

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

ORDER WR 2010-0009

In the Matter of Permit 5956 (Application 10294)

City of El Paso de Robles

SOURCE: Salinas River

COUNTY: San Luis Obispo

ORDER APPROVING PETITION FOR EXTENSION OF TIME

BY THE BOARD:

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 5956 to City of El Paso de Robles (Permittee) on April 17, 1942, pursuant to Application 10294. The permit authorizes direct diversion of eight cubic feet per second (cfs) from the Salinas River. As amended, the permit limits annual diversion to 4,600 acre-feet per annum (afa).
2. The permit requires that construction work be completed December 1, 1945, and that the water be applied to the authorized use by December 1, 1946.
3. Permittee requested, and on November 25, 1946 the Division granted, an extension of time to complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete and that water be fully used by December 1, 1961.
4. Permittee requested, and on March 21, 1962 the Division granted, an extension of time to complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete and that water be fully used by December 1, 1964.
5. Permittee requested, and on August 25, 1965 the Division granted, an extension of time to complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete and that water be fully used by December 1, 1967.

6. Permittee requested, and on April 23, 1968 the Division granted, an extension of time to apply the water to full beneficial use. The time extension order required that water be fully used by December 1, 1975.
7. Permittee requested, and on November 6, 1981 the Division granted, an extension of time to apply the water to full beneficial use. The time extension order required that water be fully used by December 1, 1991.
8. Permittee requested, and on December 6, 1994 the Division granted, an extension of time to complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 2000 and that water be fully used by December 31, 2002.
9. On July 25, 2005, Permittee filed a petition for an extension of time within which to commence or complete construction work or apply water to full beneficial use. The required fees were submitted. Permittee requested a four-year extension of time, estimating that full beneficial use of water would occur in 2006.
10. Public notice of the request for an extension of time was issued on December 15, 2006, and no protests were received.
11. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to full beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay. (Cal. Code Regs., tit. 23 § 844.)
12. Permittee has shown that due diligence has been exercised. Permittee indicated that it serves 28,000 persons. Permittee's water demand and needed infrastructure were not previously in place to fully utilize the permitted quantity. Between 1992 and 2002, Permittee drilled six wells, which were subsequently abandoned due to water quality problems and unsatisfactory production. (October 12, 2005 Notice of Exemption.) The petition indicates that in August of 2004, the Ronconi Wells were rehabilitated and brought back into service. The June 10, 2005 petition cover letter and the petition environmental information form indicate that the permit is ready for licensing, but the time extension is needed in order to consider diversions from the rehabilitated wells for licensing purposes.
13. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permittee indicated that the Ronconi Wells required rehabilitation prior to obtaining a license for this right.

14. Permittee has shown that satisfactory progress will be made if a time extension is granted. On October 8, 2007, Permittee provided the following water diversion and use records (in af) documenting increased water diversion and use for the extension period and confirmed that it wishes to be licensed based on the existing diversion data:

<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
3,547	3,728	4,324	4,558	4,065

15. Permittee has shown good cause for the time extension.
16. Pursuant to the provisions of the California Environmental Quality Act (CEQA), on October 12, 2005, Permittee filed a Notice of Exemption (NOE) with the State Clearinghouse. Between 1992 and 2002, Permittee drilled six wells. However, due to unsatisfactory production and water quality problems, the wells were abandoned. In August of 2004, Permittee rehabilitated the Ronconi Wells. A time extension will allow Permittee to divert and beneficially use the entire 4,600 afa permit allotment for existing uses only. No new facilities or new construction are required. Permittee determined that the project is exempt under Public Resources Code section 21169 (Cal. Code Regs., tit. 14 § 15261) as an ongoing project because the permit was issued prior to November 23, 1970. Permittee also claimed the project is exempt under California Code of Regulations, title 14, section 15301, which exempts the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that previously existing, including existing facilities providing public utility services. Permittee states that there will be no change in its operations as a result of the renewal of the permit.
17. Environmental review began on July 25, 2005 when Permittee filed a petition for an extension of time with the Division. Approval of this project will result in negligible or no expansion of use beyond that previously existing on the date environmental review began.
18. Pursuant to the provisions of CEQA, the State Water Board will issue a NOE, pursuant to California Code of Regulations, title 14, section 15301. The Division will file a NOE in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this order.
19. The permit conditions relating to the continuing authority and water quality objectives of the State Water Board should be updated to conform to California Code of Regulations, title 23, section 780, subdivisions (a) & (b).
20. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making Permittee aware of obligations resulting from these acts.

21. A term has been added to require measurement of water diverted under the permit to comply with Water Code section 1605.
22. Permittee is a municipal water purveyor. A term has been added to require Permittee to develop an urban water conservation plan and implement urban water conservation measures.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the State Water Board hereby approves the petition for extension of time.

Permit 5956 is amended to read:

1. Conditions 4 and 5 of the permit are deleted and replaced with:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2006.

(0000009)

2. The continuing authority condition shall be updated to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, 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 Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (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 requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water 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.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

3. The water quality objectives condition shall be updated to read as follows:

The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to Permittee and an opportunity for hearing, the State Water 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 State Water 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.

(0000013)

4. The following Endangered Species Act condition shall be added:

This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

5. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to full beneficial use pursuant to Water Code section 1605.

(0000015)

6. Permittee shall consult with the Division of Water Rights and, within one year from the date of this order, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

CERTIFICATION


The undersigned Clerk 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 February 16, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board