

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

DIVISION OF WATER RIGHTS

ORDER WR 2025-0007-DWR

In the Matter of Permit 21256 (Application 31741)

South Coast Water District

ORDER APPROVING PETITION FOR EXTENSION OF TIME

SOURCE: Aliso Creek tributary to Pacific Ocean

COUNTY: Orange

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued water right Permit 21256 to South Coast Water District (SCWD) on February 24, 2010, pursuant to Application 31741.
2. Permit 21256 authorizes the direct diversion of 1.23 cubic-feet per second of water to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this right shall not exceed 890 acre-feet per year. The authorized use is for Irrigation purposes on 330 acres within the SCWD's 5,200 acre service area.
3. Permit 21256 originally specified that complete application of the water to the authorized uses shall be prosecuted with reasonable diligence and be completed by December 31, 2019.
4. On May 21, 2018, SCWD submitted a petition for extension of time, seeking a 10-year extension to December 31, 2029.
5. Public notice of the petition for an extension of time was issued on October 13, 2022. A protest was received from Clean Water Now (CWN). CWN alleges that the time extension should not be granted because SCWD has failed to maximize water use during the permit perfection period. CWN further asserts that technical glitches, delays, and climatological factors including drought are

not adequate grounds for SCWD to seek the time extension. CWN further states that SCWD has not provided proof that water projections can be met.

6. SCWD responded to CWN's protest by letter dated May 31, 2023. In this letter SCWD detailed the conditions that led to its inability to divert water under Permit 21256. Initial project construction was completed in 2015. A drought emergency was declared by the governor in January 2014 that lasted through April 2017. The combination of drought conditions and water conservation measures upstream reduced flows in Aliso Creek below the minimum instream flows required to divert under Permit 21256. The drought emergency was reinstated by the governor in October 2021. SCWD asserted that it is contemplating variable pump operation that would allow it to capture water during infrequent higher flows without exceeding the permit's bypass limits.
7. The State Water Board has evaluated the protest submitted by CWN. CWN's assertion that SCWD's failure to put water to full beneficial use is grounds for denying the time extension, or revoking SCWD's water right entirely, is flawed. Time extension petitions exist for the purpose of authorizing more time to perfect water use under a water right permit. 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 approving time extensions. Conversely, inability to divert due to drought and environmental factors is sufficient cause. Further, this is SCWD's first time extension on Permit 21256. As stated in SCWD's May 31, 2023 protest response letter, the Aliso Creek project helps meet the goals of several state policies including the State's Recycled Water Policy, the California Water Plan, and the Water Resilience Portfolio. Approval of the extension of time is in the public's interest to authorize the additional recycled water supply project that has been partially funded by public tax money.
8. On October 2, 2023, the State Water Board sent email correspondence to Mr. Roger Butow representing CWN, summarizing the protest and the responses prepared by SCWD and the State Water Board. CWN was given 30 days to provide a statement of facts supporting the allegation that the proposed petition approval would not be within the State Water Board's jurisdiction, would not best serve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law. No response was received by Mr. Butow or CWN, and therefore the protest was dismissed.
9. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) SCWD 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.

10. SCWD has shown that due diligence has been exercised. SCWD has been constrained by multiple years of drought and diversion equipment that did not allow for variable pump operation to allow diverting at reduced pumping levels that would allow for diversion and still meet the Aliso Creek bypass requirements.
11. SCWD has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. As described above, SCWD completed construction of the project in the middle of a drought emergency, and several years of continuing drought meant diversions could not be made and still meet the Aliso Creek bypass requirements. Alterations to the pump regime will help SCWD be able to divert water at lower rates of diversion and still meet the bypass requirements.
12. SCWD has shown that satisfactory progress will be made if a time extension is granted. The combination of changes to the pump regime on Aliso Creek and additional time will help SCWD maximize its use under Permit 21256.
13. Based on the information above, the State Water Board finds that Permittee has shown good cause for the time extension, and satisfactory progress will be made if the extension of time is granted to complete application of water to beneficial use for Permit 21256.
14. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to act on petitions for time extension under specific circumstances. Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been further redelegated by memorandum dated April 20, 2023.
15. On March 21, 2011, SCWD adopted a mitigated negative declaration (SCH No. 2008081024) for the project in order to comply with CEQA. Further, SCWD filed an addendum to the mitigated negative declaration in August 2023. The Division has considered the environmental documents and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The Division will file a Notice of Determination within five days from the issuance of this Order.
16. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the

proposed change on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].) There is no evidence that approval of the time extension for Permit 21256 will cause any adverse impacts to public trust resources.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD HEREBY APPROVES THE PETITION FOR EXTENSION OF TIME.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Julé Rizzardo
Assistant Deputy Director
Division of Water Rights

Dated: May 30, 2025