

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
WR ORDER 2001-06 DWR

IN THE MATTER OF LICENSE 10464 (APPLICATION 23196)
TEMPORARY URGENCY CHANGE IN THE POINT OF DIVERSION
UNDER THE CITY OF RIO DELL
CALIFORNIA MUNICIPAL WATER CORPORATION'S LICENSE 10464

SOURCE: Eel River

COUNTY: Humboldt

ORDER APPROVING TEMPORARY URGENCY CHANGE IN THE
POINT OF DIVERSION

1.0 SUBSTANCE OF PETITION

On April 20, 2001, the City of Rio Dell a California Municipal Water Corporation (City) petitioned the SWRCB's Division of Water Rights (Division) for a temporary urgency change pursuant to Water Code Section 1435. The petition requests the addition of a point of diversion to be located on the Eel River approximately three miles upstream from the City's existing point of diversion.

2.0 BACKGROUND

License 10464 was issued to the City on September 18, 1986, pursuant to Application 23196, for direct diversion of 0.62 cubic feet per second (cfs), not to exceed 304 acre-feet of water annually, from the underflow of the Eel River in Humboldt County from January 1 through December 31 of each year.

The City is currently completing the feasibility study to determine the best long-term water supply options for the City to address expected growth and the degradation in the capacity at the wells used to divert the underflow of the Eel River. As part of that process, the City filed Application 31164 with the State Water Resources Control Board (SWRCB). The City anticipated that the approval of Application 31164 and the two to three year construction period for a new diversion system would be complete prior to loss of the existing well field. However, in the fall of 2000, one of the three wells failed and the remaining wells have showed reduced pumping capacities and increasing levels of iron and manganese. The City drilled a new well, but only 10 % of the anticipated capacity was achieved. The City has adopted mandatory water conservation measures and has declared a state of emergency.

The well system which has served the City for over fifty years has begun failing and an additional point of diversion is needed to provide an emergency water supply to the City until the long-term water supply system can be brought on line.

3.0 ENVIRONMENTAL CONSIDERATIONS

Licensee and the Division have consulted with the National Marine Fisheries Service (NMFS), California Department of Fish and Game (DFG), and United States Fish and Wildlife Service (USFWS) regarding the proposed temporary urgency change. The NMFS, DFG and USFWS all identified similar concerns relating to fish screening, streambed alterations and endangered species. It is appropriate that conditions be placed in the temporary change order to address these concerns.

By proclamation dated March 16, 2001, the Governor of the State of California has proclaimed, in accordance with Section 8625 of the California Government Code, a state of emergency to exist in the City of Rio Dell.

This action is statutorily exempt from the California Environmental Quality Act under Title 14, California Code of Regulations, Section 15269(c).

4.0 SWRCB'S DELEGATION OF AUTHORITY

Resolution 99-031, section 3.2.22 delegates to the Chief of the Division of Water Rights the authority to approve temporary urgency changes pursuant to Water Code Section 1435 provided the necessary findings can be made.

5.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The licensee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water;
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change is in the public interest.

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ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the filed petition for temporary change in the point of diversion under the City of Rio Dell's (City) License 10464 (Application 23196) is approved.

All existing terms and conditions of the subject permits remain in effect, except as temporarily amended by the following provisions:

1. License 10464 shall be temporarily amended to add a new point of diversion, described as follows:

Diversion Point #2, located north 400 feet and east 300 feet from SW corner of Section 5, T1N, R1E, HB&M, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 5.

3. No work shall commence and no water shall be diverted or used under the new point of diversion authorized by this order until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the licensee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for the new point of diversion, the licensee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

4. No water shall be diverted under this License until Licensee has constructed a fish screen at the new point of diversion or has proposed and constructed an alternative. Any alternative must comply with the Department of Fish and Game criteria and receive their written approval. Permittee shall submit a copy of the State Department of Fish and Game's written approval of the plans and design calculations to the Division of Water Rights within 30 days from the date of the approval. Construction, operation, and maintenance of any required facility are the responsibility of the permittee. If the fish screen or any alternative is rendered inoperative for any reason, the permittee shall notify the Chief of the Division of Water Rights immediately and shall restore the equipment to service as soon as possible.

(0000213)

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

(0000214)

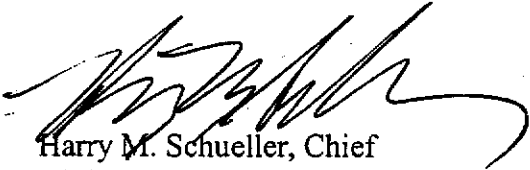
6. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control 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 SWRCB 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. Licensee 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 requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB 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 SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB 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)

7. I reserve jurisdiction to supervise the temporary urgency change under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.



