



State Water Resources Control Board



Winston H. Hickox
*Secretary for
Environmental
Protection*

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
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FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

APPLICATION 31265

DATE FILED: December 28, 2001

Notice is hereby given that Joseph M. Keating has filed an application for a water right permit for diversion of water from two points as follows: 1) Morgan Creek tributary to Pine Creek thence Rock Creek thence Owens River; and 2) Pine Creek tributary to Rock Creek thence Owens River in Inyo County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions should be included in the permit to protect the environment and other downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of a protest against the application. This notice and future notices of applications to appropriate water by permit, may be viewed and printed from the Division of Water Rights (Division) web-site at www.waterrights.ca.gov. Any correspondence to the applicant shall be mailed to:

Joseph M. Keating
847 Pacific Street
Placerville, CA 95667

DESCRIPTION OF THE PROJECT

The applicant currently holds a Federal Energy Regulatory Commission license for the Tungstar Project #7267 for the generation of 990 kilowatts of hydroelectric power. The proposed project will operate run-of-the-river and include a 4-foot-high, 10-foot-long diversion dam and an intake structure on Morgan Creek tributary to Pine Creek in Inyo County. The applicant proposes to divert water at a rate of 40 cubic feet per second (cfs), with a maximum annual total diversion of 28,000 acre-feet (af) from Morgan Creek. The water will be conveyed by a 3,400-foot long, 36-inch diameter penstock, which will drop down over a steep slope and enter a powerhouse across Pine Creek. The head on the power plant will be approximately 490 feet.

This project proposes the non-consumptive use of water, as such plant return water will be discharged to Pine Creek near the power plant and/or Gable Creek, which is tributary to Pine Creek. The applicant has also proposed to divert plant return water to Gable Creek to insure that over 1,100 feet of the creek has a continuous flow of water to guarantee a fishery resource. In the event that penstock water cannot be diverted from Morgan Creek to maintain those necessary fishery flows in Gable Creek, the applicant proposes to divert water on an

emergency

basis only from Pine Creek. Water will be diverted from Pine Creek at a point approximately 350 feet upstream of the power plant through a buried 12-inch diameter pipe to Gable Creek. The applicant will divert a maximum of 5 cfs and 40 af annually on an emergency basis only from Pine Creek. The maximum total quantity that can be diverted from both points of diversion will not exceed 40 cfs and 28,000 af annually.

According to Water Code Section 1348, a minor project diverts less than or equal to 3 cfs by direct diversion or 200 af per year by storage. A major project diverts greater than 3 cfs by direct diversion or 200 af per year by storage.

This is a "major" project (greater than 3 cfs by direct diversion or 200 af per year by storage) as defined by section 1348 of the Water Code.

APPLICATION INFORMATION

The applicant proposes to divert water from:

- 1) Morgan Creek tributary to Pine Creek thence Rock Creek thence Owens River thence Owens Lake;
- 2) Pine Creek tributary to Rock Creek thence Owens River thence Owens Lake.

The Points of Diversion are located within:

- 1) the NE¹/₄ of NE¹/₄ of projected section 8, T7S, R30E, MDB&M;
- 2) the SW¹/₄ of SW¹/₄ of projected section 4, T7S, R30E, MDB&M.

The diversion and place of use are located within the County of Inyo.

Amount of water applied for: 40 cfs (Direct Diversion), not to exceed a total of 28,000 af per year.

Water will be used for power generation, recreation, and fish and wildlife enhancement.

The applicant has requested to divert water from October 1 through September 30 of the succeeding year.

Place of Use is described as follows:

Use Within	Section	Township	Range	B & M	Acres	Cultivated
SE ¹ / ₄ of SW ¹ / ₄	4	7S	30E	MD	n/a	n/a

ENVIRONMENTAL INFORMATION

Joseph M. Keating applied to the State Water Resources Control Board for a permit to appropriate water to generate hydroelectric power, subject to vested rights. The Board has determined that the application is in compliance with Section 65943 of the Government Code. Please note the following: the State Water Resources Control Board does not have jurisdiction to prepare an environmental document subject to the California Environmental Quality Act, or make determinations regarding the conditions for water use under the subject application if it is

determined that the proposed hydroelectric power project is subject to regulation by the Federal Energy Regulatory Commission.

PROCEDURE FOR SUBMITTING PROTESTS

Any person may file a protest against the application. Protests should be submitted on standard protest forms available from the Division's web-site at www.waterrights.ca.gov/forms/, but can be submitted in letter form. A pamphlet that provides additional information relating to water rights and the procedure for filing protests can be obtained from the contact person listed below. The protest should be submitted to:

Kathryn Gaffney
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

In addition, the protestant must send a copy of the protest to the applicant.

Protests filed in response to this notice must either be postmarked, or received in the office of the SWRCB's Division of Water Rights (1001 "I" Street, 14th Floor, Sacramento, CA) **by 4:00 p.m.** on the **60th day** after the date of this notice. Due to the constraints of the noticing period, protests may be filed by FAX at (916) 341-5400. However, an original copy of all materials must be received for the SWRCB to consider your protest. For good cause, the SWRCB may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below and receive an extension of time to submit the protest prior to the final filing date and time. The SWRCB will respond to all protests within 60 days of the final day to file a protest.

PROTEST REQUIREMENTS

Parties may file protests based on any of the following factors:

- Injury to existing water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. If the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of

the application. In addition, the party claiming injury to prior water rights must provide specific information that describes the basis of the existing right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to and includes conditions to protect vested water rights. If the protest is based on environmental grounds, or other factors listed above, the protest must be accompanied by a statement of facts supporting the basis of the protest. The protest shall include a description of any measures that could be taken to resolve the protest, including modification of the application (i.e., amount, season of diversion, etc.) or conditions (i.e., fish bypass flow, measuring device, etc.) that could be included in the water right permit. If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information.

RESOLUTION OF PROTESTS

The protestant(s) and the applicant are encouraged to discuss methods that could be used to resolve the protest. If the protest(s) can not be resolved, the SWRCB may conduct a field investigation for minor projects, or hold a water right hearing for major projects.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of the protest forms or pamphlet, please contact Kathryn Gaffney by phone at (916) 341-5360 or by electronic mail at kgaffney@waterrights.swrcb.ca.gov. Protest forms may also be obtained from the Division's web-site at www.waterrights.ca.gov/forms/.

DATE OF NOTICE: 7-12-02