction of the dam and reservoir is complete and use of water has not commenced. Progress reports submitted between the periods of 1991 through 1993 indicate that the Permittee used water under the permit for irrigation of up to 1.3 acres.
4. On January 26, 1994, the Division received a petition for extension of time from the Permittee, which stated that 0.5 acre feet per annum (afa) of water had been used to irrigate 1.3 acres and that "water use will be increased as more land is planted and pipes are laid." The Division did not process this petition for extension of time because the petitioner did not submit the appropriate fees.

5. Progress reports submitted between the periods of 1994 and 1998 indicate that the reservoir spilled each year.
6. On November 18, 1998, Permittee filed a second petition for an extension of time within which to complete construction work and apply water to beneficial use. The Permittee submitted the appropriate fees. The petition for extension of time indicates that 2 afa of water had been put to beneficial use.
7. The Division issued a public notice of the petition for extension of time on March 17, 1999. Trout Unlimited of California (TUC) submitted a protest on April 19, 1999 based on environmental concerns.
8. Division staff conducted a field investigation to view the project and discuss TUC's concerns with the Permittee and a representative of TUC. The parties discussed the option of amending Permittee's diversion and imposing a bypass flow requirement. Subsequent to the field investigation, the parties agreed to terms regarding fish passage around the permitted dam and reservoir, minimum bypass flow, preparation of a compliance plan in regard to the bypass flow term, and a limitation on Permittee's riparian right. Protest issues were resolved by inclusion of permit terms confirmed in the Division's April 13, 2007 letter to the parties and included in this order.
9. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) A permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.
10. Permittee has shown that due diligence has been exercised. Permittee completed construction of the reservoir and dam in compliance with the terms and conditions and within the timeframe allotted under the permit. Permittee has submitted progress reports to the Division. The progress reports indicate that the Permittee had put water to beneficial use on approximately 1 acre of the place of use prior to December 31, 1993, the date by which complete application of the water to beneficial use was required in the permit. Permittee subsequently reported irrigating 3 acres and a maximum use of 6 afa.
11. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. The current Permittee purchased the property in September of 1999 and diligently pursued the project. The three years allotted for construction of the project was not enough time to construct the dam and reservoir, demolish and remove the house and horse arena, and develop the place of use for the planting of grapes.
12. Permittee has shown that satisfactory progress will be made if a time extension is granted. The house and horse arena were converted to vineyard, and place of use was fully developed prior to September of 1999. Permittee has put to beneficial use the complete 6.3 acre-feet of water authorized under the permit as indicated by progress reports submitted in 1999 and 2000.

13. Permittee has shown good cause for the time extension.
14. Division staff conducted a hydrologic analysis of the flow related impacts associated with approval of the petition for extension of time. The hydrologic analysis is dated August 11, 2006, and is on file with the Division. Division staff analysis concluded that approval of the petition for extension of time, as conditioned, would not result in potentially significant impacts to anadromous fish or the environment.
15. The project is exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15061, subdivision (b). The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this order.
16. To facilitate compliance with Water Code section 1605, a permit term will be added requiring Permittee to install an in-line meter to measure water withdrawal from the reservoir authorized by Permit 20316 and to maintain water diversion and use records.
17. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the Permittee aware of obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 and 9 of the permit are deleted and replaced with:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2010.

(0000009)

2. The following term shall be added to the Permit:

Permittee agrees to provide a fishway for the free passage of fish around the permitted dam and reservoir if it is determined by the Chief of the Division of Water Rights, following notification to the Division of Water Rights by the California Department of Fish and Game, that the dam authorized by this permit has become the only obstruction to anadromous fish migration for at least 1,000 feet upstream of the dam. If the requirement to provide a fishway under this permit term is invoked, then the Permittee, following consultation with the California Department of Fish and Game, shall submit a plan and a time schedule for construction of a fishway for review and approval by the Chief of the Division of Water Rights. The plan shall be in accordance with California Department of Fish and Game and National Marine Fisheries Service criteria for construction of fishways. The Permittee shall be responsible for installation, operation, and maintenance of any required fishway in accordance with the plan approved by the Chief of the Division of Water Rights.

If fish passage facilities required under this permit are rendered inoperable for any reason, the Permittee shall notify the Chief of the Division of Water Rights within 48 hours, and the diversion of water under this permit shall immediately cease until such

time as the fish passage facility is made operable to the satisfaction of the Chief of the Division of Water Rights.

3. The following term shall be added to the Permit:

For the protection of fish and wildlife, Permittee shall during the period of October 1 through April 30 bypass a minimum of 0.58 cubic feet per second (cfs) as measured directly below the point of diversion. The total stream flow immediately upstream of the point of diversion shall be bypassed whenever the stream flow is less than 0.58 cfs. Outside the period of October 1 through April 30, the total stream flow immediately upstream of the point of diversion shall be bypassed to downstream reaches immediately below the point of diversion.

4. The following term shall be added to the Permit:

Within six months of the issuance of this order, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes, etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
- b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
- c) A time schedule for the installation of these facilities.
- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by the Permittee for ten years from the date of collection and made available to the Chief of the Division of Water Rights upon request.

Any non-compliance with the terms of the permit shall be reported by the Permittee promptly to the Chief of the Division of Water Rights.

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

5. The following term shall be added to the Permit:

Permittee shall not use water under the basis of riparian right on the place of use authorized by this permit.

6. The following term shall be added to the Permit:

Permittee shall install an in-line flow meter satisfactory to the Chief of the Division of Water Rights that measures the instantaneous rate and the cumulative amount of water withdrawn from the reservoir. This in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these records with annual progress reports and whenever requested by the Division of Water Rights.

(0100900)

7. The following Endangered Species Act condition shall be added to the Permit:

This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

CERTIFICATION

The undersigned Clerk 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 May 6, 2008.

AYE:

NO:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board