

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 27948
for a Temporary Permit of

HOMESTAKE MINING COMPANY,

Applicant.

ORDER WR 84-3

SOURCES: (1) Unnamed Stream
Tributary to Hunting
Creek

(2) Unnamed Stream
Tributary to
Knoxville Creek

COUNTIES: Lake and Napa

ORDER VALIDATING ISSUANCE OF TEMPORARY PERMIT
TO DIVERT AND USE WATER

BY THE BOARD:

Application 27948 having been filed by Homestake Mining Company on January 10, 1984, for a 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; objections to the application having been filed by six interested parties; a public hearing on the application having been held before Board Vice Chairman Noteware on February 14, 1983; Board Vice Chairman Noteware having concluded from the evidence that a temporary permit should be issued, subject to review and validation by the Board as provided by Water Code Section 1425; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Homestake Mining Company (applicant) has filed Application 27948 for a temporary permit to appropriate 1.5 cubic feet per second (cfs) by direct diversion from January 15 to June 30, 1984, and 151 acre-feet (af) by storage from November 1, 1983, to April 15, 1984, from two unnamed streams. The 151 af

shall consist of (1) 15 af from an unnamed stream tributary to Hunting Creek thence Putah Creek in Lake County, and (2) 136 af from an unnamed stream tributary to Knoxville Creek thence Eticuera Creek thence Putah Creek in Napa County. The maximum diversion from both sources shall not exceed 352 acre-feet.

The Project

2. The applicant proposes to develop a gold mining operation known as the McLaughlin Project in a 1590 acre area located in Napa, Lake and Yolo Counties. The applicant has filed regular Applications 26509, 26510, and 27489 for the diversion and use of water in the development and operation of the project. Although all protests to the three regular applications have been resolved, no permits have been issued on these applications.

3. Application 27948 for a temporary permit and Application 26510 for a regular permit request diversion of water from separate unnamed tributaries of Hunting Creek. Diversion of water from the unnamed tributary of Knoxville Creek is requested only under Application 27948. Application 27948 requests a temporary permit to allow use of water for various construction activities at the McLaughlin Project, including aggregate production, earthwork and dust control.

Need

4. The applicant is currently engaged in pre-mining construction activities as authorized by use permits from Lake and Napa Counties. The applicant estimates that it will need in excess of the 352 acre-feet requested in the application to proceed with presently scheduled construction activities. Groundwater is being utilized in current construction, but the applicant estimates that no more than 40 acre-feet will be available from existing wells within the next several months.

5. The last protests against regular Applications 26509, 26510, and 27489 were resolved on February 10, 1984. If permits are issued on the regular applications, water from the sources specified would be available for diversion subject to the terms and conditions of the permits. Even if regular permits are issued, however, such permits would not authorize diversion and use of water from the sediment control ponds designated as points of diversion in Application 27948.

6. About 300 people are currently employed on the McLaughlin Project and the applicant projects an increase in employment to about 800 in the next several months. Unless water can be diverted under a temporary permit, the evidence indicates that many of the present employees would be laid off and hiring of new employees would be reduced. (RT p. 67, line 25 - p. 68, line 5.)

7. In accordance with subsection (a) of Water Code Section 1425, the Board finds that the applicant has an urgent but temporary need to divert and use water for the purposes specified for a period not to exceed six months.

Availability of Unappropriated Water

8. Stream hydrology and past Board decisions, particularly Decision 869 which approved the Solano Project of the Bureau of Reclamation on Putah Creek, show that unappropriated water is available to satisfy the requirements under Application 27948 and that the proposed diversion will not adversely affect the rights of downstream users.

9. Mr. and Mrs. Frank Barker filed a protest against the application on the basis of injury to prior rights. Mr. and Mrs. Barker own property riparian to a tributary of Knoxville Creek located immediately downstream of

the applicant's point of diversion at sediment control pond M-1. Mrs. Barker testified that they are not planning to divert and use water on their property within the next two years. (RT p. 84, line 20 - p. 85, line 4.) Therefore, diversion and use of water under a temporary permit for a period not to exceed six months will not interfere with the Barkers' intended exercise of their riparian rights in the future.

Environmental Considerations

10. As lead agency under the provisions of the California Environmental Quality Act, on July 6, 1983, the Napa County Planning Commission certified the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the McLaughlin Project. Use permits for the current construction have been issued by Napa County and Lake County. Yolo County has not yet issued a use permit for those aspects of the project under its jurisdiction. No use of water in Yolo County should be permitted under a temporary permit until the applicant obtains the necessary approval and permits from the County.

11. The Central Valley Regional Water Quality Control Board has issued waste discharge requirements for the entire McLaughlin Mine Project. The conditions of the waste discharge requirements and measures included in the EIR are directed at mitigating or avoiding adverse environmental impacts of the overall McLaughlin Mine Project. An engineer from the Regional Water Quality Control Board testified that the diversion of water proposed in the temporary permit application would be likely to have a beneficial effect on water quality in Hunting Creek and Knoxville Creek since it would reduce the probability of the sediment control ponds overflowing and discharging poor quality water downstream.

12. The applicant presented evidence indicating that the diversion and use of water from both sources requested would reduce the flow of Hunting Creek by a total of about 2 percent. Similarly, the proposed diversion of water under a temporary permit would reduce the flow of Knoxville Creek by approximately 2 percent. (RT p. 44, line 21 - p. 46, line 4.)

