

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition for)	DECISION	1634
Partial Assignment of State Filed)		
Application 5646 and Proposed)	SOURCE:	South Fork
Completed Application to)		Cosumnes River
Appropriate Water)		Subterranean
)		Stream
RIVER PINES PUBLIC UTILITY)		tributary to
DISTRICT,)		Middle Fork
Applicant,)		Cosumnes River
)		thence Cosumnes
CALIFORNIA DEPARTMENT OF FISH)		River
AND GAME,)		
)	COUNTIES:	Amador and
Interested Party.)		El Dorado
)		

DECISION APPROVING PETITION FOR PARTIAL ASSIGNMENT
OF STATE-FILED APPLICATION 5646 AND APPROVING
PROPOSED COMPLETED APPLICATION

BY THE BOARD:

1.0 INTRODUCTION

River Pines Public Utility District (River Pines) having filed a petition for partial assignment of state-filed Application 5646 and a proposed completed application to appropriate unappropriated water from the South Fork Cosumnes River, no valid protests having been filed, the State Water Resources Control Board (SWRCB) having held a hearing on May 18, 1992, pursuant to Water Code Section 10504.1, River Pines having appeared and presented evidence, the Department of Fish and Game having appeared as an interested party, the evidence in the record having been duly considered, the SWRCB finds as follows:

2.0 SUBSTANCE OF APPLICATION AND PETITION

2.1 Application 5646

Application 5646 was filed by the Department of Finance of the State of California on July 30, 1927, for possible projects on the South and Middle Forks of the Cosumnes River, and the

Cosumnes River. The application was retained by the State until November 6, 1964, when it was assigned in its entirety to the U.S. Bureau of Reclamation (Bureau) to construct the Cosumnes River Division of the Central Valley Project. Congress did not fund this project and on September 18, 1980, Application 5646 was reassigned to the SWRCB. There have been no further assignments of water from this application.

Application 5646 was filed to initiate a year-round right to directly divert 50 cubic feet per second (cfs) from the South Fork Cosumnes River (the application describes additional points of diversion and diversion quantities on the Middle Fork Cosumnes River and Cosumnes River) for irrigation and domestic use within Amador and El Dorado Counties. The place of use includes 100,000 acres within Townships 5-9 North, inclusive, and Ranges 8-13 East, inclusive, Mount Diablo Base and Meridian (MDB&M). One of the proposed points of diversion is located in Section 14, T8N, R11E, MDB&M.

2.2 River Pines Petition and Application

The River Pines petition for partial assignment and proposed completed application seek a right to continue an existing year-round diversion of 0.204 cfs, with an annual limitation of 126.4 acre-feet, from the subterranean stream of the South Fork Cosumnes River for domestic use. The point of diversion is located within the SW 1/4 of the NW 1/4 of Section 14, T8N, R11E, MDB&M. The place of use is the W 1/2 of Section 14 and the East 1/2 of Section 15, both within T8N, R11E, MDB&M. The point of diversion, place of use, and purpose of use are included in state-filed Application 5646.

3.0 PROJECT DESCRIPTION

River Pines operates an existing underground infiltration gallery (a Raney well which is known as Well No. 1 or the Foss Well) which directs water into a 36-inch diameter pipe which is located

beneath the streambed. A five-horsepower pump lifts water from the infiltration gallery into 2,127 feet of four-inch diameter cast iron pipe which conveys the water to the place of use at the community of River Pines. The infiltration gallery was built in 1938. To solve the problems of reduced volume and increased turbidity, River Pines plans to rehabilitate the facility by replacing the existing sand bed with properly graded media. The filtration trench within the river will be cleaned and additional trenches may be added to the system. These trenches will allow river water to be collected underground and transported to the gallery where it can be pumped to the treatment plant. A new treatment plant (not the subject of this proceeding) will be constructed adjacent to the river which will provide sand filtration and chlorination of the water prior to delivery to River Pines' customers. River Pines provides water service to 211 customers.

4.0 APPLICABLE LAW

The Legislature authorized the filing of applications to appropriate water which ". . . is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state." Water Code Section 10500. These applications have priority over applications subsequently filed. Id. These applications are held by the SWRCB, and any portion of an application may be assigned or released from priority when ". . . the release or assignment is for a purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law." Water Code Section 10504. Release of the priority or assignment of any state-held application is prohibited, however, when the county in which the water originates would be deprived of water necessary for development. Water Code Section 10505. The SWRCB is required to hold a

hearing prior to assignment or release of priority. Water Code Section 10504.1.

To issue a permit, the SWRCB must find that unappropriated water is available to supply the applicant. Water Code Section 1375(d). Unappropriated water includes water that has not been either previously appropriated or diverted for riparian use. Water Code Sections 1201 and 1202.

