

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application A031556

Hendrik Smeding

ORDER APPROVING MINOR CHANGE TO APPLICATION

SOURCES: (1) An Unnamed Stream tributary to Snell Creek thence Butts Creek
thence Putah Creek thence Lake Berryessa
(2) Snell Creek tributary to Butts Creek thence Putah Creek thence
Lake Berryessa
(3) Butts Creek thence Putah Creek thence Lake Berryessa

COUNTY: Napa

WHEREAS:

1. On October 9, 2001, Hendrik Smeding (applicant) filed water right application A031556 with the State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division) to appropriate water from the Putah Creek stream system in Napa County.
2. The application was publicly noticed on June 19, 2008. Protests were received from the Land Trust of Napa County, the California Department of Fish and Wildlife, and the United States Bureau of Reclamation.
3. On March 26, 2025, Division staff initiated a minor change to modify Application A031556 as follows:
 - a. Remove point of diversion 4 and the associated proposed offstream reservoir.
 - b. Change the method of diversion at point of diversion 1 by removing the collection of water to storage and the associated proposed onstream reservoir. Point of diversion 1 will become a diversion to offstream storage in the remaining offstream reservoirs.

- c. Reduce the place of use from 340 acres to 204 acres within projected sections 16, 17, 20, and 21, Township 17 North, Range 16 West, Mount Diablo Base and Meridian.
 - d. Reduce the maximum annual amount of water diverted from 400 acre-feet per year to 147 acre-feet per year.
- 4. On April 30, 2025, Division staff provided notice and an opportunity to provide comments regarding the minor change to the applicant, the protestants, and other interested parties. Comments were received from the Institute for Conservation Advocacy Research and Education (ICARE). ICARE's comments can be summarized as follows: (1) the minor change has the potential to adversely affect public trust resources, ecosystems, and beneficial uses of water in Butts Creek; (2) the applicant failed to submit a list of any special status plant species present at the locations of the proposed reservoirs; (3) the source of water for the modified point of diversion 1 is unclear; and, (4) the minor change has the potential to adversely affect beneficial uses of water in Putah Creek.
- 5. Comments 1 and 4 appear to raise concerns with the application rather than the minor change since the proposed changes to reduce the amount of diversion and remove an onstream reservoir would partially alleviate the concerns raised in these comments. Comment 2 likewise raises a concern with the application because there is no requirement in the minor change procedure for the applicant to include a list of special status plant species in the project area. Comments 1, 2, and 4 are therefore outside the scope of this minor change and no modifications will be made to the minor changes as a result of these comments. Nevertheless, the Board will consider the impacts of the application on special status plants, the public trust, and beneficial uses when acting on the application and when fulfilling the Board's obligations under the California Environmental Quality Act (CEQA). Regarding comment 3, the method of diversion will change from collection to onstream storage to diversion to offstream storage without changing the source of water. The above description of the change and the amended application reflect this explanation. The comments are accompanied by several questions about the water right application, CEQA, the minor change process, and the Division's process for considering water right applications in the Upper Putah Creek watershed that are outside of the scope of the minor change or do not need to be considered in this order.
- 6. The State Water Board may make a minor change to an application without requiring the filing of a petition for change if the Board finds all of the following:
 - a. The change does not enlarge or increase the authorized rate, amount, or season of diversion.
 - b. The change does not increase the total area subject to inundation by water diverted to storage or the area where facilities will be constructed.

- c. The change is not substantial or constitutes a reduction, agreed to by the applicant, in the authorized diversion, affected area, or other feature of the application.
- d. The change does not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses.

(Wat. Code, § 1700.4.)

- 7. The proposed changes will not enlarge or increase the authorized rate, amount, or season of diversion. The maximum annual amount of water diverted will be reduced from 400 acre-feet per year to 147 acre-feet per year. The rate of diversion and season of diversion will not change.
- 8. The proposed changes will not increase the total area subject to inundation by water diverted to storage or the area where facilities will be constructed. The changes will reduce the total footprint of proposed reservoirs. The place of use will also be reduced from 340 acres to 204 acres, and the new place of use is within the place of use proposed when the application was filed.
- 9. The proposed changes are not substantial or constitute a reduction, agreed to by the applicant, in the authorized diversion, affected area, or other feature of the application. The changes are limited to removing point of diversion 4 and the associated proposed off-stream reservoir, changing the method of diversion at point of diversion 1 and the associated proposed onstream reservoir, reducing the maximum annual amount of water diverted, and reducing the place of use.
- 10. The proposed changes do not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses.. The change reduces the amount of diversion while the points of diversion are not being moved to new sources of water or different locations on existing sources, and the rates of diversion will not change, therefore the minor change does not have the potential to adversely affect other legal users of water or instream beneficial uses.
- 11. Pursuant to Resolution 2023-0036, the State Water Board has delegated the authority to conduct and supervise the activities of the State Water Board to the Executive Director. By memorandum dated January 31, 2024, the Executive Director has redelegated the authority to act on minor changes to the Deputy Director for Water Rights. The Deputy Director for Water Rights has further redelegated this authority pursuant to a memorandum dated April 20, 2023.

NOW, THEREFORE, IT IS ORDERED:

- 1. The minor change to the application is approved.

2. