

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

ORDER WR 2013-0019-EXEC

In the Matter of Permit 10659 (Application 12716)
U.S. Bureau of Reclamation

**ORDER APPROVING CHANGES, EXTENSION OF TIME,
1707 INSTREAM FLOW DEDICATION,
AND ISSUING AMENDED PERMIT**

SOURCE: Putah Creek
COUNTIES: Solano and Yolo

BY THE BOARD:

1. Permit 10659 authorizes direct diversion of 116 cubic feet per second (cfs) from January 1 to December 31 and collection to storage of 320,000 acre feet per annum (afa) in Lake Berryessa from November 1 of each year to May 31 of the succeeding year. The U.S. Bureau of Reclamation (Reclamation) holds Permit 10659.
2. On August 23, 1994, the Division of Water Rights (Division) conducted a licensing inspection. The inspection report states that this permit will only be needed to cover direct diversion during the period not covered by the license on Application 12578, which is November 16 of each year to January 31 of the succeeding year. All collection to storage is covered by the license on Application 11199. Consequently, the inspection report states that amended Permit 10659 will include a revised direct diversion season and no collection to storage. With increased urbanization of the service area, the trend is towards more water use during the winter for municipal and industrial uses, and less during the summer for irrigation. The inspection report states that Reclamation has already declared that full use of water has been made. To demonstrate that the extension of time is only to allow more water to be taken in the winter months without an increase in what already has been diverted or taken over the course of a year, Reclamation and the Solano County Water Agency are willing to accept terms limiting the total amount of water to be taken from the source and the total amount of water to be placed to beneficial use under all filings for the Solano Project.
3. On April 2, 2002, Reclamation informed the State Water Board that a combined consumptive use limit of 250,000 afa for the three water rights for the Solano Project (Permits 10657, 10658 and 10659) was appropriate. Therefore, a consumptive use cap will be included in amended Permit 10659.
4. On July 29, 2002, Reclamation submitted a change petition to: (a) change the purposes of use to be the same for the Solano Project water rights, (b) change the place of use to conform the permit to the location where water has historically been delivered and eliminate designated areas that have not been served, and (c) modify Condition 11 related to instream flows and dedicate the

instream flows to the environment pursuant to Water Code section 1707. Reclamation also submitted a petition for a 20-year extension of time. The petition concurred with: (a) shortening the diversion season to November 16 through January 31 and (b) eliminating the storage element of the right.

5. The petitions were noticed on March 12, 2004. Two protests were filed. On July 15, 2004, the Division informed protestant Sierra Club, Mother Lode Chapter that its protest was not accepted. On February 16, 2006, the Division informed protestant Christopher Paul Horsley that his protest was not accepted.
6. Reclamation requested, and this order approves, implementation of the instream flow regime specified in Putah Creek Water Cases Judicial Council Coordination Proceeding No. 2565, Sacramento County Superior Court. In 2000, the Putah Creek Water Cases were concluded by settlement and final judgment of the Sacramento County Superior Court. This order also approves dedication of the instream flows to the environment pursuant to Water Code section 1707. The new requirements supercede prior permit requirements related to instream flow and studies related thereto. However, the continuing authority condition will remain in the permit, as amended to reflect other permit changes made pursuant to the petitions:

The State Water Board reserves continuing authority over the permit to: (1) determine if the schedule of releases required herein provides adequate protection to downstream prior rights and provides percolation from the stream channel of Putah Creek to the extent that would occur in the absence of the Solano Project, (2) make further orders that may be necessary concerning proper releases of water, and (3) impose conditions providing for additional measurements or studies that may be necessary for a final determination to be made.
7. Reclamation requested, and this order approves, adding irrigation, frost protection, and fish and wildlife enhancement as beneficial uses.
8. Reclamation requested, and this order approves, modifying the place of use by deletion of lands that are not served and addition of lands historically provided water under Permit 10659. Most of Solano County is located within the existing place of use. However, there are portions of Solano County (approximately 4,000 acres), and in the case of Yolo County, portions of the University of California-Davis campus (approximately 1,000 acres), that are located outside the existing place of use but have over the years received Solano Project water. Conversely, there are portions of Napa County (approximately 17,000 acres) located north of Vallejo, that are located within the existing place of use and by agreement between Napa County and Solano County have not and will not receive Solano Project water. Reclamation petitioned to: (1) include those areas within Solano County and the University of California-Davis campus that have received Solano Project water; (2) include the Putah Creek stream channel between Monticello Dam and the Sacramento River Deep Water Ship Channel Toe Drain as the instream flow dedication place of use; and (3) delete areas in Napa County, north of Vallejo. Reclamation stated that these changes would not expand the quantity of water that would be used. It would simply conform the permits to the existing uses made.
9. On December 10, 2012, Reclamation filed an amendment to its change petition. The amendment requests that groundwater elevation monitoring be discontinued, upon a showing to the Deputy Director for Water Rights that such monitoring is no longer needed.
10. Amended Permit Condition 10 requires Reclamation, until further order of the State Water Board, to maintain records of depth to groundwater and estimates of changes in groundwater storage in the area influenced by Putah Creek between miles 4.0 and 11.0. (April 16, 1970 Order Amending

