

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2010 - 0015 - EXEC

In the Matter of the Diversion and Use of Water by
B. J. Deis, a California Corporation

**ORDER APPROVING SETTLEMENT AGREEMENT
AND REVOCATION OF PERMITS 19159, 19160 AND 19161**

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a Notice of Proposed Revocation to B.J. Deis, a California Corporation (B.J. Deis) dated July 14, 2008. In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights prosecution team (Prosecution Team) and B.J. Deis have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

The State Water Board issued Permit 18257 to Belfast Ranch, with Everd McCain as agent, on May 13, 1981. The State Water Board issued Permits 19159, 19160 and 19161 (Applications 27087, 27088 and 27089, respectively) to Belfast Ranch, with Everd McCain as agent, on March 23 1984. These permits allow direct diversion or collection to storage of water from Willow Creek tributary to the Susan River in Lassen County. All four permits were assigned to B.J. Deis, a California Corporation, by letter dated September 27, 2005. B.J. Deis is a corporation owned by Everd and Iona McCain's four sons, Buz, John, Doug and Skeet. Everd McCain is the President of B.J. Deis.

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

Permit 18257 authorizes collection to storage of 60.7 acre-feet per annum (afa) (13.7 afa in the upper reservoir [Lake Skeet]) and 47 afa in the lower reservoir [Lake Buz] from December 1 through March 31 for irrigation, stockwatering and recreation. The permit requires that construction work be completed by December 1, 1984, with full beneficial use made of the water authorized under the permit by December 1, 1985. Orders approving new development schedules were issued on May 20, 1986, July 11, 1990 and December 15, 1995. The permit currently requires that construction work be completed by December 31, 2001 and full beneficial use of water be completed by December 31, 2005.

Permit 19159 authorizes collection to storage of 91 afa (49 afa in Pressure Reservoir and 42 afa in Collection Reservoir) from December 1 through March 1 for irrigation, stockwatering and recreation.

Permit 19160 authorizes collection to storage of 13.7 afa in Lake Skeet from December 1 to March 31 each year and direct diversion of 80 cubic feet per second (cfs) from January 1 through December 31 each year for power generation. The power project is not subject to regulation by the Federal Energy Regulatory Commission (FERC).

Permit 19161 authorizes collection to storage of 47 afa in Lake Skeet from December 1 through March 31 each year and direct diversion of 80 cfs from January 1 through December 31 each year for power generation. The power project is not subject to regulation by FERC.

Permits 19159, 19160 and 19161 require that construction work be completed by December 1, 1987, with full beneficial use made of the water authorized under the permit by December 1, 1988. Orders approving new development schedules were issued on September 11, 1989 and August 31, 1994. The permits currently require that construction work be completed by December 31, 1998, and full beneficial use of the water be completed by December 31, 2003.

Lake Buz was originally constructed in 1982 and washed out due to high flows in 1983 or 1984. Reconstruction had begun by 1986 and was completed in 1990. Lake Buz Dam washed out a second time in 1993. Lake Buz Dam was repaired/reconstructed in the fall of 2002. Regional Board Order WDID No. 6A180105013 provided the conditions for repairing Lake Buz Dam, stating that the project will re-establish the lake that was created in 1982 when the dam was initially built. The California Department of Fish and Game (DFG) approved a Fish and Game

Code section 1603 Agreement June 28, 2001 for repair of Lake Buz Dam. According to the Regional Board Order, Lake Buz Dam was repaired in 2002. According to B.J. Deis, Lake Buz was used for stockwatering and recreation during 1982, between approximately 1991 and 1993, and between approximately 2002 and 2005.

Lake Skeet Dam was completed July 25, 2005. Under the terms of Permit 18257, collection to storage at Lake Skeet is only authorized from December 1 through March 31. The reservoir could not have been used for recreation prior to December 1, 2005 unless water was diverted outside of the authorized season of diversion. Therefore, any use of water at Lake Skeet between July 25, 2005 and December 1, 2005 was unauthorized. Division staff inspected the site on October 25, 2005, and found Lake Skeet Dam still under final stages of construction, and not storing water.

Pressure Reservoir and Collection Reservoir have been completed, although no water has yet been diverted to either, as the pumps and piping are not yet constructed.

