

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2007-0029-DWR**

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In the Matter of Application 31615

**Lassen Station Hydroelectric**

**ORDER APPROVING ISSUANCE OF PERMIT**

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SOURCE: Camp Creek tributary to North Fork Feather River

COUNTY: Butte

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**WHEREAS:**

1. Application 31615 was filed with the State Water Resources Control Board (State Water Board) on May 4, 2006.
2. The application was noticed and there were no protests to approval of the application.
3. The State Water Board has determined that there is unappropriated water available to serve Application 31615. Pursuant to Permit 19350 (Application 27222) Lassen Station Hydroelectric is authorized to divert 30 cfs. Application 31615 seeks authorization to divert an additional 7.9 cfs, for a total of 37.9 cfs.

The Division of Water Rights (Division) inspected the project on August 4, 2000 and received flow data from WAVE Engineers, Inc. that was incorporated into the Report of Inspection. The flow data documents that the maximum daily average flow through the facility is 37.9 cubic feet per second (cfs). Division staff calculated the 14-day average flow through the facility is 37.6 cfs. The Applicant was complying with required bypass flows required by the Federal Energy Regulatory Commission (FERC) for the project during the period when the 37.9 cfs flow through the facility was measured.

4. The water will be diverted and used without injury to any lawful user of water. The project is a non-consumptive hydroelectric power generation project that returns flow to the stream system. The only known diverter in the vicinity of this project is Pacific Gas and Electric Company (PG&E). PG&E did not protest the application.
5. This project is subject to federal regulation by FERC and is required to operate in accordance with the requirements of its federal power license. Application of state water right law to federally licensed hydropower projects is subject to preemption except as appropriate for regulation and protection of proprietary water rights. (*California v. Federal Energy Regulatory Commission* (1990) 495 U.S. 490; *Sayles Hydro Assocs. v. Maughan* (9<sup>th</sup> Cir. 1993) 985 F. 2d 451.) Due to federal preemption of state law, the State Water Board has not evaluated the effects of the proposed water diversions on fish, wildlife, or other instream beneficial uses, or public trust issues in the context of processing this water right application.

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6. The applicant requests a right to directly divert water for hydroelectric power generation. Diversion of water for hydropower generation is considered a beneficial use of water under California Code of Regulations, title 23, division 3, section 662.

**NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31615, subject to the conditions of the attached permit.**

STATE WATER RESOURCES CONTROL BOARD

*For James W. Kussel*  
Victoria A. Whitney, Chief  
Division of Water Rights

Dated: **AUG 28 2007**

Attachment