When determining the amount of water available for appropriation and when it is in the public interest, the SWRCB must take into account the water required for preservation and enhancement of fish and wildlife resources and protection of water quality. Water Code Sections 1243 and 1243.5. The SWRCB must include conditions to develop, conserve, and utilize in the public interest the water sought to be appropriated. Water Code Section 1253. Jurisdiction may be reserved to impose additional conditions when sufficient information is not available to finally determine the terms and conditions which will reasonably protect vested rights without resulting in waste of water or which will best develop, conserve, and utilize in the public interest the water sought to be appropriated. Water Code Section 1394.

5.0 PRE-HEARING FIELD INVESTIGATION

On March 25, 1992, staff of the Division of Water Rights (Division) of the SWRCB conducted a pre-hearing field investigation to address the issues raised by the Department of Fish and Game (DFG) regarding possible adverse effects of the proposed project on fishery resources of the South Fork Cosumnes River.¹ During the investigation, River Pines and DFG reached an

¹ DFG did not file a protest to the petition and proposed application filed by River Pines. However, DFG proposed measures to mitigate adverse effects of the project when it commented on the proposed Negative Declaration prepared by River Pines pursuant to the requirements of the California Environmental Quality Act (CEQA).

agreement on bypass flows necessary to protect fishery resources in the South Fork Cosumnes River and on the need for a measuring device. River Pines and DFG also reached an agreement on the need for additional surveys and that River Pines would conduct a fish population survey and a botanical survey.

6.0 HEARING ISSUES

The Notice of Hearing dated March 27, 1992, contained the following issues:

- "1. Is the partial assignment of Application 5646, as proposed by River Pines, for a purpose of development which is not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state, or with water quality objectives established pursuant to law?
- "2. Is sufficient water available for appropriation under Application 5646 to warrant issuance of a permit pursuant to the proposed completed application submitted by River Pines?
- "3. Will the proposed project have adverse effects on fishery and wildlife resources or riparian habitat? Are there feasible alternatives or mitigation measures to avoid any adverse effects? If so, what alternatives or mitigation measures should be imposed?
- "4. Should the River Pines proposed completed application be approved, in whole or in part, and what should the authorized diversion season be?

"5. What are the appropriate conditions for any permit which is issued?"

7.0 INTERESTED PARTY

DFG was recognized by the SWRCB as an interested party in this proceeding.

8.0 FINDINGS REQUIRED BY WATER CODE SECTIONS 10504 AND 10505

8.1 No Conflict with General or Coordinated Plan

Water Code Section 10504 authorizes the SWRCB to approve a petition for assignment of a state-filed application when the purpose of development of the project is not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state. The purpose of the project is to continue a longstanding domestic water supply to the customers of River Pines. The point of diversion, purpose of use, and place of use are consistent with the California Water Plan and are included in state-filed Application 5646. There is no conflict with any general or coordinated plan. Therefore, the petition and proposed completed application comply with this portion of Water Code Section 10504.

8.2 Compliance with Water Quality Objectives

Water Code Section 10504 authorizes the SWRCB to approve a petition for assignment of a state-filed application when the purpose of development of the project is not in conflict with water quality objectives established pursuant to law. The project will not result in a discharge to the river nor will the reductions in flow resulting from this appropriation cause a violation of water quality objectives. The inclusion of Standard Permit Term 13 will ensure that any future discharges by River Pines will comply with water quality objectives. Standard Permit Term 13 states:

"The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources

Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges."

8.3 County of Origin Protection

Water Code Section 10505 prohibits assignment of a state-filed application which deprives the county in which the water covered by the application originates of any water necessary for development of the county. The place of use is in Amador and El Dorado Counties. Both counties are counties in which the water originates. Consequently, the project will not deprive the counties of origin of water necessary for development.

9.0 **AVAILABILITY OF UNAPPROPRIATED WATER**

9.1 Exemption from Declaration of Fully Appropriated Streams

The SWRCB declared that the South Fork Cosumnes River, upstream of the confluence with the Middle Fork Cosumnes River, is fully appropriated from April 15 through October 31. Declaration of Fully Appropriated Streams, Order WR 89-25, Revisions to Exhibit A, August 22, 1991, pp. 3, 9. However, in Order WR 89-25, the SWRCB declared that state-filed applications are exempt from the requirements relating to fully appropriated streams. Order WR 89-25, Paragraph 8.0, pp. 50-51.

9.2 Water Availability

There are no senior water right holders on the South Fork Cosumnes River between the proposed point of diversion and the confluence with the Middle Fork Cosumnes River.

Water availability at River Pines' point of diversion may be determined from a stream gage which was maintained by the U.S. Geological Survey (USGS) for the South Fork Cosumnes River near the community of River Pines from 1958 through 1980. The drainage area for this record is 64 square miles. The following table shows the gage data:

Daily Average Flow (cfs)					
October	November	December	January	February	March
3.3	9.2	43.0	108.0	119.0	112.0
April	May	June	July	August	September
102.0	31.0	11.0	3.8	1.0	0.6

The USGS streamflow gaged downstream of River Pines' point of diversion. River Pines utilized its infiltration gallery throughout the period of record. River Pines' estimated total historic water diversion from the South Fork Cosumnes River was 0.1 cfs (domestic use by 211 residences and 74,000 gallons per month used by the California Department of Forestry and Fire Protection). River Pines is seeking a right to divert 0.204 cfs. The requested amount represents an increase of 0.1 cfs in the amount of water actually diverted. The average daily streamflow as measured by USGS exceeds the proposed additional demand. Accordingly, there is unappropriated water available to satisfy River Pines.