Both Lake Buz Dam and Lake Skeet Dam were considerably damaged during the 2006 New Year storms. Division complaint staff has concluded that the facilities only store a fraction of their original capacity due to that damage.

All four permits require bypass of 10 cfs for protection of fish and wildlife. Permits 18257 and 19159 require that no water may be diverted until B.J. Deis has installed a device, satisfactory to the State Water Board, which is capable of measuring the flow required by the conditions of the permits. B.J. Deis did not install the required flow-measuring device at Lake Buz Dam.

Construction of the pumps and piping under Permits 19159, 19160 and 19161 has not yet been completed, nor has construction of the powerhouse under Permits 19160 and 19161. No water has been put to beneficial use to date under Permits 19159, 19160 and 19161.

On July 14, 2008 the Division issued a Notice of Proposed Revocation for Permits 18257, 19159, 19160 and 19161.

By letter dated July 22, 2008, B. J. Deis requested a hearing on the proposed revocation.

B.J. Deis and the Division Prosecution Team agree to settle the matters identified in the Notice of Proposed Revocation through this Settlement Agreement in lieu of hearings on said matters.

3.0 SETTLEMENT AGREEMENT

B.J. Deis and the Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Settlement Agreement that is attached hereto. The general terms of the settlement are: (1) B.J. Deis agrees to the revocation of Permits 19159, 19160, and 19161; (2) B.J. Deis agrees to remit a payment in the amount of \$6,475 within 30 days of the Executive Director's approval of the settlement for past unauthorized collection of water to storage in excess of the 47 acre-feet authorized at Lake Buz under Permit 18257; (3) B.J. Deis agrees to act in full compliance with the terms and conditions of Permit 18257 and Lahontan Regional Water Quality Control Board Order No. R6T-2009-0003, and agrees to complete all construction and mitigation activities (including reconstruction of Lake Buz Dam) within the time frames specified in that Order; (4) if all of the conditions of the settlement agreement are satisfied, the Division agrees to offer a license pursuant to Permit 18257 that recognizes recreational and fire protection uses established prior to 2005, with a maximum annual collection limit of 47 acre-feet of water; and (5) B.J. Deis agrees to dismiss its request for hearing regarding the Notice of Proposed Revocation and waives its right to request reinstatement of Permits 19159, 19160, and 19161.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and B.J. Deis is approved and is incorporated by reference into this Order. Permits 19159, 19160, and 19161 are hereby revoked.

Dated: 4.29.10



Dorothy Rice
Executive Director

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between B.J. Deis, a California Corporation (B.J. Deis) and the Prosecution Team of the State Water Resources Control Board's Division of Water Rights (Division Prosecution Team) and is executed this 23 day of February 2010.

RECITALS

- A. The State Water Board issued Permit 18257 to Belfast Ranch, with Everd McCain as agent, on May 13, 1981. The State Water Board issued Permits 19159, 19160 and 19161 to Belfast Ranch, with Everd McCain as agent, on March 23 1984. All four permits were assigned to B.J. Deis, a California Corporation, by letter dated September 27, 2005. B.J. Deis is a corporation owned by Everd and Iona McCain's four sons: Buz, John, Doug and Skeet. Everd McCain is the President of B.J. Deis.
- B. Permit 18257 authorizes collection to storage of 60.7 acre-feet per annum (afa) (13.7 afa in the upper reservoir [Lake Skeet]) and 47 afa in the lower reservoir [Lake Buz] from December 1 through March 31 for irrigation, stockwatering and recreation. The permit requires that construction work be completed by December 1, 1984, with full beneficial use made of the water authorized under the permit by December 1, 1985. Orders approving new development schedules were issued on May 20, 1986, July 11, 1990 and December 15, 1995. The permit currently requires that construction work be completed by December 31, 2001 and full beneficial use of water be completed by December 31, 2005.
- C. Permit 19159 authorizes collection to storage of 91 afa (49 afa in Pressure Reservoir and 42 afa in Collection Reservoir) from December 1 through March 1 for irrigation, stockwatering and recreation.
- D. Permit 19160 authorizes collection to storage of 13.7 afa in Lake Skeet from December 1 to March 31 each year and direct diversion of 80 cubic feet per second (cfs) from January 1 through December 31 each year for power generation. The power project is not subject to regulation by the Federal Energy Regulatory Commission (FERC).
- E. Permit 19161 authorizes collection to storage of 47 afa in Lake Skeet from December 1 through March 31 each year and direct diversion of 80 cfs from January 1 through December 31 each year for power generation. The power project is not subject to regulation by FERC.
- F. Permits 19159, 19160 and 19161 require that construction work be completed by December 1, 1987, with full beneficial use made of the water authorized under the permit by December 1, 1988. Orders approving new development schedules were issued on September 11, 1989 and August 31, 1994. The permits currently

