

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

DIVISION OF WATER RIGHTS

John Spencer

**ORDER APPROVING 1707 PETITION FOR
DEDICATION OF INSTREAM FLOW**

PRE-1914 APPROPRIATIVE RIGHT J000006

SOURCE: French Creek tributary to Scott River

COUNTY: Siskiyou County

WHEREAS:

1. French Creek is a tributary to the Scott River. French Creek water rights have been adjudicated and are described in the French Creek Decree 14478 (Decree).
2. On February 4, 2009, John Spencer (Petitioner) filed a petition pursuant to Water Code Section 1707 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to change the purpose of use under a water right listed in the Decree by adding preservation and enhancement of fish and wildlife resources and to change the place of use to include the reach of French Creek from the current point of diversion to the confluence of French Creek with the Scott River.
3. The Petitioner is decreed 0.76 cubic foot per second (cfs) by direct diversion from Diversion # 48 (also known as Browne Ditch) for use on 53.2 acres. The location of the point of diversion is North 2,399,460 feet and East 6,327,200 feet by California Coordinate System of 1983, Zone 1, being within NW¼ of SW¼ of Section 11, T41N, R9W, MDB&M.
4. Inasmuch as the Browne Ditch diversion serves land that has no continuity to the stream system, the diversion cannot be based on a riparian right. Since there are no appropriative rights issued by the State Water Board for this diversion, presumably, the Court recognized diversion based on a pre-1914 appropriative right.
5. The point of diversion from French Creek is listed in Table 6 of the Decree. The diversion season is throughout the year, however, diversion from October 1 of each year through March 31 of the succeeding year is limited to the amount required for domestic, stockwatering, or other beneficial uses. (Decree, p. 7.) Irrigation is not authorized in winter.
6. Dedicating water under the 1707 petitions is consistent with the Decree because the project will be: (1) operated in accordance with water rights recognized in the Decree, (2) will be subject to any seasonal diversion limits established in the Decree, and (3) does not change the priorities of rights.

7. The State Water Board finds that the change in point of diversion and place of use pursuant to the 1707 petition will not increase the amount of water that the Petitioner is entitled to use, and will not initiate a new right or unreasonably affect any legal user of water. The State Water Board further finds that the changes are in the public interest, will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources and otherwise meets the requirements of Division 2 of the Water Code.
8. The baseline for this project is February 4, 2009. Pursuant to the California Environmental Quality Act, the State Water Board is issuing a Notice of Exemption based on existing facilities exemption (Cal. Code Regs., tit. 14, section 15301), and minor alterations to land (Cal. Code Regs., tit. 14, section 15304).

The 1707 petition dedicates flow to the environment in lieu of using the water for consumptive purpose on the existing place of use. The project will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts. The project will not involve removal of healthy, mature, scenic trees. The project does not involve an expansion in use beyond that which existed at the time the State Water Board began its environmental review.

9. The instream flow dedication is subject to the terms and conditions of the French Creek Adjudication, including limits on diversion based on priority of rights.

NOW, THEREFORE, IT IS ORDERED:

1. The purposes of use are modified to include preservation and enhancement of fish and wildlife resources.
2. The place of use is modified to include the reach of French Creek from the current point of diversion to the confluence of French Creek with the Scott River. This is the stream reach from North 2,399,460 feet and East 6,327,200 feet, being within NW¼ of SW¼ of Section 11 to North 2,400,440 feet and East 6,329,100 feet, being within NE¼ of SE¼ of Section 11, all within T41N, R9W, MDB&M. All coordinates are by California Coordinate System of 1983, Zone 1.
3. Petitioner shall install and maintain measuring devices, satisfactory to the State Water Board, which are capable of measuring the instantaneous rate of diversion and the cumulative quantity of water: (a) available for diversion under the decreed rights, (b) diverted into Browne Ditch for consumptive use and (c) available for diversion but allowed to remain instream pursuant to the 1707 dedication at Browne Ditch. The Petitioner shall ensure that the measuring device is operational at all times.

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4. On a triennial basis, starting January 1 of the third year following issuance of this order, Petitioner shall report to the State Water Board annual diversion: (a) for consumptive purpose of use, (b) the quantity dedicated to the environment, pursuant to the 1707 petition, and (c) the total quantity diverted under the water right. No credit for instream flow dedication shall accrue for any year in which the Petitioner fails to timely document the quantity set aside for the environment.

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5. The State Water Board may supervise diversion and use of water under this order for the protection of lawful users of water and instream beneficial uses and for compliance with the conditions. Petitioner 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 the project works to determine compliance with the terms of this order.

6. 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 water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

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7. Nothing in this order shall be construed as finding that the Petitioner has or has not maintained his pre-1914 appropriative rights by continuous, beneficial use.

STATE WATER RESOURCES CONTROL BOARD

for James W. Kussel
Victoria A. Whitney
Deputy Director for Water Rights

Dated: FEB 25 2010