



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

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 10068E
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PERMIT 5713E

LICENSE **2805E**

THIS IS TO CERTIFY, That

Smith Family Trust
c/o Patricia B. Smith, Trustee
1703 Countryside Drive
Vista, CA 92081

has the right to the use of the waters of Dredger Cut (aka Lost Slough) in **Sacramento County**
tributary to **Snodgrass Slough**
for the purpose of **Irrigation and Stockwatering uses.**

Amended License 2805E supersedes the license originally issued on **September 14, 1945**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of **Permit 5713**. The priority of this right dates from **November 20, 1940**. Proof of maximum beneficial use of water under this license was made as of **May 14, 1944** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **a total of seventy three hundredths (0.73) cubic foot per second from March 1 to December 1 of each year. The maximum amount diverted under this license shall not exceed 400 acre-feet per year.**

In case of rotation, the equivalent of such continuous flow allowance for a thirty day period may be diverted in a shorter time if there will be no interference with other vested rights.

This license is based on the use of water available during the year 1944 which was the year of maximum use within the three year period immediately proceeding the date of the inspection.

Unless a change is approved by the State Water Board, water used under this license may be diverted, rediverted, stored, and used only as specified below.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 2, North 1,865,206 feet and East 6,713,925 feet, being within NE¼ of SE¼ of Section 17, T5N, R5E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

24.0 acres within NW¼ of SW¼ of Section 17, T5N, R5E, MDB&M,
13.2 acres within SW¼ of NW¼ of Section 17, T5N, R5E, MDB&M,
7.1 acres within SE¼ of NW¼ of Section 17, T5N, R5E, MDB&M,
10.6 acres within NE¼ of SE¼ of Section 18, T5N, R5E, MDB&M, and
3.2 acres within SE¼ of NE¼ of Section 18, R5E, MDB&M

58.1 acres total, as shown on map on file with the State Water Board and within Assessor's Parcel No. 146-0120-050.

Licensee shall comply with the following mitigation measures:

- i. No construction shall be commenced and no water shall be diverted or used under this right until all necessary federal, state and local approvals have been obtained for the construction of the project facilities.
- ii. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Licensee shall file a report pursuant to Water Code Section 13260 prior to commencement of construction and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.
- iii. Licensee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
- iv. A pre-construction survey should be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights for western pond turtle no more than two weeks prior to commencement of construction activities.
- v. Licensee shall not conduct construction activities within 50 feet of drainages from October 16 of each year to April 30 of the succeeding year to reduce the likelihood of the presence of western pond turtles in construction areas. If a western pond turtle is encountered during construction, Licensee shall cease construction and ground-disturbing activities in areas within 250 feet of the location where the western pond turtle is present and shall contact the California Department of Fish and Game for avoidance measures. Prior to restarting construction activities, Licensee shall submit to the Chief of the Division of Water Rights evidence of California Department of Fish and Game approval to continue construction.
- vi. This license 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, §§ 205 - 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, the Licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

- vii. Construction activities within the drainage canal shall occur during the active season for giant garter snake (May 1 to October 1).
- viii. A biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall be present during land clearing activities to ensure that no take of this species occurs.
- ix. Prior to land clearing or construction activities, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a training session for construction field crews to inform them of the possible presence of giant garter snakes and western pond turtles, to describe their appearance and to explain actions to be taken if they are encountered during construction.
- x. Work in the drainage canal shall occur from December 1 through July 31 for the protection of Delta smelt.
- xi. If tree removal activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-construction survey for the purpose of identifying nesting bird species prior to tree removal. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed tree removal activities. The survey shall be conducted no more than 14 days prior to the beginning of tree removal activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the Licensee shall notify the California Department of Fish and Game. If an active raptor nest is found during the pre-construction survey, a 500-foot no-disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.
- xii. Best management practices (BMP) shall be prepared by a licensed civil engineer and submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. BMPs for controlling erosion may include, but are not limited to the following: vegetation removal shall be limited to the minimum amount necessary to accommodate installation of the sump pump; temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas; and sediment shall be retained onsite by sediment basins, traps, siltation barriers or other appropriate measures as needed.
- xiii. No work shall commence and no water shall be diverted at the point of diversion on the Licensee's property under this license until a signed copy of a Streambed Alteration Agreement between the California Department of Fish and Game and the Licensee is filed with the State Water Resources Control Board, Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Licensee. If a Streambed Alteration Agreement is not necessary for this project, the Licensee shall provide the Division of Water Rights a copy of a waiver signed by the California Department of Fish and Game.
- xiv. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Licensee to evaluate the find

and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

- xv. If human remains are encountered, then the Licensee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.
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The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, 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 license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee 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 license 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 the licensee 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.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee 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.

This license 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 2089) 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 water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

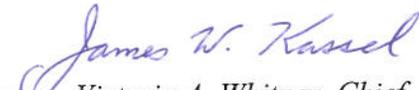
Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney, Chief
Division of Water Rights

Dated: