

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0006-DWR

In the Matter of Application 30931

Barbara E. Foster

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Streams tributary to Maacama Creek thence the Russian River

COUNTY: Sonoma County

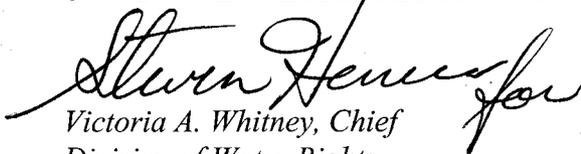
WHEREAS:

1. Barbara Foster filed Application 30931 with the State Water Resources Control Board (State Water Board) on August 18, 1999.
2. All protests to approval of the application have been resolved by inclusion of permit conditions and by dismissal pursuant to Water Code section 1335, subdivision (d).
3. The State Water Board has determined that there is unappropriated water available to serve Application 30931. The firm Wagner and Bonsignore prepared and submitted a water availability analysis on December 5, 2005, documenting the availability of water. Division of Water Rights staff concluded that unappropriated water is available and that approval of the application, as conditioned, would not result in potentially significant impacts to anadromous fish or aquatic resources. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. The water will be diverted and used without injury to any lawful user of water. The Division issued a public notice of Application 30931 on June 16, 2000. Based on the water availability analysis, water is available to serve this application without injury to prior rights. Protests were filed by California Sportfishing Protection Alliance and Trout Unlimited of California on the bases of injury to the environment. The protests were resolved through inclusion of terms in the permit that were agreed upon by the Protestant and the Applicant.
6. The intended uses are recreation and fire protection. The applicant requested to store water in a 122 acre-foot capacity reservoir and an 8 acre-foot capacity reservoir. The larger reservoir, Lowe Reservoir, is currently authorized to store 48 acre-feet of water under License 4928 (Application 14842). The applicant seeks to authorize storage of the remaining 74 acre-feet of capacity under A030931. Diversion to storage to Lowe Reservoir and the smaller reservoir, Frog Reservoir, occurs at 4 points of diversion from December 15 to March 31 of the following year.
7. Approval of the permit is exempt from the California Environmental Quality Act under California

Code of Regulations, title 14, section 15301, Existing Facilities. This project involves negligible or no expansion of an existing use, and there are no unresolved protests. The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this Order.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 30931, subject to the conditions of the attached permit.

STATE WATER RESOURCES CONTROL BOARD


*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **JAN 11 2008**

Attachment

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21207

Application 30931 of

Barbara E. Foster
3610 Washington Street
San Francisco, CA 94118

Filed on August 18, 1999, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:
Unnamed Streams

Tributary to:
Maacama Creek thence Russian River

within the Counties of **Sonoma**

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
1) North 1,990,975 feet and East 6,347,175 feet	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	16	9N	8W	MD
2) North 1,992,046 feet and East 6,346,981 feet	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	16	9N	8W	MD
3) North 1,991,598 feet and East 6,347,337 feet	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	16	9N	8W	MD
4) North 1,990,952 feet and East 6,347,264 feet	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	16	9N	8W	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Recreation Fire Protection	At Reservoir within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$	16	9N	8W	MD	10.5
Recreation Fire Protection	At Reservoir within the SW $\frac{1}{4}$ and NE $\frac{1}{4}$	16	9N	8W	MD	1
Total Acres 11.5						

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 82 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year as follows: 74 acre-feet per annum in Lowe Reservoir, and 8 acre-feet per annum in Frog Reservoir.
(000005D)
6. The maximum rate of diversion to offstream storage shall not exceed 10 cubic feet per second.
(000005J)
7. The total quantity of water collected to storage under this permit and License 4928 (Application 14842) shall not exceed 130 acre-feet per annum.
(000005L)
8. The capacity of the reservoirs covered under this permit shall not exceed 130 acre-feet.
(000005N)
9. In recognition of this permit and License 4928 (Application 14842), the capacity of Lowe Reservoir shall not exceed 122 acre-feet and the capacity of Frog Reservoir shall not exceed 8 acre-feet, which are the stated capacities in the application.
(000005P)
10. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2017.
(000009)
11. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. After initial filling of the reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water lost by evaporation and seepage, and to refill the reservoir if it is required to be emptied at the direction of a regulatory agency. Should such a need arise for drainage of the reservoir permittee shall notify the Division in writing 30 days prior to draining the reservoir.
(000040)
12. For the protection of water quality, Permittee shall notify the North Coast Regional Water Quality Control Board before draining the reservoir for maintenance purposes.
(0290500)
13. For the protection of fish and wildlife, Permittee shall during the period of December 15 through March 31, bypass a minimum of 0.43 cubic foot per second (cfs) as measured directly below point of diversion 4. The total stream flow immediately upstream of point of diversion 4 shall be bypassed whenever the stream flow is less than 0.43 cfs.
(0140060)
14. Permittee shall install a passive bypass device, satisfactory to the State Water Board, which is capable of assuring the bypass flows required by the conditions of this permit are bypassed. Said device shall be properly maintained.
(0060062B)

15. Within six months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
- A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - A time schedule for the installation of these facilities.
- The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.
- Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.
- (0000070)
16. This permit is subject to the continuing authority of the State Water Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.
- (0000042)
17. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the outlet pipes, or alternative facilities, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.
- (0050043BP)
18. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.
- (0000080)
19. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.
- (0000090A)

20. Based on the information contained in the Division's files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee diverts water under riparian right. With the Chief of the Division's approval, Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300B)

ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved; and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
(0000013)
- F. 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 & G. 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)
- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
(0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.
(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

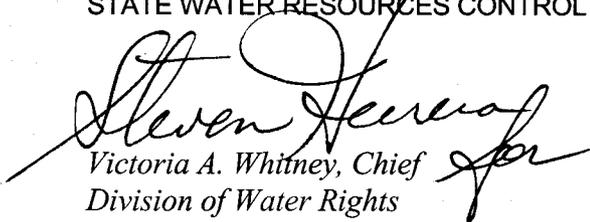
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through

condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JAN 11 2008**