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

DIVISION OF WATER RIGHTS

In the Matter of License 2805 (Application 10068)

Thomas J. and Sandra Stokes,
Department of Water Resources,
Eric and Patricia Loretz,
U.S. Bureau of Land Management, and
Smith Family Trust

ORDER APPROVING CHANGES, ISSUING SEPARATE LICENSES, AND REVOKING ORIGINAL LICENSE

SOURCE: Dredger Cut (aka Lost Slough) tributary to Snodgrass Slough

COUNTY: Sacramento

WHEREAS:

1. License 2805 was issued to E.H. Nevin, Hazel C. Nevin, Victor E. Nevin, and William Branagh on September 14, 1945 pursuant to Application 10068 and was recorded with the County Recorder of Sacramento on October 2, 1945. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.

2. The license was re-assigned to Nevin Cattle Company and William and Verna Branagh on October 19, 1954.

3. On July 16, 1962, Faustine Silva was added to License 2805 as partial owner.

4. The license was re-assigned to Nevin Cattle Company, Eric and Patricia Loretz, and Norman Smith on October 27, 1967.

5. The license was re-assigned to Thomas J. Stokes, Sandra Stokes, Earl M. Dean, and Sierra Farms, Ltd. on November 14, 1975.

6. Interstate Highway 5 (I-5) was constructed through the place of use in 1977. Highway construction severed part of the licensed place of use from access to the authorized point of diversion (POD) on Dredger Cut tributary to Snodgrass Slough. The highway lands also occupy part of the authorized place of use.

7. The license was re-assigned to Thomas J. Stokes, Sandra Stokes, Shou-Chen Yih, and Tammy Zau on March 6, 1969.

8. On April 22, 1982, the license was re-assigned to Livio Ceccarini, Frances E. Ceccarini, Anthony L. Ceccarini, Shou-Chen Yih, Tommy Zau, Eric Loretz, Patricia Loretz, Anton Wenniger, Norman D. Smith, Patricia Smith, and CalTrans. The April 22 letter advised the Licensees that, due to construction of I-5, some of the properties served by this license have been severed and cannot be served from the licensed POD.

9. On August 1, 1991, the Division of Water Rights (Division) informed the Licensees that some of the property had not used water under this right in more than five years due to construction of I-5. Therefore, the license should be reduced to reflect the reduction in water use. The Licensees were requested to advise the Division regarding the quantity that should be assigned to each party and were also asked to show the place of use on an engineered map.

10. On September 5, 1991, CalTrans advised the Division that the only property that it owned was the right of way for I-5.

11. The Division's June 23, 1997 letter advised the Licensees that the Division intended to divide the license among the parties that are using water under this right. The Licensees were requested to respond by July 23, 1997, or the Division would assume that they made no use of water.

12. The Division's February 9, 2000 letter advised the Licensees that the license would be split, but Petitions for Change were required to add PODs, sources or modify the place of use. Parties were requested to review Request for Division of License forms, sign and return them. The February 9 letter advised that if the Division did not hear from the parties, we would assume that they were not interested in receiving a portion of the license and would act accordingly.

13. Frank Loretz returned a signed Request for Division of License form dated February 22, 2000 for assignment of 2.9 cfs, not to exceed 1,561.5 afa.

14. On August 21, 2001, Norman Smith advised the Division that he diverts water from the Reclamation District 1002 Drainage Canal, not Dredger Cut.

15. The Department of Water Resources (DWR) submitted a Change Petition dated April 11, 2002 to add three new PODs. One POD is located on the Reclamation District 1002 Drainage Canal and the other two PODs are located on Dredger Cut. DWR also petitioned to change its place of use to 98 net irrigated acres within 189 gross acres. DWR acquired the parcels in the 1970s as part of the proposed Peripheral Canal right of way acquisition and indicated that the parcels have been continuously irrigated since it acquired them.

16. The Division revised its records of ownership for the water right on October 25, 2005 to list U.S. Bureau of Land Management (BLM), DWR, and Eric and Patricia Loretz. The Division removed Livio and Frances Ceccarini, Anton Wenniger, and Norman and Patricia Smith from the license. The Smiths were being removed from the license because they do not use the licensed source of water and had not filed a Change Petition to modify the source. The proposed assignments of water were: (a) 2.9 cfs, with a maximum annual diversion of 1,561.5 acre-feet (af) to Loretz; (b) 1.32 cfs, with a maximum annual diversion of 721.14 af to DWR; and (c) 1.8 cfs, with a maximum annual diversion of 967.1 af to BLM (as successor to Kunwar). The parties were informed that all quantities of water are subject to further verification and may be modified upon review. The Division requested that the parties respond and concur with the license modifications, or the Division would assume that they were not interested in receiving a portion of the license.

