

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0020

In the Matter of Permit 11605 (Application 15673)
United States Bureau of Reclamation

SOURCE: Little Truckee River

COUNTY: Sierra

ORDER APPROVING PETITIONS FOR EXTENSION OF TIME

BY THE BOARD:

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 11605 to United States Bureau of Reclamation (Reclamation) on October 27, 1958, pursuant to Application 15673 for direct diversion of 350 cubic feet per second from the Little Truckee River and collection to storage of 126,000 acre-feet per annum in Stampede Reservoir.
2. The permit requires that construction work be completed by December 1, 1963, and that the water be applied to the authorized use by December 1, 1972.
3. Reclamation requested, and was granted, extensions dated November 28, 1960, April 2, 1964, March 16, 1965, and July 7, 1982. The 1982 Order extended the time to complete full beneficial use of water to December 1, 1992.
4. In a letter dated November 1, 1992, Reclamation petitioned for a further extension of time.
5. In 1993, the Division advised Reclamation that the State Water Board did not intend to take action on the request for extension of time until negotiations on the Truckee River Operating Agreement (TROA) were completed.
6. On October 23, 2006, Reclamation asked that the State Water Board act on the November 1, 1992 request for time extension and submitted another time extension petition. Reclamation requested extensions of time totaling 20 years, indicating that water will be fully used when TROA becomes effective.

The submittal indicates that TROA has been negotiated pursuant to Section 205(a) of Public Law 101-618, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, to make operations at existing Truckee River Reservoirs more effective and efficient, and to expand their use in order to provide multiple benefits, such as:

- enhancing instream flows and water quality,
- enhancing spawning flows for Pyramid Lake fish,
- enhancing reservoir storage to serve recreational uses, and
- increasing the municipal and industrial drought water supply for the Truckee Meadows area, the town of Fernley, and the Truckee River Basin in California.

TROA establishes agreed-upon rules for accounting of water that is stored, released, exchanged, displaced, or spilled at Independence, Stampede, Boca and Prosser Creek Reservoirs. The five mandatory parties to TROA are: the U.S. Department of the Interior, the States of California and Nevada, the Pyramid Lake Paiute Tribe of Indians, and the Truckee Meadows Water Authority. Numerous other entities have also signed the TROA, including from California: the North Tahoe Public Utilities District, the Truckee Donner Public Utilities District, the Placer County Water Authority, and the Sierra Valley Water Company.

7. On January 30, 2007, the Division issued public notice of the requests for extension of time on Permit 11605, together with notice of petitions to change Licenses 3723, 4196 and 10180 (Applications 5169, 9247 and 18006) and Permit 11605, and notice of new Applications 31487 and 31488. The purpose of the two new applications is to allow use of the full capacity of the existing Stampede and Prosser Creek Reservoirs, and to allow a year-round diversion season. The four petitions for change to the four existing Truckee River Reservoirs seek to include the same points of rediversion, redistribution of storage, places of use, and purposes of use, so that water can be exchanged, stored and diverted efficiently to implement TROA. The two time extensions (1992 and 2006) seek time for the changes to be implemented and water to be put to full beneficial use. Implementation of the proposed changes and development of water use pursuant to the two new applications are predicated on the approval and implementation of TROA.

Although protests were filed regarding the change petitions and new applications, no protests were received regarding the time extension petitions on Permit 11605.

8. 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.
9. Reclamation has shown that due diligence has been exercised. Reclamation timely constructed Stampede Reservoir and put water to beneficial use to the extent possible without implementation of TROA.
10. Reclamation has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Negotiation of TROA, including addressing numerous fishery and water rights, and development of a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for TROA under the National Environmental Policy Act and the California Environmental Quality Act, required a significant commitment of time and resources. TROA was signed on September 6, 2008, but is not yet effective.

11. Reclamation has shown that satisfactory progress will be made if time extension is granted. If the change petitions and new applications are approved, additional time will be required to implement the provisions of TROA.
12. This Order takes note that the State Water Board will address the protests to the change petitions and new applications in a separate proceeding. A hearing has been calendared for July 2010.
13. Reclamation has shown good cause for a time extension. Reclamation has requested an extension of time to 2012 to put complete application of water to beneficial use, a total extension of time of 20 years. This Order will extend the period to complete full beneficial use from December 1, 1992 to December 31, 2012.
14. In August 2004, the U.S. Department of the Interior and California Department of Water Resources, as co-lead agencies, jointly published a Revised Draft EIS/EIR for the Draft TROA (SCH # 2004042078). The project evaluated in the Revised Draft EIS/EIR was the signing, adoption, and implementation of TROA by the State of California and other parties, including the changing of California water right permits and licenses—including the time extensions—to allow the water storage, transfers, and exchanges provided for in TROA. The final EIS/EIR was issued on January 23, 2008.

On September 9, 2008, the Resources Agency issued a Notice of Determination (NOD) for the EIS/EIR. The NOD states that no significant adverse impacts were identified in the EIS/EIR, and consequently no mitigation measures were identified or made conditions of the approval of the project.

The State Water Board is a responsible agency for purposes of considering whether to approve the time extension petition. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the EIS/EIR in deciding whether to approve the petitions. Approval of the time extension petition will not result in significant impacts to the environment. Within five days of this order, the State Water Board will file an NOD.

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ORDER

NOW, THEREFORE, IT IS ORDERED THAT the State Water Board hereby approves the petitions for extension of time.

PERMIT 11605 IS AMENDED as follows:

- 1. Conditions 10 and 11 of the permit are deleted and replaced with:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2012.

(0000009)

- 2. The following Endangered Species Act condition shall be added:

This permit does not authorize any act that results in the "taking" of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). 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. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 15, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board