

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**In the Matter of License 13527A (Application A030049A) and
Permit 20770B (Application A030049B)**

Hidden Valley Lake Community Services District

ORDER DENYING TEMPORARY URGENCY CHANGE

SOURCE: Putah Creek (subterranean flow) tributary to Lake Berryessa

COUNTIES: Lake

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On July 22, 2016, Hidden Valley Lake Community Services District (District) filed two Temporary Urgency Change Petitions (TUCPs) with the State Water Resources Control Board, Division of Water Rights (Division), requesting approval of temporary changes to water right License 13527A (Application A030049A) and Permit 20770B (Application A030049B) pursuant to Chapter 6.6 of Part 2 of Division 2 of the Water Code. (Wat. Code, § 1435 et seq.) The petitions seek authorization to temporarily suspend mandated supplemental water releases to Putah Creek from July 15 to October 31, 2016, to conserve municipal water supply in anticipation of continuing drought conditions. The subject temporary urgency change was filed seven days after the start of the supplemental release season specified in the subject water rights. The District provided supplemental information on August 10, 2016 in support of the TUCPs. Also on August 10, 2016, the District informed the Division that it was not currently providing the mandated releases to Putah Creek as required by the terms of its permit and license.

2.0 BACKGROUND

The subject water rights authorize a combined, year-round diversion of up to 2,300 acre-feet of subterranean flow from four offset wells located adjacent to Putah Creek. Three of the wells (Grange Road Wells 2, 3, and 4) serve as the sole source of municipal water supply for the District, while the fourth well (Agricultural Well) provides non-potable water for outdoor municipal uses such as irrigation. The subject water rights include terms 2609 and 1005, requiring the discharge of supplemental water into Putah Creek between July 15 and October 31 of each year for the protection of aquatic resources between the aforementioned offset wells and U.S. Geological Survey Gage No. 11453500 (Guenoc Gage). The District must release up to 2.0 cubic feet per second (cfs) of water when the flows measured at Guenoc Gage, located approximately 2.2 miles downstream of the offset wells, fall below certain levels. The minimum flows the District must maintain vary from a high of 4.7 cfs in July to a low of 0.6 cfs in October.

The District filed similar TUCPs to remove the discharge requirements in 2007 and 2014, and in 2013 filed a non-urgent change petition to permanently remove the discharge requirements from its water rights. Both of the TUCPs were denied. The 2007 TUCP was denied because the District failed to demonstrate an urgent need for the change, and had not exercised due diligence in petitioning for the same change pursuant to other, non-urgency provisions of the Water Code. The 2014 TUCP was denied following curtailment of post-1914 water rights in the Sacramento River watershed. The 2013 non-urgent change petition is currently pending.

In 2012, the Division's Enforcement Section conducted an investigation and subsequently issued a draft cease and desist order and an administrative civil liability (ACL) complaint to the District for failure to make the mandated flow releases for several days in September and October 2010. Shortly thereafter, the Division and the District executed a settlement agreement which included partial payment of a portion of the proposed ACL and a stipulation by the District that any failure to comply with the supplemental water releases required by the conditions of its permit and license from July 15 through October 31 of each year, will be treated as a violation of a cease and desist order and subject to penalties as provided by the Water Code section 1845.

3.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITION

On August 3, 2016, the State Water Board issued a notice of the District's temporary urgency change petitions pursuant to Water Code section 1438(a). On the same day, the State Water Board posted the notice of the temporary urgency changes and the TUCPs (and accompanying materials) on its website. The State Water Board also distributed the notice through an electronic notification system. The comment period ended on August 25, 2016 and no comments were received.

4.0 REQUIRED FINDINGS OF FACT

The State Water Board must make certain findings before issuing a temporary change order for an existing water right. These include a finding that the applicant has an urgent need for the requested change. (Wat. Code, § 1435, subd. (b)(1).) "Urgent need" means "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented." (Wat. Code, § 1435 subd. (c).)

In the subject TUCPs, the District states that the proposed changes are urgent and necessary to conserve municipal water supply in the event that drought conditions persist. Although not a direct measure of available subterranean flows, water surface elevations from wells can be used as an indicator of available water supply in subterranean stream systems. Supplemental information provided by the District included water surface elevations for the four offset wells named in the subject water rights from January to June 2016 and they are above the 25-year average (1990 to 2015). The above-average conditions indicate that it is unlikely that the District will experience an immediate municipal water supply shortage. Additionally, by email dated August 17, 2016, the Division of Drinking Water stated that it is not aware of any current or anticipated water supply shortages for the District. The above-average conditions support the conclusion that both municipal use and instream flows may be maintained in furtherance of the constitutional policy that water resources be put to beneficial use to the fullest extent to which they are capable. The District had also not offered any evidence that it has investigated alternate sources of supply either for municipal use or to maintain minimum instream flows as required by the terms of its permit and license.

The District also states that continuing the supplemental water releases from July 15 to October 31, 2016, will adversely affect the quality of its supply by increasing the concentration of hexavalent chromium as water surface elevations recede in response to continued diversion. However, the District has not provided data or information to support its claim that there is a relationship between water surface elevations and hexavalent chromium concentrations. Likewise, the Division of Drinking Water is not aware of data or information supporting said relationship. Information available to the Division indicates that the water quality impacts to the District's water supply from elevated hexavalent chromium are chronic and ongoing. The District intends to comply with the new state-mandated water quality standards for hexavalent chromium by December 2019 and is working with the Division of Drinking Water to evaluate potential compliance alternatives. There is currently insufficient evidence to conclude that a reduction in pumping subterranean flows will reduce concentrations of hexavalent chromium in the District's water supply.

Based on the above information, the District does not have an urgent need for the proposed changes to the subject water rights.

5.0 STATE WATER BOARD DELEGATION AUTHORITY

Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director of Water Rights (Deputy Director) to act on requests for temporary urgency changes to existing water rights. (Resolution No. 2012-0029, section 4.4.1.)

6.0 CONCLUSIONS

Based on the information available to the Division, the applicant does not have an urgent need for the requested change. The findings of this Order do not necessarily apply to or bind the State Water Board in acting upon the related change petition filed by the right holder on October 16, 2013, pursuant to Chapter 10 of Division 2 of Part 2 of the Water Code.

ORDER

THEREFORE, IT IS ORDERED THAT THE REQUESTED CHANGE TO WATER RIGHT LICENSE 13527A (A030049A) AND PERMIT 20770B (A030049B) IS HEREBY DENIED.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Leslie F. Grober, Deputy Director
Division of Water Rights*

Dated: SEP 23 2016