require that construction work be completed by December 31, 1998 and full beneficial use of the water be completed by December 31, 2003. B.J. Deis filed a petition for a five-year extension of time for all four permits on May 13, 2003.

- G. Lake Buz was originally constructed in 1982 and washed out due to high flows in 1983 or 1984. Reconstruction had begun by 1986 and was completed in 1990. Lake Buz Dam washed out a second time in 1993. Lake Buz Dam was repaired/reconstructed in the fall of 2002. Regional Board Order WDID No. 6A180105013 provided the conditions for repairing Lake Buz Dam, stating that the project will re-establish the lake that was created in 1982 when the dam was initially built. The California Department of Fish and Game (DFG) approved a Fish and Game Code section 1603 Agreement June 28, 2001 for repair of Lake Buz Dam. According to the Regional Board Order, Lake Buz Dam was repaired in 2002. According to B.J. Deis, Lake Buz was used for stockwatering and recreation during 1982, between approximately 1991 and 1993, and between approximately 2002 and 2005.
- H. Lake Skeet Dam was completed July 25, 2005. According to B.J. Deis, Lake Skeet was used for recreation between July 25 and December 31, 2005. Under the terms of Permit 18257, collection to storage at Lake Skeet is only authorized from December 1 through March 31. The reservoir could not have been used for recreation prior to December 1, 2005 unless water was diverted outside of the authorized season of diversion. Therefore, any use of water at Lake Skeet between July 25, 2005 and December 1, 2005 was unauthorized. Division staff inspected the site on October 25, 2005, and found Lake Skeet Dam still under final stages of construction, and not storing water.
- I. Pressure Reservoir and Collection Reservoir have been completed, although no water has yet been diverted to either, as the pumps and piping are not yet constructed.
- J. Both Lake Buz Dam and Lake Skeet Dam were considerably damaged during the 2006 New Year storms. Division complaint staff has concluded that the facilities only store a fraction of their original capacity due to that damage.
- K. All four permits require bypass of 10 cfs for protection of fish and wildlife. Permits 18257 and 19159 require that no water may be diverted until B.J. Deis has installed a device, satisfactory to the State Water Board, which is capable of measuring the flow required by the conditions of the permits. B.J. Deis did not install the required flow-measuring device at Lake Buz Dam.
- L. Construction of the pumps and piping under Permits 19159, 19160 and 19161 has not yet been completed, nor has construction of the powerhouse under Permits 19160 and 19161. No water has been put to beneficial use to date under Permits 19159, 19160 and 19161.

- M. By order dated January 8, 2008, the Division Chief denied the B.J. Deis's petition for extension of time, citing the B.J. Deis's failure to show that: (1) due diligence has been exercised, (2) failure to comply with previous time requirements has been occasioned by obstacles that could not reasonably be avoided, and (3) satisfactory progress will be made if an extension of time is granted. B.J. Deis timely submitted a petition for reconsideration to the State Water Board.
- N. The State Water Board rejected B.J. Deis's petition by Order WR 2008-0021-EXEC, citing that the petition for reconsideration failed to raise substantial issues. Therefore, the December 31, 2001 (Permit 18257) and December 31, 1998 (Permits 19159, 19160 and 191961) deadlines to complete construction of the project and the December 31, 2005 (Permit 18257) and the December 31, 2003 (Permits 19159, 19160 and 19161) deadlines to complete application of water to full beneficial use remain in effect, and Permittee cannot continue with and complete the construction of this project beyond what originally existed.
- O. On July 14, 2008 the Division issued a Notice of Proposed Revocation for Permits 18257, 19159, 19160 and 19161.
- P. By letter dated July 22, 2008, B. J. Deis requested a hearing on the proposed revocation.
- Q. B.J. Deis and the Division Prosecution Team agree to settle the matters identified in the Notice of Proposed Revocation through this Settlement Agreement in lieu of hearings on said matters.
- R. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, B.J. Deis and the Division Prosecution Team do hereby agree to settle the Proposed Revocation as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154.
3. B.J. Deis agrees to the revocation of Permits 19159, 19160, and 19161 (Applications 27087, 27088, and 27089). B.J. Deis also waives all rights to a hearing pursuant to the Notice of Proposed Revocation dated July 14, 2008. Upon receipt of the order

