

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17661)	ORDER:	WR 88-7
on Application 25159)		
EDWINA PARK,)	SOURCE:	EAST BORROW PIT OF
EDWARD S. DEAN, ET AL. ,)		SUTTER BY-PASS OF
)		THE SACRAMENTO RIVER
Permittees.)	COUNTY:	SUTTER

STIPULATED ORDER DEFERRING REVOCATION
AND MODIFYING PERMIT

BY THE BOARD:

1.0 INTRODUCTION

Edwina Park, Edwdrd S. Dedn, et al., (permittees) having been notified of a proceeding to revoke Permit 17661 for diversions of water in violation of permit conditions; a hearing having been held on November 2, 1987; a stipulated settlement between the Division of Wdter Rights and permittees having been entered in the record; the Board finds as follows:

2.0 BACKGROUND

Permittees are authorized to divert water from the East Borrow Pit of the Sutter By-Pass at the rate of 3 cubic feet per second (cfs) between April 1 and June 30 and between September 1 and September 30 each year (not more than 720 acre feet per year) under Permit 17661.

Permit 17661 is subject to Standard Permit Term 91 which further limits diversions if releases of supplemental Project Water are needed to satisfy in-basin entitlements. No water is available for appropriation in the East Borrow Pit during the summer irrigation season and Term 91 frequently curtails diversions beginning in May. Permittees lease their land in the Sutter By-Pass to Fred Ziegenmeyer. As a lessee Fred Ziegenmeyer is entitled to the diversion authorized in Permit 17661. Fred Ziegenmeyer is aware of the terms in Permit 17661 (he has a similar permit in his own name). Permittees and Fred Ziegenmeyer were notified by the Division of Water Rights that water could not be diverted from the East Borrow Pit during July and August unless they could provide the Board with proof of an alternative water supply, such as a contract from the Bureau of Reclamation. Despite these warnings, Fred Ziegenmeyer diverted water from the East Borrow Pit to irrigate the permittees' 115-acre parcel during July. On August 20, 1987 the Board adopted Cease and Desist Order No. 5F, and directed staff to pursue revocation of Permit 17661. Loretta Dean (a co-permittee and local agent for the other permittees) and Fred Ziegenmeyer were notified of the revocation proceedings by certified mail on October 13, 1987. A hearing was held on November 2, 1987

3.0 SETTLEMENT STIPULATION

Loretta Dean, acting on behalf of permittees, offered a stipulated settlement to avoid revocation proceedings. The Division of Water Rights is satisfied that the stipulation will prevent a recurrence of unauthorized diversions, and that deferral of revocation proceedings

in this instance is in the public interest. A copy of the stipulation is attached to this Order. The stipulation includes the following provisions:

- o An admission of unauthorized diversion;
- o A promise to pay the Bureau of Reclamation for water diverted in violation of Permit 17661;
- o A new permit term requiring permittee to enter into a contract with the Bureau of Reclamation for an alternative supply of water for the 1988 irrigation season, and for each year thereafter, unless the permittee install a well, or prove that the place of use will not be irrigated;
- o An agreement that the Division of Water Rights may revoke Permit 17661 without further proceedings in the event of further violations;
- o An agreement to pay liquidated damages of \$5000, regardless of the duration of unauthorized diversion, in the event of further violations; and
- o Acknowledgment that Cease and Desist Order No. 5F will remain in full force and effect.

4.0 CONCLUSIONS

Permittees have stipulated to violation of the terms and conditions contained in Permit 17661. Permittees have promised to pay for the water used illegally in 1987 in accordance with the stipulation. If

permittees comply with the remaining terms of the stipulation, permit revocation should be deferred in accordance with the stipulation.

