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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary)
Permit 20050 (Application 28999))
Coflo International, Inc.)
Permittee)

Order: WR 87-5
Source: Millard Creek
County: Riverside



FINDINGS AND ORDER VALIDATING THE
ISSUANCE OF TEMPORARY PERMIT

Coflo International, Inc., hereinafter referred to as CII, having filed Application 28999 for a conditional temporary urgency permit to divert and use water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the Board having consulted with the California Department of Fish and Game; Board Chairman Maughan having concluded from available information that CII should be granted a temporary permit to divert and use water, subject to review and validation by the Board as provided by Water Code Section 1435(d); the Board finds as follows:

Substance of the Application and Proposed Project

1. Application 28999 is for a temporary permit to divert water directly from Millard Creek in Riverside County for the irrigation of 70 acres of existing orchard located within the NW1/4 of Section 29, T2S, R2E, SBB&M.
2. CII seeks to divert 0.918 cubic foot per second (cfs) via 6,080 feet of 4-inch and 6-inch diameter pipe extending from the point of diversion within the SW 1/4 of NW 1/4 of Section 21, T2S, R2E, SBB&M to the 70 acres of orchard to be irrigated.

Contractual Right of Coflo International, Inc. to be Served Water Under
Water Rights Held by Cabazon County Water District.

3. CII holds a contract with Cabazon County Water District (CCWD) which entitles CII to receive water sufficient to irrigate the orchard. CCWD has not provided sufficient water to irrigate CII's orchard adequately during the 1986 and 1987 irrigation seasons and the orchard is showing adverse effects as a result.
4. CCWD holds adjudicated rights to 4.67 cfs (1885 priority) and 2.5 cfs (1915 priority) for diversion of water from Millard Canyon. In addition, the Board's records show CCWD holds appropriative water right License 660 (Application 554) which covers diversion of 0.500 cfs throughout the year.
5. CCWD claims lack of funds prevents it from cleaning the intake pipe whose holes have gradually plugged with fine dirt particles over the years. A CCWD representative stated that as a result CCWD is unable to serve CII adequately.
6. In a lawsuit brought by CII against CCWD, (Coflo International v Cabazon County Water District, Riverside County, Superior Court No. Indio 47888), the Superior Court entered an order directing CCWD to provide water to CII to maintain its orchard pursuant to the CCWD water supply contract with CII. By court order dated February 2, 1987, the CCWD was found in contempt for failure to comply with the earlier order to provide water to CII. The court order indicates that the failure of CCWD to provide water as directed has been at least partially due to faulty diversion facilities which are inadequate for diverting the quantity of water to which CCWD holds a right.

7. In its application for a temporary permit, CII proposes to install a separate pipeline and intake works near that of CCWD to divert water to CII's orchard pending resolution of the water delivery problem.

Urgent Need of Applicant To Divert and Use Water

8. The information submitted to the Board indicates that the CII orchard has suffered drought damage. According to statements from one agricultural expert, the orchard may not survive if not irrigated in the immediate future. In accordance with Water Code Section 1425, the Board finds that CCI has an urgent need to divert and use water under a temporary permit.

Effect of the Diversion on Lawful Users of Water and the Rights of Downstream Users.

9. The diversion sought under CII's Application 28999 will substitute for the water previously made available by CCWD for the same 70 acres of orchard. Accordingly, the diversion will not infringe on prior downstream rights or reduce instream flows required for prior rights.
10. Staff has contacted Coachella Valley Water District which has no objection to the diversion under Application 28999 since the quantity diverted under the temporary permit will be offset by the decrease in diversion under the rights of CCWD.
11. Staff also contacted CCWD and the Chairman of the Board said that CCWD could not serve both the town of Cabazon and CII since CCWD has very little money available and could not afford to repair the intake works sufficiently to increase the intake capacity necessary to that which would

be required. Water is available at the point of diversion area but the drain holes in the 40-foot deep well casing are largely plugged by clay and small gravel.

12. Water can be diverted and used under this temporary permit without injury to other lawful users of water.

Effects of the Proposed Diversion on Fish, Wildlife and Other Instream Uses.

13. Board staff has contacted representatives of the California Department of Fish and Game which has issued a permit to CII to construct the diversion works.

Findings Concerning the California Environmental Quality Act

14. An environmental analysis has shown the project is exempt in accordance with Categorical Exemption, Class 4, in accordance with Title 14, California Administrative Code, Section 15304. The analysis finds that the project involves only minor alternations in the condition of land, water and/or vegetation which do not result in significant loss of mature natural vegetation and that it will not cause significant adverse impacts on any sensitive environment or result in significant cumulative impacts.

Public Interest

15. The Board concludes that diversion and use of water by CCI under a temporary permit is in the public interest and in accordance with the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

Issuance of Temporary Permit

16. Board staff explained the foregoing situation to Board Chairman Maughan and recommended approval of the temporary permit. Board Chairman Maughan concurred with the staff recommendation, and on April 23, 1987 authorized issuance of the temporary permit. On the same date, Lloy Johnson, Division of Water Rights issued Temporary Permit 20050 on behalf of Raymond Walsh, Chief of the Division of Water Rights.

Objection to Issuance of a Temporary Permit

17. Notice of Application 28999 was provided on April 23, 1987 to CCWD and other potentially interested parties. The notice provided that objections to issuance of a temporary permit must be received by May 8, 1987. No objections were received within the specified period. On May 11, 1987, however, an objection from CCWD was received. CCWD stated that its objections could be dismissed if CCI locates its point of diversion downstream of CCWD and takes only surplus water; and if CCI's diversion of water is "with concurrence of Riverside County Superior Court."
18. In order to make use of gravity flow to the place of use, CCI's point of diversion is located above CCWD's. A condition of Temporary Permit 20050, however, is that CCI shall curtail its diversion of water any time there is insufficient water available at CCWD's point of diversion to supply to customers. Therefore, diversion of water under Temporary Permit 20050 should not infringe upon the reasonable diversion and use of water by CCWD.
19. Sections 1425-1430 of the California Water Code grant the Board jurisdiction to act upon applications for a temporary permit to divert and use water. Issuance of Temporary Permit 20050 allowing CCI to divert water

needed for irrigation of its orchard is entirely consistent with the previously mentioned order of the Superior Court for Riverside County which held that CCI is entitled to receive water for orchard irrigation. If the final resolution of the litigation between CCI and CCWD determines that CCI has no right, contractual or otherwise, to receive water from CCWD, then the temporary permit can be reassessed at that time if the permit has not already expired.

NOW, THEREFORE, IT IS ORDERED that issuance of Temporary Permit 20050 is validated subject to the conditions specified in the permit.

CERTIFICATION

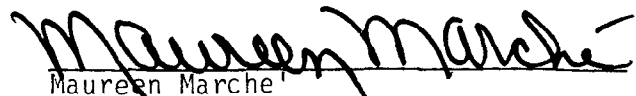
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 21, 1987.

Aye: W. Don Maughan, Chairman
Darlene E. Ruiz, Vice Chairwoman
Edwin H. Finster, Member
Eliseo M. Samaniego, Member

No: None

Absent: Danny Walsh

Abstain: None


Maureen Marche
Administrative Assistant to the Board