revoking Permits 19159, 19160, and 19161 (Applications 27087, 27088, and 27089), B.J. Deis also waives its right to request reinstatement of these permits. However, B.J. Deis does not waive his right to reapply for new permits to complete construction of projects contemplated in the permits being revoked, or new projects. Permit 18257 shall remain valid subject to the terms of this Settlement Agreement.

4. Both parties agree that violations of the specific terms of this Settlement Agreement or Order Approving Settlement Agreement are enforceable under provisions for Cease and Desist Order pursuant to Water Code section 1845.
5. B.J. Deis shall act in full compliance with the terms and conditions of Permit 18257 and Lahontan Regional Water Quality Control Board Order No. R6T-2009-0003, and completion of all construction and mitigation activities (including reconstruction of Lake Buz Dam) must be concluded within the time frames specified in that Order or any extensions issued thereto. Should B.J. Deis fail to satisfy any specified deadlines, or any extensions thereto, it agrees that such failure shall result in immediate revocation of Permit 18257, or, alternatively, a regular monthly payment of a penalty until compliance is confirmed by the State Water Board. Any payment for late compliance with the terms of the settlement, including the terms of Order No. R6T-2009-0003, as incorporated, will not affect the ability of the Lahontan Regional Water Quality Control Board to pursue additional penalties or enforcement for failure to comply with the terms of Order No. R6T-2009-0003.
6. For past-unauthorized collection of water to storage in excess of the 47 acre-feet authorized at Lake Buz under Permit 18257, B.J. Deis agrees to remit a payment in the amount of \$6,475 within 30 days of the Executive Director's approval of the settlement.
7. B.J. Deis agrees to comply with all terms and conditions of Permit 18257 (Application 25917) to the satisfaction of the Assistant Deputy Director for Water Rights, including installation and continued maintenance of upstream and downstream stream flow measuring devices with continuous recording of the amount of water passing through the devices when the natural inflow into the reservoir is 10 cfs or less, and installation of a device capable of ensuring that no water is collected to storage outside of the authorized season.
8. If the above conditions of the settlement are satisfied, the Division will offer a license pursuant to Permit 18257 (Application 25917) that recognizes recreational and fire protection uses established prior to 2005 and the collection of 47 acre-feet of water to storage, or the as-repaired capacity of Lake Buz, whichever is less. Both parties agree that construction of a reservoir capacity in excess of 47 acre-feet shall constitute a violation of this settlement agreement.
9. **Withdrawal of Hearing Request.** Upon approval of this Settlement Agreement by the State Water Board's Executive Director, B.J. Deis's request for hearing on the

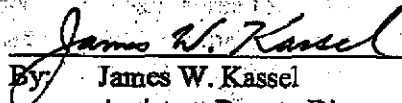
notice of proposed revocations of Permits 18257, 18159, 19160, and 19161 (Applications 25917, 27087, 27088, and 27089) will be deemed withdrawn.

10. **Waiver of Reconsideration.** B.J. Deis waives its right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no additional requirements are included in that order beyond the requirements of this Settlement Agreement.
11. **Successors.** This Settlement Agreement is binding on any successors or assigns of B.J. Deis and the State Water Board.
12. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
13. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board. This Settlement Agreement also shall not be construed to be an admission by B.J. Deis of any of the facts set forth in the notice of proposed revocation.
14. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
15. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
16. **Mutual Agreement.** The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
17. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
18. **Reasonableness of Settlement.** The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.

19. **Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
20. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.
21. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
22. **Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

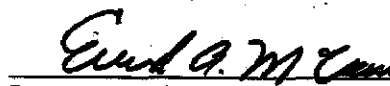
Dated: 23 February, 2010

State Water Board Division of Water Rights
Prosecution Team


By: James W. Kassel
Assistant Deputy Director

Dated: 16th February, 2010

B.J. Deis, a California Corporation


By: Everd McCain
President