17. Thomas Stokes contacted Division staff after he received the October 25 letter and advised the Division that he still diverts water from Lost Slough, but at a location West of I-5. The conversation is documented in a November 14, 2005 letter.

18. BLM confirmed that it uses the licensed POD, in an undated letter received November 16, 2005.

19. Frank Loretz confirmed that he uses the licensed POD, by letter dated November 21, 2005.

20. Miller Associates did not respond to the Division's October 25, 2005 notification. The Miller parcel cannot be served by the license without filing a Change Petition and moving the POD. Therefore, no water will be assigned to Miller Associates in the license split.

21. Thomas Stokes submitted a Change Petition dated December 19, 2005 to change the POD to the existing pump site. The pump was moved to the existing location when I-5 was built.

22. The DWR and Stokes petitions were noticed on March 24, 2006. No protests were submitted.

23. Pursuant to the provisions of the California Environmental Quality Act (CEQA), DWR issued a Notice of Exemption (NOE) based on Categorical Exemption under Class 1 pursuant to CCR, Title 14, section 15301. The exemption notice states:

> The project consists of partitioning License 2805, issued on September 14, 1945, to reflect change in ownership and location of diversion points. The construction of I-5 around 1977 required the relocation of PODs to allow continued irrigation of the property. Land use and total water diverted from the source will not change. The property has been continuously farmed for over 60 years.

The State Water Resources Control Board (State Water Board) will issue an NOE for the DWR and Stokes petitions within five days of issuance of this order.

24. The Smith Family Trust submitted a Change Petition dated February 2, 2007 to change its POD location. The petition was noticed on March 23, 2007. No protests were submitted.

25. The State Water Board, as lead agency pursuant to the California Environmental Quality Act (CEQA), prepared an Initial Study/proposed Mitigated Negative Declaration (MND) for the Smith Family Trust petition to relocate the POD 600 feet eastward of the existing DWR pump on the drainage canal. The proposed MND was circulated through the State Clearinghouse on September 29, 2009 and no comments were received. The State Water Board will file a Notice of Determination with the State Clearinghouse within five days of issuance of this order.

26. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the petitions, with the inclusion of the mitigation measures from the Smith Family Trust MND to minimize impacts to biological resources, will have any adverse impacts on public trust resources.

27. The quantities of water to be assigned to each party receiving a portion of License 2805 have been recalculated and are listed in the order below.

28. Approval of the license splits will not result in injury to prior rights, and will not create new rights.

29. The license terms relating to the continuing authority of the State Water Board should be added to the licenses to conform to section 780(a), Title 23 of the California Code of Regulations.

30. The license terms relating to the water quality objectives of the State Water Board should be added to the licenses to conform to section 780(b), Title 23 of the California Code of Regulations.

31. 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 term should be placed in each license making the Licensees aware of possible obligations resulting from these acts.

THEREFORE, IT IS ORDERED:

1. License 2805 is hereby replaced and superseded upon the issuance of Licenses 2805A, 2805B, 2805C, 2805D, and 2805E.

2. Separate Licenses be issued as follows:

A.

License:	2805A (A010068A)
Owner:	Stokes 1996 Trust c/o Thomas J. Stokes 7581 West Kile Road Lodi, CA 95242
Source:	Dredger Cut (aka Lost Slough) tributary to Snodgrass Slough in Sacramento County
Use:	Irrigation
Amount:	2.35 cfs, with a 1,286 afa limit
Season:	March 1 to December 1
Point of Diversion:	By California Coordinate System of 1983, Zone 2, North 1,860,788 feet and East 6,717,708 feet, being within SE¼ of NW¼ of Section 20, T5N, R5E, MDB&M.
Place of Use:	188 acres: 90.5 acres in SW¼ of projected Section 17; 2.5 acres in SE¼ of SE¼ of projected Section 18, and 95 acres in NW¼ and W½ of NE¼ of projected Section 20, all within T5N, R5E, MDB&M, as shown on a map on file with the State Water Board and within Assessor's Parcel Nos. 146-0120-046 and 146-0120-047.

B.

License:	2805B (A010068B)
Owner:	Department of Water Resources c/o Nancy Quan 1416 9th Street, Suite 113 Sacramento, CA 94236
Source:	(1) Dredger Cut (aka Lost Slough) and (2) Reclamation District 1002 Drainage Canal tributary to Snodgrass Slough in Sacramento County
Use:	Irrigation
Amount:	1.22 cfs, with a 668 afa limit
Season:	March 1 to December 1

