

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permitted

Application 21829 of)
HRC COMMUNITY SERVICES DISTRICT)

Order : WR 79-8

Source: Peacock (Bear), Creek

Permittee

County: Del Norte

ORDER AMENDING PERMIT AND EXTENDING TIME
' TO COMPLETE CONSTRUCTION AND TO PLACE
WATER TO BENEFICIAL USE

BY THE BOARD:

On June 17, 1976, HRC Community Services District, hereinafter referred to as petitioner, filed a petition for extension of time to complete construction and place water to beneficial use under permitted Application 21829. A protest was received from the California Department of Fish and Game, hereinafter referred to as protestant, opposing approval of the petition unless 0.5 cubic foot per second was bypassed at all times to protect fishlife. The permit currently contains no bypass requirements,

On May 16, 1978, a proceedings in lieu of hearing was held at the project site to determine whether an extension of time should be granted and, if so, whether any new flow bypass conditions should be imposed. Petitioner and protestant having appeared at said proceeding, evidence having been presented at said proceeding and having been duly considered, the Board finds as follows:

1. Application 21829 was filed June 25, 1964, for a permit to appropriate 0.10 cubic foot per second (cfs) year round from Peacock (Bear) Creek, by direct diversion, for domestic use. No protests were filed, and the application was approved and a permit issued on March 9, 1965. In 1970 an extension of time to complete construction and use was granted by the Board.

2. In 1976 petitioner requested a second extension of time to complete construction and use of water,

3. Protestant contends that in years of short supply there will not be sufficient water in Peacock Creek for instream uses. Protestant points out that Peacock Creek is a spawning and nursery stream for steelhead and cutthroat trout and that the creek contributes to the fisheries in Smith River, a component of the State's Wild and Scenic River System. Further, the protestant claims that the diversion of water can be detrimental to fishery resources unless adequate flows are bypassed below the petitioner's point of diversion. Protestant recommends that the present use of water under the existing permit be subject to bypass of a minimum flow of 0.5 cfs during the period from June 15 to September 15. The protestant presented no evidence to support the 0.5 cfs bypass and it appears that the recommendation is based on a rough estimate.

4. Petitioner contends that the only issue before the Board is petitioner's diligence since the previous extension of time was granted.

5. Petitioner has developed most of its project under its permit. The facilities now serve 15⁴ houses, and it is anticipated that by December, 1979 the subdivision will be complete with service to five more houses. Current use of water during the maximum month has been measured to be 0.017 cfs and full use will require about 0.023 cfs. When the project is complete a license will be issued confirming a right to the actual amount of water used which will probably be considerably less than the 0.10 cfs allowed under the permit.

6. The bypass requirement, if imposed, would only be effective on any diversion by permittee in excess of the current diversion rate of 0.017 cfs and would represent an ineffective and unnecessarily complicated restriction on diversion under the permit.

7. Several stream flow measurements submitted by the protestant indicate that with the exception of drought year 1977 water has been available at all times to meet diversion demands and instream uses.

8. There has been no substantial change in the concept of the petitioner's project since Application 21829 was approved by the Board in 1965. The record shows that petitioner has shown diligence in moving toward full development. The Board recognizes that certain streams are valuable natural resources and that minimum flows should be maintained to the extent necessary to Preserve fish and wildlife. However, no substantial evidence has been submitted which indicates that during the period from June 15 to September 15, in a normal year, water will not be available for instream uses with full development of the project.

It is concluded from the foregoing findings that the petition for extension of time should be granted with no requirements for specific bypass of water as recommended by the protestant. The permit should also be amended to make it subject to standard permit terms adopted as Board policy since the permit was originally issued on Application 21829.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Construction work shall be completed on or before December 1, 1980.
2. Application of water to beneficial use shall be completed on or before December 1, 1981.
3. Term 7 in the permit be amended and Term 8 added to the permit as follows:

"7. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control

Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation."

"8. *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.*"

Dated: April 19, 1979

/s/ W. DON MAUGHAN
W. Don Maughan, Chairman

/s/ WILLIAM J. MILLER
William J. Miller, Member

/s/ L. L. MITCHELL
L. L. Mitchell, Member:

