



# State Water Resources Control Board **SURNAMES FILES**



**Terry Tamminen**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
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**Arnold Schwarzenegger**  
Governor

**FEB 18 2004**

In Reply Refer to:  
KDM:A26306 & A26307

CERTIFIED MAIL

1831 4104

Emerson Investment Inc.  
c/o Jack Frost  
P.O. Box 496014  
Redding, CA 96049-6014

Dear Mr. Frost:

PERMITS 19164 AND 19165 (APPLICATIONS 26306 AND 26307) – SHASTA RIVER IN SISKIYOU COUNTY

The Division of Water Rights (Division) conducted a compliance inspection on August 23, 2002 of the property served by Permits 19164 and 19165. The inspection was conducted to determine the current extent of the beneficial use of water. Permit 19164 authorizes direct diversion from the Shasta River of 5 cubic feet per second (cfs) from February 1 to November 1 each year. Permit 19165 authorizes direct diversion of 14 cfs from the Shasta River from February 1 to November 1 each year. Both permits are used for irrigation and stockwatering. The time to complete beneficial use of water pursuant to both permits ended on December 31, 1995.

Based on the statements of the Watermaster, Keith Dick, there has been no water available for use under Permit 19164 and 19165 since there has not been any water surplus to the Shasta River adjudication rights in the last few years. Division staff inspected the permits in June of 2000 to determine if a license could be issued. At that time there were no records of diversion to determine the amount of water being beneficially used under these permits. Division staff requested that you keep records and submit petitions for extension of time for the purpose of establishing a record of diversion and use under these permits. You subsequently submitted the petitions to the Division, but due to protests and environmental concerns the petition process has not been completed. As noted in the Division's October 7, 2003 letter, there are still no records of diversion and there has not been any surplus water available since the last inspection. Therefore, a license still cannot be issued.

There are several steps that you must take in order for petition processing to continue. First, you must respond to the protests. The Division's records include the following protests and actions to date on the protests:

- Department of Fish and Game (DFG). The Division dismissed the elements of the DFG protest asserting lack of due diligence by letter dated August 24, 2001. The Division's August 24 letter informed DFG that it's protest asserting adverse environmental impact

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California Environmental Protection Agency

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Exhibit 35

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due to diversions pursuant to the time extension is not accepted unless DFG provides a statement of facts. DFG's September 24, 2001 statement of facts documents that there are coho salmon in the Shasta River. There is suitable coho spawning and rearing habitat in the area of the diversions. Due to the status of coho salmon as a federally threatened and State candidate species, DFG does not believe the time extension is in the public interest since the diversions could have direct adverse impacts on listed species. By copy of this letter, the DFG protest regarding impacts to coho salmon is accepted.

- California Sportfishing Protection Alliance (CSPA). The Division dismissed the element of the CSPA protest asserting lack of due diligence, by letter dated August 23, 2001. The Division's August 23 letter also informed CSPA that it must provide a statement of facts regarding the assertion that (a) there is no surplus water available for appropriation in the Shasta River, and (b) adverse environmental impacts could occur as a result of diversions pursuant to the permits, or these issues are not accepted. CSPA's September 10, 2001 response on protest issue (a) states that it is inappropriate for the Division to make conclusions regarding water availability and it is also inappropriate for the Watermaster to determine when surplus flows exist pursuant to the Shasta River decree. This information is not responsive to the Division's request for a statement of facts.

Regarding protest issue (b), CSPA's September 10 letter states that the Shasta River and its tributaries support numerous resident and migratory fish species and provide habitat for numerous wildlife species. Sufficient downstream flows are necessary to maintain these species and habitat. CSPA has not identified species of concern or provided other specific information to identify the public trust issues for this site and how diversions pursuant to the time extension could affect identified species. The information submitted by CSPA does not constitute a statement of facts. The August 23, 2001 protest dismissal is applicable.

A response to the DFG protest is requested within the next 30 days.

Issuance of an Order approving the two time extension petitions to develop additional water use pursuant to the permits is a discretionary action, as defined by the California Environmental Quality Act (CEQA). CEQA requires that the State Water Resources Control Board, as lead agency, prepare the appropriate environmental document. As the petitioner, you are responsible for all costs related to the environmental evaluation and the preparation of the CEQA document. The environmental document may recommend a change in permit conditions for the increase in diversions pursuant to the petitions, to reflect new information regarding environmental conditions.

In view of the above discussion, we request that you advise the Division whether you want it to continue processing your petitions. Please submit your reply in writing within 30 days of the date of this letter. If you do not respond in writing within 30 days, we will assume that you no longer want to pursue the petitions.

Emerson Investment Inc.  
Mr. Jack Frost

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In order to approve a time extension, the Division must document that there is good cause for approval, pursuant to section 681, Title 23, California Code of Regulations, listed below:

Upon receipt of a request for an extension of time to complete an application, if good cause is shown, the board will grant such time as appears reasonably necessary. Good cause requires a satisfactory showing that a diligent effort has been made to complete the application within the time previously allowed and that failure to do so has been occasioned by obstacles which could not reasonably be avoided. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay.

Division staff requests that you document the frequency when water is available to serve these permits, and the months when water is available in order to document that there is sufficient water available to warrant granting a time extension. If there is no water available to serve the permits or for any increase in diversions pursuant to the petitions, it appears that you cannot show good cause for a time extension. A response to this issue is requested within the next 30 days.

Failure to provide an adequate response to the issues identified in this letter in a timely manner may result in cancellation of your petitions. If the petitions are cancelled, the Division may issue a Notice of Proposed Revocation of Permits 19164 and 19165 due to non-use.

If you determine that you no longer wish to pursue this matter, Division staff suggests that you voluntarily withdraw the petitions and seek revocation of Permits 19164 and 19165.

If you require further assistance, I can be contacted at (916) 341-5363.

Sincerely,

ORIGINAL SIGNED BY

Katherine Mrowka, Chief  
Watershed Unit #3

cc: Regional Manager  
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Northern Calif.-North Coast Region  
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Ms. Jane Vorpagel  
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bcc: RAS, AM  
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