

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2002-0008-EXEC

In the Matter of Permits 20733, 20734, 200735, and 20736
(Applications 29699, 29700, 29701, and 29702)
Herbert Paul Lauffs and Colleen Lauffs, Trustees

SOURCE: Unnamed Streams in Upper Putah Creek Watershed

COUNTY: Napa County

ORDER DENYING REQUEST TO SET ASIDE ORDER REVOKING PERMITS AND
DENYING REQUEST TO REINSTATE PERMITS 20733, 20734, 20735, AND 20736
(APPLICATIONS 29699, 29700, 29701, AND 29702) WITHOUT PREJUDICE

BY THE EXECUTIVE DIRECTOR:

This matter comes before the State Water Resources Control Board (SWRCB) on a request to set aside an order by the Division of Water Rights (Division) revoking permits and a request to reinstate the above mentioned water right permits held by Herbert Paul Lauffs and Colleen Lauffs, Trustees (Lauffs). In this order, the SWRCB denies both requests.

1.0 INTRODUCTION

The Lauffs filed Applications 29699, 29700, 29701, and 29702 on March 26, 1990, and the Division issued Permits 20733, 20734, 20735, and 20736, respectively, on May 11, 1994. In 1996, pursuant to Condition 12 of the 1995 Upper Putah Creek Settlement Agreement, the Lauffs requested continuation permits for each filing. The Division issued the continuations in 1997 in accordance with Order WR 96-002, and advised the Lauffs to complete the project by December 31, 1997. The Division did not receive annual progress reports from 1998 to 2000, and in 2001, advised the Lauffs to file for a time extension or risk revocation of the permits.

Having received no response, the Division sent notice of proposed revocation on June 13, 2001, which provided 15 days to object and request a hearing. The Division did not receive an objection or a request for a hearing, and thus revoked the permits on August 23, 2001. On November 19, 2001, the SWRCB timely received a petition requesting the SWRCB to set aside the order revoking Permits 20733, 20734, 20735, and 20736 (Applications 29699, 29700, 29701, and 29702).

2.0 LAW GOVERNING REVOCATIONS AND REINSTATEMENTS

California Water Code section 1410.1 authorizes the SWRCB to act on a proposed revocation without a hearing unless the permittee or permittee's representative submits a written request for a hearing within 15 days of receipt of the proposed revocation notice. Water Code section 1410.2 provides: "In any case when a permit is revoked without a hearing, as provided in Section 1410.1, the permittee, within 90 days of the date of the order of revocation, may file with the board a request to set aside the revocation, and the board, for good cause shown, may reinstate the permit."

Section 1410.2 of the Water Code has the similar effect to that of the Code of Civil Procedure section 473, which allows a court to relieve a party from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. The question of good cause to reinstate the permit does not reach the merits of the revocation. Rather, the party must show why he or she failed to file a request for a hearing within the time specified.

3.0 ANALYSES OF ALLEGED CAUSES FOR RECONSIDERATION

Petitioner submitted information addressing why the permittees failed to timely request a hearing. Petitioner submits that the Lauffs did not fully comprehend the nature of the SWRCB's revocation procedures and assumed that the notice of proposed revocation meant that the action was final. Petitioner requests that the SWRCB construe section 1410.2 liberally, similarly to section 473 of the Code of Civil Procedure, and resolve any doubt in favor of allowing the issue to go to a hearing on the merits.

The Division's permitting team timely submitted its rebuttal, asking the SWRCB to interpret “good cause” under Water Code section 1410.2 in accordance with the definition of good cause to receive a time extension under Water Code section 1398. There is cause for an extension of time to complete a water right application or to put water to beneficial use if the SWRCB finds that the applicant exercised due diligence, that failure to comply with previous time requirements occurred as a result of obstacles that could not be reasonably avoided, and that satisfactory progress will be made if a time extension is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise are generally not accepted as good cause. (Cal. Code Regs., tit. 23, § 844.) Under this definition of good cause, failure to understand the law is not an adequate reason for failing to request a hearing within the time specified.

I conclude that “good cause,” as used in section 1410.2, should be interpreted similarly to the Code of Civil Procedure, section 473. This is because the failure to request a hearing results in a type of default judgment similar to those contemplated by the Code of Civil Procedure in state court. Section 473 of the Code of Civil Procedure is a remedial statute of the type which courts

construe liberally in order to dispose of cases upon their merits in a later hearing. In contrast, good cause for issuing a time extension reaches the merits of a request for an extension and therefore involves a higher standard. After reviewing the evidence, even under a liberal interpretation, I am not persuaded that the Lauffs could have made a mistake in the law and misunderstood the notice of proposed revocation.

The only explanation offered for the Lauffs' failure to timely request a hearing is that they believed that their permits had already expired in 1997 and that they considered the Notice of Proposed Revocation to be a mere formality. The Notice of Proposed Revocation is patently clear that the revocation action was proposed, not final. The word "proposed" is stated in bold letters in the title of the notice, which goes on to unambiguously state that the permittee could request a hearing to show cause why the permit should not be revoked. The notice and cover letter clearly specify that the permit may be revoked without a hearing "unless" a request for hearing is received within 15 days. It strains credulity to suggest the permittees thought the permits had already been revoked, or that they could not request a hearing for the purpose of presenting evidence as to why the permit should not be revoked before the SWRCB took action on the proposed revocation. While I am inclined to interpret section 1410.2 liberally to allow a permittee an opportunity to get a hearing on the merits of a proposed revocation, in this case, it does not appear that the notice could have been any clearer. To reinstate the permits here would effectively eliminate the requirement for good cause. Accordingly, the request to set aside the order revoking the permits is denied.

ORDER

IT IS HEREBY ORDERED THAT the request to set aside the order revoking permits and the request to reinstate the permits is **DENIED**.

Dated: 08/09/02

/s/

Celeste Cantú
Executive Director