13. Several parties at the hearing questioned whether the increased construction enabled by issuance of a temporary permit would adversely affect proposed environmental monitoring aimed at establishing baseline data on aquatic ecology. This data would be used in evaluating the effects of the McLaughlin Project after it is operating. The additional environmental monitoring which is being considered to obtain baseline data, however, is limited to surface and groundwaters of the Davis Creek watershed in Yolo County. The sources of water covered by the temporary application are not tributary to the Davis Creek watershed. Therefore, issuance of a temporary permit would have no impact on flow in Davis Creek.

No construction can occur in Yolo County until the County issues a use permit. Thus, issuance of a temporary permit to divert and use water would not result in construction occurring in Yolo County until the County is satisfied that environmental monitoring to obtain baseline data would not be adversely affected by such construction. In addition, the February 1984 Brown and Caldwell report on baseline data adequacy indicates that there is no reason to believe that dust generated in other areas of the McLaughlin Project will affect water quality in the Davis Creek watershed. (SWRCB Exh. 6, p. 1-3.)

14. The Department of Fish and Game has been contacted and has no objection to issuance of a temporary permit.

15. In view of the findings above, the Board concludes that water may be diverted under a temporary permit without unreasonable effect on fish, wildlife, or other beneficial instream uses.

Review of Regional Water Quality Control Board Orders

16. The Central Valley Regional Water Quality Control Board has granted the applicant waste discharge requirements and an NPDES permit for operation of the proposed gold mining project. Two petitions have been filed with this Board seeking review of Regional Board Order No. 83-124 and Order No. 83-125. The petitioners did not request a stay of the Regional Board approval pending resolution of the petitions for review. The issues raised in the petitions for review of the Regional Board orders will be considered separately by this Board. Granting a temporary permit for the diversion and use of water does not restrict this Board from modifying provisions of the Regional Board orders if a review of the evidence indicates any modifications are appropriate.

Other Subjects Addressed at Hearing

17. One party at the hearing expressed concern regarding the structural stability of the dam constructed at sediment control pond M-1. The dam in question is subject to the jurisdiction of the Division of Safety of Dams of the Department of Water Resources. The applicant presented testimony that the dam was constructed in accordance with the Division of Safety of Dams' requirements and was subject to inspection by that agency. Any concerns regarding the safety of the M-1 dam should be resolved with the Division of Safety of Dams.

Other subjects addressed at the hearing by parties who oppose issuance of a temporary permit include allegations regarding the employment practices of

the applicant and its sub-contractors and working conditions at the project. These matters are within the jurisdiction of other regulatory agencies. Allegations regarding violations of laws or standards regarding employment practices or working conditions may be resolved by the agency having jurisdiction.

Issuance of Temporary Permit

18. After reviewing the evidence presented at the hearing, Board Vice Chairman Noteware directed that a temporary permit be issued on Application 27948 on February 22, 1984.

19. The Board concurs in Board Vice Chairman Noteware's decision to issue a temporary permit. The applicant is put on notice, however, that issuance of a temporary permit on this application shall not be construed as indicating Board approval of water right permits requested under other pending applications.

ORDER

NOW, THEREFORE, IT IS ORDERED that issuance of a temporary permit on Application 27948 is validated subject to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1.5 cubic feet per second by direct diversion to be diverted from February 22, 1984 to June 30, 1984 and a total of 151 acre-feet by storage to be collected from February 22, 1984 to April 15, 1984 as follows: 136 acre-feet in M-1 reservoir and 15 acre-feet in T-1 reservoir. The maximum amount diverted under this temporary permit shall not exceed 352 acre-feet.

2. Diversion of water shall extend from February 22, 1984, to June 30, 1984, for direct diversion, and from February 22, 1984, until April 15, 1984, for collection to storage. This temporary permit shall expire without further Board action on August 22, 1984.

3. Issuance of this temporary permit shall not be construed as indicating Board approval of water right permits requested under other pending applications.

4. This temporary permit is issued and permittee takes it subject to the 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 Board.

5. The Board shall supervise diversion and use of water under the temporary permit for the protection of vested rights 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.

6. Pursuant to California Water Code Sections 100 and 275, and the 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.

7. The permittee shall report to the State Water Resources Control Board by September 30, 1984, the maximum rate of diversion and the total acre-feet diverted under this temporary permit.

8. Use of water under this permit is subject to compliance by the permittee with all conditions and restrictions imposed by Lake and Napa Counties, the Division of Dam Safety, the Central Valley Regional Water Quality Control Board and other governmental agencies having jurisdiction over the project.

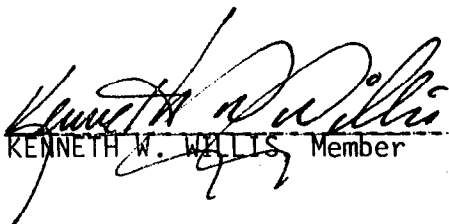
Dated: MAR 15 1984

ABSENT


CAROLE A. ONORATO, Chairwoman


WARREN D. NOTEWARE, Vice Chairman


F. K. ALJIBURY, Member


KENNETH W. WILLIS, Member

