

W. W. W. W. W.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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| IN THE MATTER OF TEMPORARY) | |
| PERMIT 20124 (APPLICATION 29080)) | ORDER: 87-9 |
| MAMMOTH COUNTY WATER DISTRICT,) | SOURCE: LAKE MARY, LAKE GEORGE |
| Permittee) | LAKE MAMIE, TWIN LAKES |
|) | AND MAMMOTH CREEK |
|) | COUNTY: MONO |
|) | |

FINDINGS AND ORDER VALIDATING THE ISSUANCE
OF TEMPORARY PERMIT

Mammoth County Water District, hereinafter referred to as District, having filed Application 29080 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 Board having consulted with the Department of Fish and Game (DFG); 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:

Substance of the Application

1. Application 29080 is for a temporary permit to divert 7.5 cubic feet per second (cfs) from Mammoth Creek and Lake George, Lake Mary, Lake Mamie and Twin Lakes and to divert to storage 660 acre-feet (af) in Lake Mary, 60 af in Lake Mamie and 20 af in Twin Lakes from August 4, 1987 to December 31, 1987. The water will be used for municipal, fish protection and fish enhancement purposes within the service area of the District and in Mammoth Creek within Sections 27, 28, 33, 34, 35 and 36, T3S, R27E, and Sections 1, 2, 3, 4, and 10, T4S, R27E, Sections 5 and 6, T4S, R28E, and Sections 31, 32, and 33, T3S, R28E, MDB&M. Of the 7.5 cfs directly diverted, 2.5 cfs is to be used for fishery protection purposes in Mammoth Creek. The application for a temporary permit was accompanied by the District's proposed "1987 Emergency Water Operating Procedures for the Mammoth Creek Watershed." These operating procedures are a result of meetings with DFG, the United States Forest Service (USFS), California Trout Inc., and the California Sportfishing Protection Alliance. Operation in accordance with the specified procedures is required by temporary permit term 11.

Water Rights Held by the District

2. The District holds 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.

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.

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 as required by permit term 23 in Permit 17332.

Urgent Need of Applicant to Divert and Use Water

3. The precipitation in the Mammoth Lake area for 1986/1987 was 51 percent of normal. The District has water rights with the Board to divert and use 2,760 acre-feet per annum. However, because of operational constraints, the Master Operational Agreement with the USFS, and limitations in its existing water right permits and license, the District cannot utilize its full entitlement when precipitation is less than 100 percent of normal. Since precipitation for July 1986 through June 1987 was 51 percent of normal, the District may not have sufficient water to serve its needs. The District's use of surface water from January 1 to June 30, 1987 was 756 af compared to 1,080 af for the same period last year, resulting in a 30 percent reduction. The overall reduction in water use within the District was 13 percent. The District increased its use of ground water during the same period by 205 percent.

4. The District declared an emergency and imposed various water conservation measures to reduce water consumption. They include District's Resolutions 04-16-87-13, 05-21-87-14, and 07-16-87-18. The conservation measures include reducing landscape irrigation to three days per week, elimination of water use for dust control, planting of new lawns, and unreasonable and wasteful landscape irrigation methods.

The District projects that Lake Mary inflow might decrease to substantially below one cfs during the later part of this year. If the District meets the requirements of the conditions of its existing water rights, to bypass only the Lake Mary natural inflow, the flows bypassed into Mammoth Creek would be substantially less than one cfs later in the year. Extremely low flows in Mammoth Creek could cause significant injury to the resident fishery. Temporary Permit 20124 allowed the District to reduce immediately the bypass and maintain a minimum of two cfs release into Mammoth Creek (inflow was 4.2 cfs on August 13, 1987). 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 resource.

Based on the above information, the Board concludes that the applicant has an urgent need to divert and use water as authorized by Temporary Permit 20124.

Exercise of Existing Water Rights

5. Term 9 of Temporary Permit 20124 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 requirements of their existing license and permits that are not in conflict with their temporary permit.

Effect of the Diversion on Any Lawful User of Water

6. Prior to issuance of the temporary permit Board staff contacted all known lawful users of water that could be affected by the diversion. Objections were received from four water right license holders. Three of the objections were resolved through direct negotiations with the licensees and the District. The District has not reached agreement with the Mill City Tract Cabin Owners, (see Section 11 G of this Order), but proposes to provide water in sufficient quantity and quality to meet the license conditions of the cabin owners at the point of their system intake. The Board concludes that water may be diverted and used under Temporary Permit 20124 without injury to any lawful user of water.

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

7. Board staff consulted with DFG whose concerns have been addressed by conditions incorporated into the temporary permit. Diversion of water under the terms of the temporary permit will allow for maintaining higher

flows in Mammoth Creek in the later part of the year than would otherwise exist. 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.

Finding Concerning the California Environmental Quality Act

8. An environmental analysis has shown the project meets the requirements of Section 15307 of the California Environmental Act Guidelines and is a Class 7 Categorical Exemption.

Public Interest

9. 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.

Issuance of Temporary Permit

10. 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 August 4, 1987 authorized issuance of the temporary permit. On the same date, Raymond Walsh, Chief of the Division of Water Rights, issued Temporary Permit 20124.

Objection to Issuance of a Temporary Permit

11. The temporary permit was noticed as required by the Water Code on August 4, 1987. 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 objections have been received:

A. The California Sportfishing Protection Alliance supports the temporary permit providing the Board requires the District to implement conservation measures in the future, and/or require a new source of water to satisfy the District's needs during dry years.

Response

The District submitted a water conservation plan to the Division of Water Rights on April 1, 1987. The Division reviewed the plan and sent comments to the District on May 15, 1987. The Division is awaiting a response to the comments. Temporary permit term 12 requires the District to come before the Board on or before the April 1988 Board workshop with a plan to assure compliance with fishery flow requirements.

B. The USFS has no objection to the temporary permit if the following condition is included in the permit:

"Should draw down level exceed the following levels at Lake Mary, Lake George, or Lake Mamie prior to September 15, the District shall eliminate all outside irrigation with fresh water until those levels are reached: Lake George 1 foot, Lake Mamie 2 feet, and Lake Mary 3 feet."

Response

The requested requirement is imposed by Term 13 of the temporary permit.

- C. Crystal Crag Water and Development Association (Crystal) objects to the temporary permit. Crystal wants the District to abide by its agreement with the USFS affecting water levels in Lake Mary.

Response

Issuance of Temporary Permit 20124 will not adversely affect the water level in Lake Mary. Under the temporary permit, a portion of Lake Mary inflow (when greater than two cfs) may be used by the District or retained in storage. Prior to issuance of the temporary permit, all natural inflow to Lake Mary was required to be bypassed and the water level was dropping at the rate of approximately 0.10 feet per day. During the first week of operation under the temporary permit, the water decline in level was approximately 0.03 feet per day.

The fishery issue and municipal water supply protection outweigh the potential adverse effect on reduced recreational use caused by lower lake levels. Also, if the temporary permit was not issued, the level of Lake Mary would be significantly lower.

- D. Ms. Louise Furlow Barrett, owner of Pokonobe Lodge and related recreation facilities on the shore of Lake Mary, objects to the temporary permit. Her boat dock facilities and boat ramp are stranded

with the lowering of the Lake Mary. Ms. Barrett wants the District to compensate her for relocation of the docks down to the water, costs associated with building a new boat ramp, and loss of business due to the low water.

Response

The Mammoth Lakes water basin is experiencing one of the worst droughts of record. The District is attempting to manage existing water supplies to meet the needs of all users in the basin. The expected results of issuing this temporary permit to the District will be the careful management of the Mammoth Lakes basin to protect temporarily the existing fishery, the District's municipal water supply and to the greatest extent possible, the basin's recreational use in this emergency situation.

The fishery issue and municipal water supply protection outweigh the potential adverse effect on reduced recreational use caused by lower lake levels. Also, if the temporary permit was not issued, the level of Lake Mary would be significantly lower than it will be under the temporary permit because the conditions of the Districts prior water rights would have required bypassing all inflow to Lake Mary.

E. The following residents or representatives of local residents object to the temporary permit:

1. Mildred Benioff and Alice Benioff
2. Dr. and Mrs. Ralph Walker
3. John Rohde, representing Twin Lakes Cabin Owners Assn.

4. Genny Smith, representing Falls Tract Cabin Owners
5. Robert J. and Peggy Schotz

They want the District to restrict landscape irrigation severely if lake levels fall below minimums prescribed by existing operating agreements.