Harry M. Schueller, Chief
Division of Water Rights

Dated: April 27 , 2001



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board



Gray Davis
Governor

Division of Water Rights

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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of ways you can reduce demand and cut energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

**NOTICE OF PETITION
BY THE
CITY OF RIO DELL CALIFORNIA MUNICIPAL WATER CORPORATION
REQUESTING APPROVAL OF A TEMPORARY URGENCY CHANGE
IN THE POINT OF DIVERSION
UNDER WATER RIGHT LICENSE 10464 (APPLICATION 23196)**

April 30, 2001

On April 20, 2001, the City Of Rio Dell California Municipal Water Corporation (City) filed a petition requesting a Temporary Urgency Change to License 10464. The petition requests that the City be allowed to add an additional point of diversion on the Eel River in Humboldt County.

BACKGROUND

License 10464 was issued to the City of Rio Dell a California Municipal Water Corporation (City) on September 18, 1986, pursuant to Application 23196. License 10464 is for direct diversion of 0.62 cubic feet per second (cfs), not to exceed 304 acre-feet of water annually, from the underflow of the Eel River in Humboldt County from January 1 through December 31 of each year.

The City is currently completing the feasibility study to determine the best long-term water supply options for the City. As part of that process, the City filed Application 31164 with the State Water Resources Control Board (SWRCB). It was anticipated that the approval of Application 31164 and the two to three year construction period for a new diversion system would be complete prior to loss of the existing well field. However, in the fall of 2000, one of the three wells failed and the remaining wells showed reduced pumping capacities and increasing levels of iron and manganese. The City drilled a new well, but only about 10 % of the anticipated capacity was achieved. The City has adopted mandatory water conservation measures and has declared a state of emergency.

The well system which served the City for over fifty years has begun failing and an additional point of diversion is needed to provide a emergency water supply to the City until the long-term water supply system can be brought on line. The City has petitioned the SWRCB for a temporary urgency change pursuant to Water Code Section 1435. The petition requests the addition of a point of diversion to be located on the Eel River approximately three miles upstream from the City's existing point of diversion. Water will be diverted from a screened intake structure containing two submersible pumps. The system will be placed in a deep hole in the River downstream of several large chunks of debris remaining from an old bridge destroyed during the 1964 floods. Water will be pumped using one or both pumps, depending on the local need for water, and supplied to a temporary water treatment plant.

By proclamation dated March 16, 2001, the Governor of the State of California has, in accordance with Section 8625 of the California Government Code, proclaimed a state of emergency to exist in the City of Rio Dell.

CEQA COMPLIANCE

Actions to prevent or mitigate an emergency are statutorily exempt from the requirements of CEQA under Public Resources Code section 21080(b)4 and section 15269(c) of the CEQA guidelines. The State Water Resources Control Board (SWRCB) proposes to issue a Notice of Exemption for the proposed temporary urgency change.

Additionally, both the Licensee and the Division have consulted with the National Marine Fisheries Service (NMFS), California Department of Fish and Game (DFG), and United States Fish and Wildlife Service (USFWS) regarding the proposed temporary urgency change.

SWRCB'S STATUTORY PROVISIONS

Pursuant to Water Code section 1435 et seq., the SWRCB is authorized to issue temporary urgency change orders, allowing the change of a point of diversion, the place of use, purpose of use of the water, or change in the conditions of the permit. The SWRCB may issue a conditional order after completing an initial evaluation sufficient to determine that the proposed temporary urgency changes comply with the following:

1. The permittee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife or other instream beneficial uses; and
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

On April 27, 2001, the SWRCB issued WR Order 2001-06 DWR, approving the temporary urgency change in point of diversion. The SWRCB has retained jurisdiction to modify WR Order 2001-06 DWR.

Temporary urgency changes authorized under section 1435 et seq. expire 180 days after the date of issuance, after which they may be renewed upon request of the petitioner if they still meet the above criteria.

Pursuant to the requirements of section 1435 above, the SWRCB is seeking information to assist in the additional evaluation of the proposed temporary urgency change. Any person may file comments or objections concerning the City's petition to change the point of diversion. The materials must address the issues that the SWRCB must evaluate, as set forth above. The approval of the change petition may be revised or withdrawn if there is good cause, or a hearing may be held regarding the temporary urgency change.

Materials filed in response to this notice **shall be mailed to the parties at the addresses listed below**. The response must be received in the office of the SWRCB's Division of Water Rights, the at the address listed below by **4:00 p.m. on the 20th day after the date of this notice**. Interested parties are encouraged to file comments, etc., by FAX and to notify the following contact persons by telephone of any materials that will be submitted.

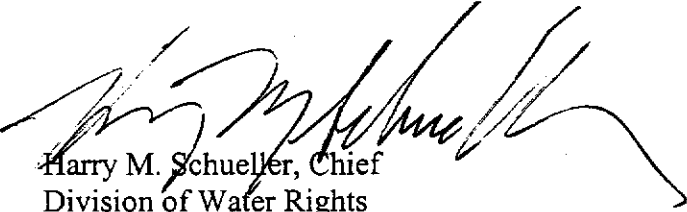
However, an original copy of all materials **must** be received for the SWRCB to consider your concerns.

Mark Stretars
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Sacramento, CA 95812-2000

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Harry M. Schueller, Chief
Division of Water Rights

Dated: April 30, 2001

