

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary
Permit 20336 (Application 29489)
MAMMOTH COUNTY WATER DISTRICT, Permittee

ORDER: WR 89-12
SOURCE: Lake Mary, Lake Mamie,
Twin Lakes and Mammoth
Creek
COUNTY: Mono

FINDINGS AND ORDER VALIDATING
TEMPORARY PERMIT

Mammoth County Water District, (hereinafter referred to as District), having filed Application 29489 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 Department of Fish and Game (DF&G); Board Chairman Maughan having concluded from available information that the District should be granted a temporary permit to divert and use water, subject to review and validation by the Board as provided by Water Code Section 1425(d); the Board finds as follows:

1. Substance of the Application

Application 29489 is for a temporary permit to directly divert up to 7.5 cubic feet per second (cfs), including 2.5 cfs for fish protection and enhancement, from Mammoth Creek, Lake Mary, Lake Mamie and Twin Lakes and to collect to storage 660 acre-feet (af) in Lake Mary, 60 af in Lake Mamie and

20 af in Twin Lakes from June 5, 1989 to December 1, 1989. The water will be used for municipal and fish protection and enhancement purposes within the service area of the District and in Mammoth Creek within Section 27, 28, 33, 34, 35 and 36 of T3S, R27E; Sections 1 (projected), 2 (projected), 3, 4, and 10 (projected) of T4S, R27E; Sections 5 and 6, T4S of R28E; and Sections 31, 32, and 33 of T3S, R28E, MDB&M. The application for a temporary permit was accompanied by the District's proposed "1989 Emergency Water Operating Procedures for the Mammoth Creek Watershed." These operating procedures were developed as a result of meetings with the DF&G, the U. S. Forest Service (Forest Service), California Trout Inc., and the California Sportfishing Protection Alliance (CSPA). Operation in accordance with the 1989 emergency procedures is required by temporary permit term 11.

2. Water Rights of the District

The District holds or has applied for the following water rights for domestic and municipal purposes within the service area of the District:

- A. License 5715 (Application 12079) to divert 25,000 gallons per day from Lake Mary from May 1 to November 1.
- B. Permit 11463 (Application 17770) to divert two cfs from Lake Mary from January 1 to December 31.

- C. Permit 17332 (Application 25368) to divert three cfs and the storage of 660 af at Lake Mary. Direct diversion is authorized from January 1 to December 31. Collection to storage is authorized from April 1 to June 30 and from September 1 to September 30.
- D. Protested Application 27379 filed by the District on July 7, 1982 to divert 257 acre-feet per annum to storage in George Lake is still pending.

The total quantity of water diverted under the rights specified in items A, B, and C above may not exceed 2,760 acre-feet per annum.

Pursuant to the Master Operating Agreement between the District and the Forest Service, the District is required to bypass all natural inflow to Lake Mary when certain minimum flows are not maintained at a point downstream in Mammoth Creek near Highway 395.

3. Urgent Need of Applicant to Divert and Use Water

- A. The Mammoth Creek Watershed has been facing water shortages due to drought for the last three years. Precipitation in the Mammoth Lake area for water year 1986-1987 was 51 percent of normal and in 1987-88, 58 percent. As of May 16, 1989, precipitation in 1988-89 water year was 70 percent of normal. The District has appropriative water rights to divert and use 2,760 acre-feet per annum. However, because of

operational constraints in the Master Operational Agreement with the Forest Service, and limitations in its existing water right permits and license, the District cannot use its full entitlement when precipitation is less than 100 percent of normal. Since precipitation during 1988-89 water year is projected to be less than normal, the District is envisioning hardship during the later part of this calendar year to meet its combined demands for municipal and fish protection and enhancement purposes.

- B. The District has completed two new ground water wells to supplement surface water supplies for meeting its municipal needs; however, it is anticipated that there will not be enough surface water available during the later part of the year to maintain fishery bypass flows. The District projects that the natural inflow to Lake Mary may decrease to approximately 1 cfs during the later part of this year. If the District meets the requirements of its existing water rights and bypasses only the Lake Mary inflow, the flow in Mammoth Creek could be less than 1 cfs later in the year.

In accordance with the Master Operating Agreement with the Forest Service, the required flow in Mammoth Creek is 25 cfs for the month of May, 40 cfs for June, 25 cfs for July, and 10 cfs for August. For the remainder of the year, the required flow is 6 cfs or the natural flow into Lake Mary, whichever is less. Extremely low flow in Mammoth Creek could cause significant injury to the resident fishery. In the letter

dated June 5, 1989, the District urged the Board to approve the Temporary Permit authorizing it to store water now to prevent an emergency later in the year.

The DF&G in its letter of March 23, 1989 expressed concern about such an impact to the fishery and urged the District to file for a temporary permit.

- C. In order to prevent damage to the resident fishery, the District adopted Resolution 04-20-89-12 on April 20, 1989 authorizing application for a Temporary Urgency Permit. Instead of operating Lake Mary according to the existing water rights as discussed above, the District has requested that the Board issue a Temporary Permit to operate the Mammoth Creek Watershed in accordance with its 1989 Emergency Water Operating Procedures. These procedures require the District to immediately reduce the bypass and maintain a minimum of 1.5 cfs release into Mammoth Creek. Reducing current bypass requirements allows for retaining more water in storage which can be used for maintaining higher creek flows later in the year than are required under the District's license and regular permits. Maintaining higher flow levels later in the year should reduce negative impacts on the fishery. Also, altering the flow releases in accordance with the Temporary Permit may aid the District in completing studies required by the Board.