OKDER

IT IS HEKEBY ORDERED that:

1. Permittees shall pay tne United States Bureau of Reclamation all fees and costs for using water during the 1987 irrigation season. Proof of payment shall be submitted to the Board within 30 days of the date of this Order;
2. Permit 17661 shall be modified to include the following conditions:

"2.1 Permittees or their agent or assigns shall submit evidence by May 1, 1988 (and by May 1 of each succeeding year) that an alternative source of supply has been secured from the U.S. Bureau of Reclamation for the irrigation season. Alternatively, permittees may file a statement that no crops will be planted at the place of use or that no crop requiring irrigation during the months of May through August (the months most frequently affected by Standard Term No. 91) will be planted.

"2.2 Condition 15 shal 1 not be applicable once permittees demonstrate that:

- (a) a long term contract for an alternate source of supply has been secured or;
- (b) a well and all equipment are in place to supply ground water."

3. Cease and Desist Order "C & D No. 5F" dated August 20, 1987 shall remain in full force. If water is diverted during 1988 or 1989 without fully complying with Permit 17661 and amendatory orders and with C & D No. 5F permittees shall be liable, without proof of the days of actual violation, for penalties totaling \$5000 under Water Code Section 1845(b), or for revocation of Permit 17661, at the discretion of the Board.
4. Any determination with respect to violation of permit conditions or the terms of this Order by the Chief of the Division of Water Rights of the Board shall be binding without the need for further proceedings, including hearings, before the Board.

CERTIFICATION

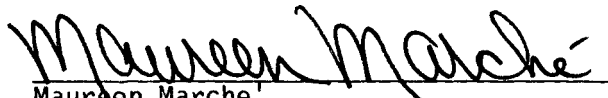
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 21, 1988.

AYE: W. Don Maughan
Edwin H. Finster
Danny Walsh
Eliseo M. Samaniego

NO: None

ABSENT: Darlene E. Ruiz

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board



TEXT OF STIPULATION BY EDWINA PARK AND EDWARD S. DEAN,
HOLDERS OF PERMIT 17661.

- I. The permittees diverted water during 1987 in violation of Permit 17661 and amendatory orders of the Board.
- II. The Board may enter an order respecting Permit 17661 (Application 25159) which provides as follows:

(1) Permittee shall file [sic] pay all fees and costs for using water during the 1987 irrigation season to the U.S. Bureau of Reclamation (about \$1500). Permittees agree that Permit 17661 shall be revoked by the Board without further notice or proceedings if permittees fail to provide evidence of payment to the Board within 30 days of entry of an order including this stipulation.

(2) Permit 17661 shall be amended to include the following condition:

2.1 Permittees or their agent or assigns shall submit evidence by May 1, 1988 (and by May 1 of each succeeding year) that an alternative source of supply has been secured from the U.S. Bureau of Reclamation for the irrigation season. Alternatively, the permittees may file a statement that no crops will be planted at the place of use or that no crop requiring irrigation during the months of May through August (the months most frequently affected by Standard Term No. 91) will be planted.

2.2 Condition 2.1 shall not be applicable once the permittees demonstrate that:

(a) a long term contract for an alternate source of supply has been secured; or

(b) proof that a well and all equipment are in place to supply ground water.

(3) Cease and Desist Order "C & D No. 5F" dated August 20, 1987 shall remain in full force. Permittee agrees that if water is diverted during 1988 or 1989 without fully complying with Permit 17661 and amendatory orders and with C & D No. 5F they shall be liable, without proof of the days of actual violation, for penalties totalling \$5000 under Water Code Section 1845(b), or for revocation of Permit 17661, at the discretion of the Board.

(4) Permittees agree that any determination with respect to violation of permit conditions or the terms of this stipulation made by the Chief of the Division of Water Rights of the State Water Resources Control Board shall be binding without the need for further proceedings, including hearings, before the Board. Permittees, who are represented by counsel, were advised of their right to a hearing before the Board and knowingly waive such right in order to induce the Board to make this stipulation rather than proceeding with immediate revocation Of Permit 17661.

The Stipulation was signed on November 2, 1987, by Loretta Dean, agent for Edwina Park and Edward S. Dean, and by Paul Minasian, attorney for permittees.