

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

DIVISION OF WATER RIGHTS

In the Matter of Application 30150

Heritage Development, L.P.

ORDER CANCELING APPLICATION

SOURCE: Carmel River Subterranean Stream

COUNTY: Monterey

WHEREAS:

1. Rancho San Carlos (Applicant) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on June 30, 1992, requesting the right to divert 0.3 cubic foot per second for irrigation from the Carmel River Subterranean Stream.
2. Application 30150 was accepted on June 30, 1992. The application was noticed on March 27, 1998. The Department of Fish and Game, Monterey Peninsula Water Management District, California Sportfishing Protection Alliance, Sierra Club, Ventana Chapter, and the Carmel River Steelhead Association filed protests. None of the protests has been resolved.
3. On August 5, 2002, the application was re-assigned to Thomas A. Gray.
4. There is no documentation in the file showing that the Applicant has had any contact whatsoever with the protestants and attempted to resolve the protests. On October 6, 2005, Applicant indicated that he intended to contact the protestants regarding the protests. However, the Applicant did not provide any documentation that the protestants were contacted.
5. On April 13, 2007, the application was re-assigned to Heritage Development L.P.
6. On April 6, 2009, the Division advised the Applicant that there has been little or no attempt to resolve pending protests. Therefore, the Division requested that the Applicant respond to the protests. (Wat. Code §§ 1275, 1334.) The Applicant was advised that Application 30150 may be cancelled for failure to provide requested information. (Wat. Code § 1335.) A response was requested by May 6, 2009.
7. The Applicant responded in an April 21, 2009 email (attached to May 7, 2009 email in file) that he believes that there is a valid pre-1914 appropriative water right for this property.

8. During a May 12, 2009 telephone conversation, the Division granted an extension to June 12, 2009 to respond to the protests. The Applicant is pursuing a ten-lot split. During the conversation, the Applicant advised the Division that he is not ready to proceed with the application. Since he is an ongoing diverter, he presumes that there is a water right. The Applicant also informed the Division that he does not want to answer the protests on Application 30150 or spend money on red-legged frog or other biological resource issues.
9. On June 10, 2009, the Applicant advised the Division that he had retained an attorney to assist him in documenting a pre-1914 appropriate right for the diversion.
10. On July 10, 2009, the Applicant's attorney outlined how he wanted to proceed with this filing. The Applicant is exploring the possibility of selling the land to a land conservation organization. If the land is sold to a land conservation group, the application will be withdrawn. The Applicants intend to continue preparing documentation of a pre-1914 water right. If, however, the pre-1914 right is in question and they are unable to sell their property to a land conservation organization, the Applicant will likely proceed with the filing. Since the Applicant is pursuing a ten-lot split, the filing would need to be revised to include municipal and industrial uses. The Applicant proposed to defer responding to the protests until it is determined if the Applicant will proceed with Application 30150, a change petition is filed, and the Division acts on the petition.

The Applicant indicated that the protests are based either on claims of prior right or environmental issues relating to endangered steelhead or terrestrial species. While not intended to be the Applicant's formal answer, the general lines of response to the protests were provided.

11. The Applicant, after due notice, has failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.) The Applicant has not provided a formal response to protests.
12. The State Water Board has delegated the authority to cancel applications to the Deputy Director of the Division pursuant to Resolution No. 2007-0057. The Deputy Director has redelegated this authority to the Assistant Deputy Director in the absence of the Deputy Director, pursuant to redelegation order dated October 4, 2007.

THEREFORE, IT IS ORDERED THAT APPLICATION 30150 IS HEREBY CANCELED.

It is Applicant's responsibility to remove or modify any diversion works or impoundments to ensure that water is no longer diverted if the Applicant is unable to demonstrate a valid basis of right. Applicant should consult with the Department of Fish and Game and the Regional Water Quality Control Board in order to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. These agencies may require a permit or other approval prior to any construction activity.

Applicant is hereby put on notice that any diversion of water from the point of diversion proposed under this application may be subject to administrative civil liability of up to \$500 per day without further notice, pursuant to Water Code section 1052 if there is no valid basis of right. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Applicant shall document any diversions made under claim of riparian or pre-1914 water rights by filing a Statement of Water Diversion and Use with the State Water Board in accordance with Water Code sections 5100 through 5108.

STATE WATER RESOURCES CONTROL BOARD



Barbara Evoy

Deputy Director for Water Rights

Dated: **NOV 10 2010**

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