D. The emergency operating procedures reduce the number of days by one-half for outside watering uses when the average flows measured at Old Highway 395 for a 24 hour period fall below 5 cfs during July 1 to July 30, 4 cfs during August 1 to August 15, and 3 cfs during August 16 to November 18, 1989.

E. Based on the above information, the Board concludes that the applicant has an urgent need to divert and store water to alleviate any adverse impacts to the fishery during the later part of calendar year 1989.

4. Exercise of Existing Water Rights

Term 8 of Temporary Permit 20336 prohibits the District from exercising its existing water rights for as long as the Temporary Permit is in effect. This action relieves the District from complying with the existing bypass conditions and allows the bypass requirements set forth in term 11 to be used for as long as the Temporary Permit is in effect. The District will still be required to meet all other requirements of the existing license and permits that are not in conflict with its 1989 Temporary Permit conditions.

5. Effect of the Diversion on Any Lawful User of Water

The Temporary Permit was noticed as required by the Water Code on May 12, 1989. Notice was sent to all affected downstream diverters and interested parties known to the Board. The notice was published in the Review/Mono

Herald and Bridgeport Chronicle-Union. The following comments have been received:

- A. CSPA supports the issuance of the Temporary Permit.

- B. California Trout has no objection to the issuance of the Temporary Permit to the District provided the District: (1) completes the data collection for the instream flow study in progress by June 30, 1989; and (2) discharges all flows in accordance with the Instream Flow Incremental Methodology as established in the Mammoth Creek Instream Flow Study Work Plan.

Terms 12 and 13 in the 1989 temporary permit address the above concerns raised by California Trout.

- C. Both the Forest Service and Robert and Peggy Schotz objected to the proposed operating requirement that specifies a five-foot draw down in Lake George.

The Forest Service objected because this year's permit (unlike the Temporary Permits issued in 1987 and 1988) does not contain a term that requires the elimination of outside watering when the draw down in Lake George exceeds one foot from the natural spillway level. The Forest Service asserts that a similar term in the 1989 Temporary Permit would result in less water being drawn from Lake George. Thus, the beneficial uses of the lake would not be as adversely impacted.

Mr. and Mrs. Schotz allege that the proposed five-foot draw down would adversely affect wildlife and fishery resources, and that recreational and scenic values of the lake would be impaired.

The above concerns were discussed with the District. The District agreed to eliminate Lake George as a source of water. Consequently, all references to Lake George were deleted before issuance of the Temporary Permit.

- D. The Los Angeles Department of Water and Power (Department) has no objection to the issuance of the Temporary Permit to the District. The Department, however, would like the District to install additional wells to meet its demands on a long-term basis. The District completed two wells last year and is currently testing and using those wells to meet its needs on a long-term basis.
- E. Herbert C. Reed, who represents the residents of Mill City Tract, has no objection to the issuance of the Temporary Permit, provided the District supplies water to the residents of Mill City Tract.

Term 10 in the Temporary Permit addresses the above concern raised by Mr. Reed.

- F. The Board concludes that the water may be diverted and used under the Temporary Permit without injury to any lawful users of water.

6. Effects of the Diversion on Fish, Wildlife and Other Instream Uses

- A. Board staff consulted with the DF&G. The DF&G was concerned that diversion of water under the Temporary Permit for municipal purposes by the District would limit bypass flows needed for the protection of the fishery. The DF&G wanted the District to maximize use of their wells for municipal purposes in order to minimize impacts on lake levels and stream flow. The DF&G also proposed a mid-season evaluation of lake levels and stream flow. The evaluation would help determine whether lake levels need to be drawn down any further to protect the fishery in Mammoth Creek.

Terms 14 and 15 in the Temporary Permit address the above concerns of the DF&G.

- B. The Board concludes that water may be diverted and used under the Temporary Permit without unreasonable adverse effect upon fish, wildlife, or other instream beneficial uses.

7. Compliance with the California Environmental Quality Act

The Board, being a lead agency, has filed a Notice of Exemption in accordance with Title 14, California Code of Regulations, Section 15307. The project is a Class 7 Categorical Exemption.

8. Public Interest

The Board concludes that diversion and use of water by the District under a temporary permit 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.

9. Issuance of Temporary Permit

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

Board staff explained the foregoing situation to Board Chairman Maughan and recommended approval of the Temporary Permit. Board Chairman Maughan concurred with the staff recommendation, and on June 5, 1989 authorized issuance of the Temporary Permit. On the same date, Walter G. Pettit, Chief of the Division of Water Rights, issued Temporary Permit 20336.

Since the issuance of the permit, a typographical error has been noticed in Term 16 of the Temporary Permit. The expiration date for the Temporary Permit should be December 1, 1989 and not November 18, 1989.

ORDER

NOW THEREFORE IT IS ORDERED THAT issuance of temporary permit 20336 is validated subject to the conditions specified in the permit. Also, the expiration date shall be December 1, 1989 and not November 18, 1989 as shown in Term 16 of the Temporary Permit.

CERTIFICATION

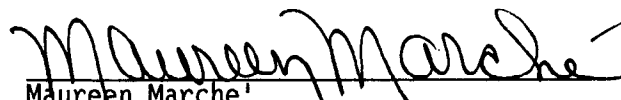
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 22, 1989.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster

NO: None

ABSENT: Eliseo M. Samaniego
Danny Walsh

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

100
100
100