	Points of Diversion:	1) By California Coordinate System of 1983, Zone 2, North 1,860,766 feet and East 6,712,482 feet, being within SE¼ of NW¼ of Section 19, T5N, R5E, MDB&M. 2) By California Coordinate System of 1983, Zone 2, North 1,865,157 feet and East 6,713,883 feet, being within NE¼ of SE¼ of Section 18, T5N, R5E, MDB&M. 3) Movable Point of Diversion by California Coordinate System of 1983, Zone 2, between North 1,860,740 feet and East 6,716,579 feet, being within SE¼ of NE¼ of projected Section 20 and North 1,860,777 feet and East 6,712,732 feet, being within SE¼ of NW¼ of projected Section 19; both within T5N, R5E, MDB&M.
	Place of Use:	98 net acres within 189 gross acres: 0.8 acres within NW¼ of SW¼ of projected Section 17; 15.2 acres within NE¼ of SE¼ and SE¼ of SE¼ of projected Section 18; 72 acres within E½ of NE¼ of projected Section 19; and 10 acres within NW¼ of NW¼ and within S½ of NW¼ of projected Section 20 all within T5N, R5E, MDB&M, as shown on map on file with the State Water Board and within Assessor's Parcel Nos. 146-0120-026, 146-0120-036, 146-0120-048, and 146-0120-053.
C.	License:	2805C (Application 10068C)
	Owner:	Eric Loretz and Patricia Loretz 10884 Franklin Boulevard Elk Grove, CA 95758
	Source:	Dredger Cut (aka Lost Slough) tributary to Snodgrass Slough in Sacramento County
	Use:	Irrigation and Stockwatering
	Amount:	2.1 cfs with a 1,148 afa limit
	Season:	March 1 to December 1
	Point of Diversion:	By California Coordinate System of 1983, Zone 2, North 1,864,486 feet and East 6,720,141 feet, being within NE¼ of SE¼ of Section 17, T5N, R5E, MDB&M.
	Place of Use:	168 acres: 122 acres in S½ of SW¼, and S½ of SE¼ of projected Section 8 and 46 acres in N½ of NW¼ and N½ of NE¼ of projected Section 17, T5N, R5E, MDB&M, as shown on map on file with the State Water Board and within Assessor's Parcel Nos. 146-0080-028, 146-0080-029, 146-0080-046, 46-0080-048, and 146-0080-049.
D.	License:	2805D (Application 10068D)
	Owner:	U.S. Department of the Interior Bureau of Land Management Folsom Field Office 63 Natoma Street Folsom, CA 95630

	Source:	Dredger Cut (aka Lost Slough) tributary to Snodgrass Slough in Sacramento County
	Use:	Irrigation and Stockwatering
	Amount:	1.65 cfs with a 903 afa limit
	Season:	March 1 to December 1
	Point of Diversion:	By California Coordinate System of 1983, Zone 2, North 1,864,486 feet and East 6,720,141 feet, being within NE¼ of SE¼ of Section 17, T5N, R5E, MDB&M.
	Place of Use:	132.2 acres: 129.2 within SE¼, NE¼ of SW¼ and S½ of NE¼ of projected Section 17, T5N, R5E, MDB&M, and 3 acres within projected Section 20, T5N, R5E,MDB&M as shown on a map on file with the State Water Board and within Assessor's Parcel Nos. 146-0120-039 and 146-0120-044.
E.	License:	2805E (A010068E)
	Owner:	Smith Family Trust c/o Patricia B. Smith, Trustee 1703 Countryside Drive Vista, CA 92081
	Source:	Dredger Cut (aka Lost Slough) tributary to Snodgrass Slough in Sacramento County
	Use:	Irrigation and Stockwatering
	Amount:	0.73 cfs with a 400 afa limit
	Season:	March 1 to December 1
	Point of Diversion:	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.
	Place of Use:	58.1 acres: 24 acres in NW¼ of SW¼ of Section 17, 13.2 acres in SW¼ of NW¼ of Section 17, 7.1 acres in SE¼ of NW¼ of Section 17, 10.6 acres in NE¼ of SE¼ of Section 18, and 3.2 acres in SE¼ of NE¼ of Section 18; all being within T5N, R5E, MDB&M, as shown on map on file with the State Water Board and within Assessor's Parcel No. 146-0120-050.

3. License 2805E shall have the following mitigation measures from the MND:

   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 Deputy Director for 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.

4. Licenses 2805A, 2805B, 2805C, 2805D, and 2805E shall contain all other terms and conditions presently in License 2805 or updated terms to reflect compliance with the State Water Board's policy. The amended licenses shall supersede License 2805. All other elements of License 2805 that are not assigned to the amended licenses are hereby revoked.

5. The continuing authority condition, shall be updated and 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/license 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/licensee without unreasonable draft on the source. Permittee/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 requirements 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 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 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)

6. The water quality objectives condition, shall be updated and read as follows:

The quantity of water diverted under this permit is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the 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 Board finds that: (1) adequate 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)

7. The addition of a condition to the license that reads as follows:

The licensee 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 5131 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.

(0000014)

STATE WATER RESOURCES CONTROL BOARD

for James W. Kassel

Victoria A. Whitney
Deputy Director for Water Rights

Dated: