

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31562

**Luchetti Children's Trust and Jim Comstock, Judy Comstock, Lisa Comstock,
Joint Tenants in Common**

ORDER CANCELING APPLICATION

SOURCE: (1) Putah Creek and (2) Unnamed Stream

COUNTY: Lake

WHEREAS:

1. Luchetti Children's Trust and Jim Comstock, Judy Comstock, Lisa Comstock, Joint Tenants in Common (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on September 19, 2003, requesting the right to divert to storage 1,500 acre-feet (af) from (1) Putah Creek and (2) Unnamed Stream in Lake County.
2. On March 1, 2005, the application was accepted and assigned number 31562.
3. In correspondence dated July 5, 2006, Division staff notified the Applicants that additional information including a preliminary Water Availability Analysis (WAA), environmental information, and a project map must be submitted to complete the application. The requested environmental information and project map were submitted on August 4, 2006. The preliminary WAA pursuant to Water Code section 1260(k) was received on August 22, 2006.
4. Application 31562 was noticed on February 1, 2008. Eight protests were filed. Three protests remain unresolved.
5. In a January 22, 2009 letter, the Division requested that the Applicants submit (1) confirmation that they intend to continue processing Application 31562 and (2) acknowledgment that they agree to retain engineering and environmental consultants needed to prepare the refined WAA pursuant to Water Code section 1375(d) and appropriate California Environmental Quality Act (CEQA) or public trust document. The Applicants responded on February 25, 2009 that they intended to hire the appropriate consultants.
6. The January 22, 2009 letter also required the Applicants to submit the following items by July 21, 2009: (1) identification of the consultants or persons that will prepare the WAA and cumulative flow related impacts analysis, (2) identification of the consultants or person that will prepare the CEQA document and/or an evaluation of impacts on public trust resources, and (3) three original Memorandums of Understanding (MOU) fully completed and signed. The letter contained a warning that failure to submit the requested information within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.

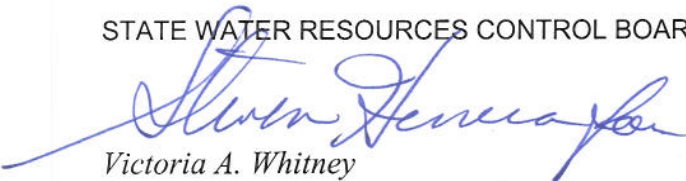
7. On July 15, 2009, the Applicants advised the Division that Application 31652 is a companion filing with Application 31565 filed by Hidden Valley Lake Community Services District (Hidden Valley) and Callayomi County Water District (Callayomi) for the construction of a joint facility, including shared diversion and storage facilities. Although Hidden Valley notified the Division that it would not be pursuing Application 31656 anymore, Hidden Valley and Callayomi had scheduled a joint meeting on July 23, 2009 to consider whether to continue pursuing Application 31565. Given the joint nature of the facilities, the Applicants proposed preparing a single environmental analysis and WAA. Therefore, a 120-day extension to submit the information requested by the Division in its January 22, 2009 letter was requested.
8. On July 23, 2009, the Division denied the time extension request, stating that the Applicants had already had 180 days since the January 22 letter to identify the consultants that will prepare the WAA and CEQA document. The Applicants did not provide the required WAA and MOU or document that Callayomi would serve as CEQA lead agency and provided substantiation that Callayomi is preparing the CEQA document.
9. On November 16, 2009, the Division reminded Callayomi of the need to enter into an MOU or the application would be subject to cancellation. A response was required by December 16, 2009.
10. On December 8, 2009, Applicant's legal representative requested that the application be cancelled.
11. 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 31562 IS HEREBY CANCELED.

Applicants are hereby put on notice that any diversion of water from the points 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. 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.

Applicants 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


Victoria A. Whitney
Deputy Director for Water Rights

Dated: FEB 18 2010