Response

The District has stated there is an emergency drought situation on the Mammoth Lakes basin this year. Precipitation is reported as 51% of normal this year. There are insufficient supplies of water to cover all the needs of the basin in accordance with existing agreements and water permit requirements. Regulating agencies and special interest groups recognize the emergency nature of the situation in the basin and are in agreement with the District's proposal to manage the available water supplies to serve the basin's competing needs on this short term basis. The District, through its 1987 Emergency Operating Procedures, is attempting to manage carefully the existing uses to meet the total needs of the basin and its users. They have restricted the use of landscape irrigation and are taking additional steps to curtail other municipal uses. In addition, if the situation becomes even more critical, the temporary permit requires more severe conservation measures, including total elimination of landscape irrigation, if stream flows or lake levels go below prescribed minimums before certain target dates. This permit is considered only a temporary solution to an immediate problem of an emergency nature. It is only intended to get the District and the community of Mammoth Lakes through the next four months with minimum damage to local resources while serving a local population's minimum water needs.

Requiring enforcement of existing agreement terms or protection of one portion of the watershed at the expenses of other areas or the local population is inappropriate in light of the current situation and the potential losses to the resources and the city if they were rigidly enforced. Concerning further restrictions on the District users to protect the lake levels to pre-drought conditions, it would be impossible to support such position arbitrarily at the expense of an already minimal municipal use. Also, requiring more restrictive conservation measures over the ones already agreed to by the District should involve all basin residents not just the municipal users. Enforcement of such action would only aggravate the current situation, be realistically unenforceable and impossible to implement. The Board agrees with the Department of Fish and Game, and other resource oriented groups that a shared use of available waters is a more reasonable and appropriate method to get this area through this drought period.

- F. Louis B. Roeser objects to the temporary permit. He is the holder of water right License 2788, (Application 9088), and water right License 3983 (Application 13397), allowing for diversion of 2,600 gallons per day from May 1 through October 31 of each year for domestic and stockwatering purposes. Mr. Roeser diverts water from Lake Mary via Bodle Ditch which is proposed to be shut off by the District September 15, per the temporary permit. He objects to not being able to divert water under his existing licenses and to loss of water from the ditch which supplies a small lake and meadow which he uses for pasture.

Response

The District and Mr. Roeser have signed an agreement requiring the District to provide an equivalent amount of water for the remaining portion of his diversion season as described in his above listed licenses. Mr. Roeser's objection has been withdrawn.

- G. Herbert C. Reed, representative for 13 cabin owners of the Mill City Tract and the U.S. Forest Service object to the temporary permit on the basis of their injury to existing water rights. The U.S. Forest Service supplies 5,500 gallons per day to the cabin owners for domestic use under License 3909, (Application 6538). The water is diverted from Lake Mary via Bodle Ditch. The season of use under the license is from May 1 through October 15 of each year. If the District shuts off water in Bodle Ditch, the cabin owners will be without a domestic water supply.

Response

The District and the Mill City Tract Cabin Owners and the U.S. Forest Service have not been able to reach any agreement as of August 25, 1987. According to the District, the cabin owners do not want to withdraw their objection unless a permanent solution to the water service can be reached. Even though there is no agreement as yet, the District proposes to provide water to the cabin owner in the amount of 5,500 gallons per day to replace the flow of water from Bodle Ditch. Water will be piped from the District distribution system to the cabin owner's point of diversion.

Water is to be provided on a temporary basis and no infringement on any existing water rights of any of the parties involved is expected from this temporary measure.

ORDER

NOW THEREFORE IT IS ORDERED THAT issuance of temporary permit 20124 is validated subject to the conditions specified in the permit and the following additional conditions:

The permittee shall provide sufficient water to the holder of License 3909 (Application 6538 - U.S. Inyo National Forest) in the amount specified by the license through October 15, 1987.

The permittee shall provide sufficient water to the holder of Licenses 2788 and 3983 (Applications 9088 and 13397 - Louis B. Roeser) to the amount specified by the licenses through October 31, 1987.