Both the hearing record and the streamflow record show that occasionally there is no surface flow in the South Fork Cosumnes River. Therefore, water may not be available year round in all years. Accordingly, standard permit term 90 should be included in any permit which is issued. Term 90 states:

"This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Cosumnes River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing."

9.3 Protection of Fish and Wildlife Resources

At the field investigation conducted by SWRCB staff, River Pines and DFG agreed to a minimum bypass flow of 15 gallons per minute (gpm) to protect the instream resources of the South Fork Cosumnes River. The SWRCB concludes that a minimum bypass flow of 15 gpm will protect the instream resources of the South Fork Cosumnes River. Accordingly, any permit which is issued should include the following terms which were previously agreed to in principle by River Pines:

- For the protection of fish and wildlife, permittee shall continually bypass a minimum of 15 gpm at the point of diversion. The total streamflow shall be bypassed whenever it is less than the designated amount.
- No water shall be diverted under this permit until permittee has installed a device, satisfactory to the Chief of the Division of Water Rights, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be located upstream of the existing diversion facility and shall be properly maintained.
- Beginning on May 1 of each year, the permittee shall monitor streamflow on a bi-weekly basis. Beginning on June 1 of each year, or on the date when streamflow drops below 100 gpm prior to June 1, permittee shall record the

streamflow on a routine basis which shall not be less than once per week. Weekly readings may be discontinued after September 30 of each year, provided that the streamflow exceeds 100 gpm.

Permittee shall keep a record of the readings required pursuant to this permit term. Such readings shall be supplied to the SWRCB with the next progress report submitted to the SWRCB by the permittee.

River Pines completed the fish population survey and the botanical survey that it committed to doing at the field investigation. The surveys showed that the proposed project would not have any significant adverse effects on fish or plants. Therefore, no additional permit terms are necessary to protect fish and plants in the project area.

10.0 COMPLIANCE WITH CEQA

River Pines is the lead agency pursuant to CEQA. On February 12, 1992, River Pines adopted a Mitigated Negative Declaration which analyzed the environmental impacts of the water diversion project covered by the petition and proposed application as well as a proposed water system improvement project which includes construction of a water treatment plant.

In accordance with its functions as a responsible agency under Section 15096 of the CEQA Guidelines (Title 14, California Code of Regulations Section 15,000 et seq.), the SWRCB has reviewed the Negative Declaration. The SWRCB has considered the Negative Declaration in deciding whether to approve the petition and proposed application and in deciding what specific terms or conditions should be included in any permits which may be issued. The Negative Declaration concluded that no significant adverse impacts on the environment would be caused by the proposed project covered by the petition and proposed application, and

that the proposed mitigation measures will reduce project impacts to less-than-significant levels.

11.0 CONCLUSION

The petition for partial assignment and proposed completed application should be approved subject to the terms and conditions specified in the order which follows. If the permit issued pursuant to this petition for partial assignment of state-filed Application 5646 and proposed completed application is revoked or water is not put to beneficial use in accordance with the terms of the permit, then the portion of Application 5646 assigned to River Pines should revert back to the SWRCB.

ORDER

IT IS HEREBY ORDERED that Application 5646 held in the name of the State Water Resources Control Board (SWRCB) be partially assigned and that the proposed completed application be approved and a permit issued to River Pines. If the permit issued pursuant to this petition for partial assignment of state-filed Application 5646 and proposed completed application is revoked or water is not put to beneficial use in accordance with the terms of the permit, then the portion of Application 5646 assigned to River Pines should revert back to the SWRCB. The permit shall be issued subject to vested rights and subject to standard permit terms 6, 9 through 13, 90, and 119² in addition to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.204 cubic feet per second to be diverted from January 1 through December 31 of each year. The maximum amount diverted under this permit shall not exceed 126.4 acre-feet per year.

² Copies of standard permit terms may be obtained upon request.

4. Beginning on May 1 of each year, the permittee shall monitor streamflow on a bi-weekly basis. Beginning on June 1 of each year, or on the date when streamflow drops below 100 gpm prior to June 1, permittee shall record the streamflow on a routine basis which shall not be less than once per week. Weekly readings may be discontinued after September 30 of each year, provided that the streamflow exceeds 100 gpm.

Permittee shall keep a record of the readings required pursuant to this permit term. Such readings shall be supplied to the SWRCB with the next progress report submitted to the SWRCB by the permittee.

CERTIFICATION


The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 23, 1996.

AYE: Chairman John P. Caffrey
Vice Chairman John W. Brown
Member James M. Stubchaer
Member Mary Jane Forster
Member Marc Del Piero

NO: None.

ABSENT: None.

ABSTAIN: None.


for Maureen Marché
Administrative Assistant to the Board

