

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

DIVISION OF WATER RIGHTS

ORDER WR 2008 - 0019 - DWR

In the Matter of Application 6150

Rachel M. Hervey

**ORDER APPROVING REQUEST TO SET ASIDE ORDER REVOKING
LICENSE 1503 AND APPROVING REQUEST TO REINSTATE LICENSE 1503**

SOURCE: Tassajara Creek tributary to Salinas River

COUNTY: San Luis Obispo

WHEREAS:

1. This matter comes before the State Water Resources Control Board (State Water Board) on a request to set aside an order by the Division of Water Rights (Division) revoking water right License 1503. The holder of the license, Rachel Hervey, requests that the State Water Board reinstate License 1503. In this Order, the State Water Board approves the request.
2. On January 5, 1929, Henry J. Coventry filed Application 6150 to appropriate water from the Tassajara Creek tributary to Salinas River for irrigation, domestic and industrial use. The Division issued License 1503 on November 17, 1934, changing irrigation use to fish culture use. On June 15, 1970, the Division transferred License 1503 to Robert C. Hervey and Rachel M. Hervey. On May 17, 1984 the Division records were changed to show Rachel Hervey as the sole owner of License 1503.

On February 23, 2007 Ms. Hervey filed a request with the Division to revoke License 1503. On the voluntary revocation form, Ms. Hervey waived her right to a hearing under Water Code section 1675.1 and waived her right to reinstatement under section 1675.2. On January 11, 2008, the Division issued an order of revocation for License 1503.

On January 22, 2008, the Division received a letter from Ms. Hervey. She claimed that she had requested revocation of License 1503 based on misinformation and for the same reason had mistakenly waived her rights under Water Code sections 1675.1 and 1675.2. In a January 17 phone conversation between Ms. Hervey and Kathy Mrowka of the Division, Ms. Hervey explained that she asked for revocation of License 1503 under the mistaken impression that revocation would not negatively impact her ability to divert. Ms. Hervey asked the Division to set aside the revocation order and reinstate License 1503.

3. Water Code section 1675.1 authorizes the State Water Board to act on a proposed revocation without a hearing unless the licensee or licensee's representative submits a

written request for a hearing within 15 days of receiving the proposed revocation notice. Water Code section 1675.2 provides: "In any case when a license is revoked without a hearing, as provided in section 1675.1, the licensee, within 90 days 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 license."

Section 1675.2 of the Water Code has a similar effect to that of 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 license does not reach the merits of the revocation. Rather, the party must show why they failed to file a request for a hearing within the time specified.

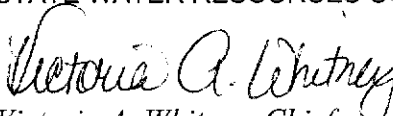
State Water Board Resolution 2007-0057 delegates to the Chief of the Division of Water Rights the authority to act on requests to set aside the revocation of a license, in accordance with Water Code section 1675.2.

4. The Division received Ms. Hervey's timely request to set aside the revocation and reinstate the water right. Ms. Hervey claims to have been under the mistaken impression that revocation would not negatively impact her ability to divert. This caused her to mistakenly request revocation of License 1503 and waive her rights under sections 1675.1 and 1675.2. The Division's January 11, 2008 order revoking License 1053 was issued based solely on Ms. Hervey's request for revocation. Ms. Hervey's timely response was within the statutory period for requesting a hearing under section 1675.1, as well as within the period specified in section 1675.2

Thus, Ms. Hervey waived her right to a hearing due to a mistaken reliance on misinformation regarding License 1503, which she promptly sought to rectify. Interpreting section 1675.2 consistent with Civil Code section 473, and based on the particular facts at issue in this case, Ms. Hervey has shown good cause to reinstate the license. Accordingly, the license should be reinstated.

NOW, THEREFORE, IT IS ORDERED THAT THE REQUEST TO SET ASIDE THE ORDER REVOKING LICENSE 1503 AND THE REQUEST TO REINSTATE THE LICENSE ARE APPROVED. License 1503 is reinstated.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **APR 11 2008**