CERTIFICATION

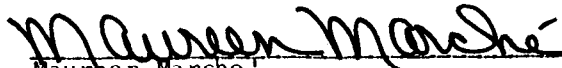
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on SEP 03 1987

AYE: W. Don Maughan, Chairman
Darlene E. Ruiz, Vice Chairwoman
Edwin H. Finster, Member
Danny Walsh, Member

NO: None

ABSENT: Eliseo M. Samaniego, Member

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

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STATE WATER RESOURCES CONTROL BOARD

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Urgent Need of Applicant to Divert and Use Water

3. The precipitation in the Mammoth Lake area for 1986/1987 was 51 percent of normal. The District has water rights with the Board to divert and use 2,760 acre-feet per annum. However, because of operational constraints, the Master Operational Agreement with the USFS, and limitations in its existing water right permits and license, the District cannot utilize its full entitlement when precipitation is less than 100 percent of normal. Since precipitation for July 1986 through June 1987 was 51 percent of normal, the District may not have sufficient water to serve its needs. The District's use of surface water from January 1 to June 30, 1987 was 756 af compared to 1,080 af for the same period last year, resulting in a 30 percent reduction. The overall reduction in water use within the District was 13 percent. The District increased its use of ground water during the same period by 205 percent.

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Requiring enforcement of existing agreement terms or protection of one portion of the watershed at the expenses of other areas or the local population is inappropriate in light of the current situation and the potential losses to the resources and the city if they were rigidly enforced. Concerning further restrictions on the District users to protect the lake levels to pre-drought conditions, it would be impossible to support such position arbitrarily at the expense of an already minimal municipal use. Also, requiring more restrictive conservation measures over the ones already agreed to by the District should involve all basin residents not just the municipal users. Enforcement of such action would only aggravate the current situation, be realistically unenforceable and impossible to implement. The Board agrees with the Department of Fish and Game, and other resource oriented groups that a shared use of available waters is a more reasonable and appropriate method to get this area through this drought period.

- F. Louis B. Roeser objects to the temporary permit. He is the holder of water right License 2788, (Application 9088), and water right License 3983 (Application 13397), allowing for diversion of 2,600 gallons per day from May 1 through October 31 of each year for domestic and stockwatering purposes. Mr. Roeser diverts water from Lake Mary via Bodle Ditch which is proposed to be shut off by the District September 15, per the temporary permit. He objects to not being able to divert water under his existing licenses and to loss of water from the ditch which supplies a small lake and meadow which he uses for pasture.

Response

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- G. Herbert C. Reed, representative for 13 cabin owners of the Mill City Tract and the U.S. Forest Service object to the temporary permit on the basis of their injury to existing water rights. The U.S. Forest Service supplies 5,500 gallons per day to the cabin owners for domestic use under License 3909, (Application 6538). The water is diverted from Lake Mary via Bodle Ditch. The season of use under the license is from May 1 through October 15 of each year. If the District shuts off water in Bodle Ditch, the cabin owners will be without a domestic water supply.

Response

The District and the Mill City Tract Cabin Owners and the U.S. Forest Service have not been able to reach any agreement as of August 25, 1987. According to the District, the cabin owners do not want to withdraw their objection unless a permanent solution to the water service can be reached. Even though there is no agreement as yet, the District proposes to provide water to the cabin owner in the amount of 5,500 gallons per day to replace the flow of water from Bodle Ditch. Water will be piped from the District distribution system to the cabin owner's point of diversion.

Water is to be provided on a temporary basis and no infringement on any existing water rights of any of the parties involved is expected from this temporary measure.

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NOW THEREFORE IT IS ORDERED THAT issuance of temporary permit 20124 is validated subject to the conditions specified in the permit and the following additional conditions:

The permittee shall provide sufficient water to the holder of License 3909 (Application 6538 - U.S. Inyo National Forest) in the amount specified by the license through October 15, 1987.

The permittee shall provide sufficient water to the holder of Licenses 2788 and 3983 (Applications 9088 and 13397 - Louis B. Roeser) to the amount specified by the licenses through October 31, 1987.

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 SEP 03 1987

AYE: W. Don Maughan, Chairman
Darlene E. Ruiz, Vice Chairwoman
Edwin H. Finster, Member
Danny Walsh, Member

NO: None

ABSENT: Eliséo M. Samaniego, Member

ABSTAIN: None


Maurien Marche
Administrative Assistant to the Board