Decision 869, Order WR 79-14 and Order 84-7.) The stream reach between miles 4.0 and 11.0 should benefit from the higher instream flow regime established herein. Thus, further monitoring may not be needed. An amended condition shall be included in the permit to allow monitoring to be discontinued upon a showing, to the satisfaction of the Deputy Director for Water Rights, that further groundwater elevation monitoring is not needed.

11. On December 10, 2012, Reclamation amended its change petition to request to eliminate the current requirement for a streamflow gage in Putah Creek in the vicinity of the Davis Gage. The single-gage requirement has been superceded by the more extensive gaging requirement established in the Putah Creek Water Cases, which is being included in the permit as Exhibits E-1, E-2 and E-3. This order approves the requested change.
12. The State Water Board has determined that good cause for such changes has been shown. The petitions for change do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
13. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay. (Cal. Code Regs., tit. 23 § 844.)
14. Reclamation has shown that due diligence has been exercised. Permit 10659 was issued in 1957. The time to complete full beneficial use of water ended on December 1, 1993. During the development period, Reclamation completed construction of the project and served municipal users that were experiencing growth.
15. The requirement that delays to putting the water to full beneficial use be occasioned by obstacles that could not be reasonably avoided is primarily focused on the basic requirement of completing construction and applying the water to beneficial use. Reclamation timely completed construction of the dam and put water to beneficial use.
16. Reclamation is seeking a 20-year extension to complete full beneficial use. Reclamation has requested a 250,000 afa combined right cap on deliveries to the service area, because it is not seeking to expand its overall use. Reclamation requires additional time, however, because water use is shifting from irrigation to municipal and industrial uses and this may affect how the Solano Project is operated. Additional water may be directly diverted under Permit 10659 in the future, instead of being released from storage under the license issued pursuant to Application 11199. Reclamation has shown that satisfactory progress will be made if a time extension is granted.
17. Reclamation has shown good cause for the time extension.
18. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions as are determined to be in the public interest.
19. The amended permit shall include the conditions relating to the continuing authority and water quality objectives of the State Water Board updated to conform to section 780(a & b), title 23 of the California Code of Regulations.

20. The previous combined right diversion limit pursuant to Applications 11199, 12578 and 12716 is revised to 999,031 af combined right diversion limit established during the licensing inspection.
21. The Solano County Water Agency issued the following environmental documents for the petition actions:
 - a. Solano Project Water Rights Amendment, Negative Declaration, SCH #95023011; Notice of Determination filed June 21, 1995. This document is related to amendment of the Solano Project water right permits to include additional water uses and modify the place of use defined in Permits 10657, 10658 and 10659. The Negative Declaration did not identify any mitigation measures.
 - b. Petition to amend the water rights for the Solano Project to increase releases for fish and wildlife enhancement in Putah Creek; Notice of Exemption filed January 22, 2001.
 - c. Solano Project Water Rights Permit 10659 Extension of Time Negative Declaration, SCH #2001122078; Notice of Determination filed April 23, 2002. The Negative Declaration did not identify any mitigation measures.

The Division reviewed the Negative Declarations identified in (a) and (c) and will issue NODs within five days of approval of the petitions. The Division will also issue a Notice of Exemption for the project identified in (b).

22. 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 condition should be placed in the permit making the permittee aware of possible obligations resulting from these acts.
23. A condition should be placed in the permit requiring submittal of a new permit map, if it is determined that the as-built conditions of the project are not correctly represented on the map.

NOW, THEREFORE, IT IS ORDERED THAT THE PETITIONS ARE APPROVED, SUBJECT TO THE CONDITIONS LISTED IN THE ATTACHED AMENDED PERMIT.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Thomas Howard
Executive Director

Dated: MAY 28 2013

Attachment

KDM: ds 3/2/2009.GHernandez 03/05/2013.
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