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Secretary for
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Protection

State Water Resources Control Board

Division of Water Rights
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Arnold Schwarzenegger
Governor

RE-NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

APPLICATION: 31265

DATE FILED: December 28, 2001

A public notice of this application was originally issued on July 12, 2002, however the proposed project has been modified since that public notice was issued. Specifically, the applicant revised the project to more accurately reflect Federal Energy Regulatory Commission License (FERC) No. 7267. The specific modifications to Application 31265 are explained following the description of the project below. Please note that if you have previously filed a protest against Application 31265 it is still considered active, however you may wish to modify your protest based on the changes to the project. A protest based on issues related to elements that have been eliminated from the project is subject to dismissal.

Notice is hereby given that Joseph M. Keating has filed an application for a water right permit for diversion of water from two sources as follows: 1) Unnamed stream (identified as mine water outfall) which flows into Morgan Creek and 2) Morgan Creek tributary to Pine Creek thence 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) website 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 FERC license No. 7267, which was issued on July 2, 1992 for the Tungstar Project for the generation of hydroelectric power. Application 31265 was filed to obtain an appropriative water right for the Tungstar Project as necessary for the FERC license. The applicant claims there are two sources of water at the same point of diversion for the project along Morgan Creek, which is tributary to Pine Creek in Inyo County. One source is mine water, which is discharged into Morgan Creek from a tungsten mining facility. This mine water discharge contributes about 60 percent of the streamflow in the upper-reach of Pine Creek below its confluence with Morgan Creek. The additional water will be diverted from the natural flow of Morgan Creek during spring snowmelt. 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).

The proposed hydropower project will operate run-of-the-river and includes a 4-foot-high, 10-foot-long diversion dam and an intake structure on Morgan Creek. The dam will be located adjacent to the tungsten mining facility, approximately 800 feet upstream of the confluence of Morgan Creek and Pine Creek. The water diverted will be conveyed via 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 powerhouse will have one-turbine generator unit with a rated capacity of 990 kilowatts. The head on the power plant will be approximately 478 feet.

This project proposes the non-consumptive use of water, after generating power the plant return water will be discharged to Pine Creek adjacent to the power plant.

Summary of Application

County: Inyo
Source: 1) Mine Water Outfall to Morgan Creek and 2) Morgan Creek tributary to Pine Creek thence Rock Creek thence Owens River
Point of
Diversion: Located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 8, T7S, R30E, MDB&M.
Amount: 40 cfs of direct diversion, not to exceed a total of 28,000 af per year.
Season: January 1 through December 31
Purpose: Hydropower generation
Place of Use: Located within the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 4, T7S, R30E, MDB&M.

Project Modifications:

The applicant has modified the proposed project since the first public notice was issued on July 12, 2002. The project originally proposed by Application 31265 deviated somewhat from the project as described by the FERC license. The applicant has since modified Application 31265 to better reflect the project described by the FERC license. Specifically, the following elements of the project proposed by Application 31265 have been changed:

- The applicant previously proposed to discharge the power plant return water to either Pine Creek adjacent to the power plant or to Gable Creek, which is tributary to Pine Creek. The discharge to Gable Creek was proposed to provide 1,100 feet of the creek a continuous flow to support fishery resources. In the event that the powerhouse went off-line and was not able to discharge water into Gable Creek, the applicant proposed an emergency diversion from Pine Creek to Gable Creek.

The applicant has modified Application 31265 and proposes discharge of power plant return water to Pine Creek only. Because a discharge into Gable Creek is no longer proposed, the applicant has also discontinued the proposal for the emergency diversion from Pine Creek.

- Application 31265 previously listed three beneficial uses for the diversion: hydropower generation, fish and wildlife enhancement, and recreation. As the applicant no longer proposes to discharge plant return water into Gable Creek for fishery enhancement purposes, the only beneficial use now proposed by the application is hydropower generation.

ENVIRONMENTAL INFORMATION

Joseph M. Keating applied to the SWRCB 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 that the SWRCB 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 FERC.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- 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. There must be a clear link between the proposed project and the objection to its approval. If the objection is based on interference with prior water rights, the protest must describe specifically what injury would result if the application is approved. In addition, the party claiming interference with prior rights must provide specific information describing the basis of the prior 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 vested water rights and will include conditions to protect such rights.

If the protest is based on an allegation that the proposed appropriation would not be within the SWRCB's jurisdiction, would not best conserve the public interest or public trust uses, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation.

For example, public interest protests should clearly indicate how the appropriation will affect the public; public trust protests must identify the navigable waters and public trust values that would be affected by the proposed project and how the project will impact public trust values.

All protests should include a description of any measures that could be taken to resolve the protest. The protest also must indicate the manner in which the protestant served upon the applicant a duplicate copy of the protest.

If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

Procedure for Submitting Protests

Protests should be submitted on standard protest forms available from the Division's website at www.waterrights.ca.gov/forms/ or upon request, in writing or by telephone, from the Division. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the individual listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the applicant.**

Please note: If you have previously filed a protest on this application the protest is still active, however each protestant will need to evaluate the changes to the proposed project to determine whether their protest needs to be modified to reflect the project changes.

Protest Submittal Deadline

Protests submitted in response to this notice must be received by the Division by 3:00 p.m. on the **60th** day after the date of this notice (the close of the protest period). Protests may be submitted by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000; Sacramento, CA 95812-2000
2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading "Contact Person"
4. Hand-delivered to the Division office located at 1001 "I" Street, 14th Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division in order for the protest to be accepted. The SWRCB will respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

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 as "Contact Person" to request the extension prior to the end of the protest period.

Resolution of Protests

The applicant will have 30 days to respond to a protest once it is accepted by the Division. The protestant and the applicant are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

This is a “major” project (the proposed diversion is greater than 3 cubic feet per second by direct diversion or greater than 200 acre-feet per year by storage) as defined by section 1348 of the Water Code. Therefore, any protest issues not resolved by the applicant or by provisions of section 1335 of the Water Code will be decided by the State Water Resources Control Board following an evidentiary hearing.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Kate Gaffney by phone at (916) 341-5360 or by electronic mail at kgaffney@waterrights.swrcb.ca.gov. Information and protest forms are also available at the Division’s website: www.waterrights.ca.gov/forms/.

Date of Notice: **12-24-04**

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