

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary)
Permit 20477 (Application 29842))
)
)
STEVE MACELVAINE, Permittee)
)
_____)

ORDER: WR 90-19
SOURCE: Little Morro Creek
Underflow
COUNTY: San Luis Obispo

FINDINGS AND ORDER VALIDATING THE
ISSUANCE OF TEMPORARY PERMIT

Steve MacElvaine, hereinafter referred to as MacElvaine, having filed Application 29842 for a temporary 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 and the only downstream diverter of record, the City of Morro Bay; Board Chairman W. Don Maughan having concluded from available information that MacElvaine 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 1435(d); the Board finds as follows:

Issuance of Temporary Permit

1. The Water Code provides for delegation of the authority to issue temporary permits and each Board Member has been delegated this authority. When this authority is exercised, the Water Code requires the Board to review and validate any temporary permit within 30 days of issuance. On November 19, 1990, Board Chairman W. Don Maughan authorized issuance of the temporary permit and on the same date, Jesse M. Diaz, Chief of the Division of Water Quality and Water Rights, issued Temporary Permit 20477. The matter is before the Board for review and validation.

Substance of the Application and Project

2. Temporary Permit 20477 (Application 29842) is for the direct diversion and use of water from the underflow of Little Morro Creek in San Luis Obispo County for domestic purposes at Rancho Colina Mobile Home Park (Rancho Colina) within the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of projected Section 19, T29S, R11E, MDB&M. The season of diversion is from November 19, 1990 to April 15, 1991.
3. The temporary permit allows MacElvaine to divert a maximum of 12,500 gallons per day (gpd) from a point of diversion within the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of projected Section 30, T29S, R11E, MDB&M. Water pumped from the point of diversion will be transported to the place of use by tanker truck.

Water Rights Held by MacElvaine

4. MacElvaine owns two pieces of property in the Morro Creek/Little Morro Creek watershed. At the northerly end of the basin, he owns and operates Rancho Colina on property which is reportedly riparian to Morro Creek. MacElvaine indicates that water is pumped from a well in the Morro Creek underflow to supply Rancho Colina with water for domestic use. At the southerly end of the basin, MacElvaine owns property claimed to be riparian to Little Morro Creek. At this location, an existing well pumps the underflow of Little Morro Creek for irrigation and domestic uses.

5. Due to a succession of dry years, the yield of the well serving Rancho Colina has declined to less than 5 gallons per minute (gpm). When well yield drops below 20 gpm, an additional supply of water is needed at Rancho Colina for domestic use. At present, MacElvaine is purchasing water which is being hauled in by tank truck from the Arroyo Grande area. MacElvaine reports, however, that this and other sources are becoming undependable due to dwindling supplies. The temporary permit allows MacElvaine to temporarily supplement the domestic water supply for Rancho Colina with water from the well on his southerly property adjoining Little Morro Creek.

6. MacElvaine filed Application 28822 with the Board on April 7, 1986 to appropriate water from his well in Little Morro Creek for use at Rancho Colina on a permanent basis. Processing of Application 28822 is pending the results of a hearing held by the Board on several applications filed by the City of Morro Bay to appropriate water from Morro Creek Underflow and Little Morro Creek, the latter being tributary to the former.

Urgent Need of Permittee to Divert and Use Water

7. If additional water is not found to supplement the existing water supply, Rancho Colina may suffer severe consequences, including forced displacement of residents. Accordingly, as required by Water Code Section 1425, the Board finds that MacElvaine has an urgent need to divert and use water under the temporary permit.

Notice of the Temporary Permit

8. Public notice of the application for temporary permit was issued on October 30, 1990. Copies of the notice were posted and mailed to all known interested persons in accordance with Water Code Section 1428. The closing date to file comments or objections was November 13, 1990. The Board's staff also verbally contacted all known users of water that could be affected by the requested diversion by temporary permit.

Objection by City of Morro Bay

9. The City of Morro Bay (City), by copy of letter to MacElvaine dated November 8, 1990 and received by the Board on November 13, 1990, stated it would not file an objection to issuance of a temporary permit provided that MacElvaine agrees to: (1) reduce the requested diversion from 25,200 gpd to 12,500 gpd; (2) cease diversion under the temporary permit when a live stream occurs adjacent to MacElvaine's Morro Creek well; and (3) not increase the overall production from Little Morro Creek Underflow over that presently used for irrigation.

Objection by California Department of Fish and Game

10. The Department of Fish and Game (DFG) filed an objection on November 13, 1990. The basis for the DFG objection is that diversion under the temporary permit could adversely impact the ability of steelhead to migrate up Little Morro Creek and the potential impact to riparian vegetation by decreasing the availability of water. The DFG set two conditions for dismissal of its objection which are similar to the conditions requested by the City of Morro Bay. The DFG requested that diversion under the temporary permit cease when visible surface flow returns to Morro Creek in the area adjacent to MacElvaine's well. The DFG also requested that the MacElvaine's total diversions from Little Morro Creek be limited to the amount diverted in previous years under claim of riparian right.

Resolution of Objections

11. Based on the requested conditions for dismissal of objections discussed above, Board Staff developed proposed conditions for inclusion in the temporary permit. On November 14 and 15, 1990, the proposed permit conditions were discussed with MacElvaine, the City and DFG. The proposed conditions were acceptable to MacElvaine and resolved the objections of both the City and DFG. In addition to reducing the diversion rate to 12,500 gpd, these permit conditions are as follows:

Water appropriated under this temporary permit shall be considered a secondary supply source for the authorized place of use, (Rancho Colina Mobile Home Park). Diversion under this temporary permit shall cease when there is visible surface flow in Morro Creek adjacent to the primary well. (Temporary permit Condition 7)

During the authorized season under this temporary permit, permittee shall not use any additional water than that which has been historically used from this source for irrigation and domestic use under claim of riparian right. (Temporary permit Condition 7)

Permittee shall record the electric meter reading for the diversion well prior to any diversion under this temporary permit and on a monthly basis thereafter. In addition, permittee shall record the amount of water diverted on a volumetric basis. The meter readings and the amount of water pumped from the underflow of Little Morro Creek shall be provided to the City of Morro Bay once a month commencing on December 15, 1990. Permittee shall also provide meter records to the City for the same period from the most recent year when non-drip irrigation was employed. (Temporary permit Condition 11)

Effect of the Diversion on Other Lawful Users of Water

12. Based upon the facts described above, the Board finds that water may be diverted and used under Temporary Permit 20477 without injury to any lawful user of water.

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

13. Permit conditions have been included in the temporary permit which resolve the objection of the California Department of Fish and Game. In accordance with Water Code Section 1425, the Board finds that water may be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses.

Findings Concerning the California Environmental Quality Act

14. The Board is lead agency under the California Environmental Quality Act, Public Resources Code, Section 21000 et seq. Board staff have conducted an environmental review of the project proposed under Application 29842 and have determined that the project consists of only minor alterations in the conditions of land, water and vegetation and will not cause a significant environmental impact. Therefore, the Board finds that the project qualifies for an exemption from the California Environmental Quality Act in accordance with Sections 15300 and 15304 of Title 14, California Code of Regulations.

No Effect on Board's Future Decision

15. Issuance of Temporary Permit 20477 on Application 29842 is independent of any action the Board may take on pending applications for rights to water from the Morro Creek/Little Morro Creek watershed. No finding herein shall be construed as predetermining any issues relevant to the Board's consideration of pending applications.

Public Interest

16. The diversion and use of water by MacElvaine 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.

Correction of Condition 5 of Temporary Permit 20477

17. Condition 5 of the temporary permit limits the total amount of water diverted to 14 acre-feet. Diversion at the authorized rate of 12,500 gpd for a season of 148 days, however, would result in a total diversion of 5.7 acre-feet. Therefore, the last sentence of Condition 5 is amended to read as follows:

The maximum amount diverted under this permit shall not exceed 5.7 acre-feet.

NOW, THEREFORE, IT IS ORDERED that the issuance of Temporary Permit 20477 is validated subject to the conditions specified in the permit as amended by paragraph 17 above.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the forgoing 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 December 10, 1990.

Aye: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego
John Caffrey

No: None

Absent: Darlene E. Ruiz

Abstain: None


Maureen Marché
Administrative Assistant to the Board

