

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

DIVISION DECISION 99-02

DONALD R. AND MAUREEN K. HAHN

NAVARRO RIVER WATERSHED

MENDOCINO COUNTY

APPLICATION 29907

November 1, 1999

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NAVARRO RIVER WATERSHED

The State Water Resources Control Board (SWRCB), Division Of Water Rights (Division) has concluded that a water right permit should be issued to Donald R. and Maureen K. Hahn (Hahn) that would authorize diversion of 6 acre-feet per annum (afa) with the inclusion of standard permit terms and special terms designed to protect fishery resources including coho salmon and steelhead within the Navarro River watershed.

BACKGROUND

In 1991 Hahn submitted an application requesting a water right permit for diversion of a total of 6 afa from November 15 through May 15 from an unnamed tributary to Floodgate Creek tributary to the Navarro River in Mendocino County. Water would be stored in an existing off-stream pit-type reservoir and would be used for irrigation, frost protection and heat control of 16 acres of existing vineyards.

A notice of Hahn's application was distributed to interested parties by notice dated October 4, 1991. Protests against this application were submitted by the following eight parties:

Albion Residents Association,

Roger and Georgia Collin,

Department of Fish and Game,

Douglas and Deborah Hendricks,

North Greenwood Community Association,

Pacific Coast Federation of Fishermen's Association,

Diane Paget, and

E. Ellsworth and Janet Seibert

The protests contend that Hahn's diversion would have adverse impacts on the environment and the fishery resources within the Navarro River watershed.

On October 15, 1997, the Division conducted an on-site field investigation of five pending water right applications, including Hahn's application, within the Navarro River watershed in accordance with section 1345 of the Water Code. The field investigation provided the applicants and the protestants with the opportunity to present information relative to the proposed projects and the issues raised in the protests.

Following the field investigation, the Division prepared and distributed a draft Division decision dated December 15, 1998. The draft decision provides a detailed discussion of the Division's evaluation of the five pending applications, and includes an analysis of comments submitted by the protestants. Several parties submitted comments and recommendations in response to the draft decision. Except as otherwise provided, the information, analysis, and findings contained in the draft Division decision are incorporated herein by reference.

This final Division decision pertains only to Hahn's pending application. The Division will prepare separate documents pertaining to the four other pending applications.

WATER AVAILABILITY

The Division has conducted an evaluation of water availability that includes evaluating the instream flows needed to protect prior rights and public trust resources, in accordance with section 1243, 1243.5 and 1375 (d) of the Water Code. The draft Division decision provides a detailed description of the Division's analysis of water availability. Based on that analysis, the Division concludes that sufficient water is available for appropriation.

ENVIRONMENTAL CLEARANCE

The SWRCB is the lead agency pursuant to the California Environmental Quality Act (CEQA). Division staff prepared an Initial Study and proposed mitigated Negative Declaration for the proposed project under Application 29907. On June 22, 1999, the SWRCB staff circulated the Initial Study and proposed mitigated Negative Declaration pursuant to CEQA for public review and comment. Comments were received from the Department of Fish and Game (DFG), the North Greenwood Community Association, the Sierra Club, and the Navarro Watershed Protection Association. However, most comments did not contain factual information directly related to the project.

CEQA provides that a Negative Declaration may be adopted even when an Initial Study indicates that there are potential significant effects on the environment if the project plans have been revised to avoid or mitigate the adverse effects to a less-than-significant level. (Public Resources Code section 21080, subd. (c)(2).) As discussed in the Initial Study, the applicant has agreed to

mitigation, which will avoid or reduce potential impacts to a less-than-significant level. The draft Decision and the Initial Study and proposed mitigated Negative Declaration provide a detailed description of the fishery and other public trust resources and an analysis of the proposed permit terms that will be required to mitigate potential environmental impacts.

Based on the whole record, there is no substantial evidence that the proposed project as mitigated will have a significant effect on the environment. The Division intends to adopt the proposed mitigated negative declaration prior to issuing a permit pursuant to this decision. At the time the mitigated negative declaration is adopted, the Division will file a notice of determination in accordance with section 15075 of the CEQA guidelines.

SUMMARY AND CONCLUSIONS

The Division concludes that Hahn's proposed diversion and use of water is reasonable, beneficial, and will provide economic benefits. The Division concludes that sufficient water is available for appropriation, taking into consideration the water needed to protect downstream prior rights and bypass flows needed to protect coho salmon, steelhead, and other aquatic resources.

DECISION

Based on a review of all available information, the Division concludes that a water right permit should be issued with the inclusion of standard permit terms, special permit terms, and the following permit terms which were developed to resolve outstanding protest issues.

The following permit terms are substantially the same as those set forth in the draft Division decision, with some minor changes. The term concerning the exercise of riparian rights has been revised to clarify that the Division Chief is authorized to approve or reject a proposal by the permittee to use water under basis of riparian right on the permitted place of use, provided that the permittee submits reliable evidence of riparian use unrelated to the appropriation authorized by the permit.

A term that would have allowed the SWRCB access to the stream for purposes of conducting studies and implementing habitat improvements has been deleted because the Division has concluded that the term was unnecessarily burdensome. Other permit terms, including the bypass term, and the term limiting the season of diversion, coupled with the SWRCB's ability to enforce compliance with those terms, will be adequate to protect fishery resources and the riparian corridor.

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 6 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year.

Water shall be used for the purposes of irrigation, heat control and frost protection of 16 acres of vineyards.

The maximum rate of diversion to storage shall not exceed 2 cubic feet per second (cfs).

Permittee shall not use more water under basis of riparian right on the place of use authorized by this permit than permittee likely would have used absent the appropriation authorized by this permit. Consistent with this term, permittee may not divert any water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this limitation may be modified, and permittee may use water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that permittee likely would have used under basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by permittee to use water under basis of riparian right on the place of use authorized by this permit.

During the authorized season of diversion, permittee shall bypass 0.12 cfs in the unnamed stream as measured at the point of diversion, or the actual flow, whichever is less.

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to diversion and use of water. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

No diversion of water is authorized under this permit until the permittee has submitted a plan that is acceptable to the Chief of the Division of Water Rights that describes the measures that will be taken to demonstrate compliance with the terms specified in this permit. The plan shall include a time schedule for implementation of the elements included in the plan. Permittee is not authorized to divert water under this permit until all measures are in place and are operating in accordance with the approved plan.

No diversion of water is authorized under this permit until the permittee has submitted a land management plan that is acceptable to the Chief of the Division of Water Rights. The plan shall describe the specific measures to be taken to minimize erosion and sedimentation, protect the riparian corridor, stabilize streambanks and preserve large woody debris. The permittee shall refer to measures described in the Navarro Watershed Restoration Plan dated June 1998.

The plan shall include a time schedule for implementation of the elements included in the plan.

Harry M. Schueller, Chief

Division of Water Rights

Date: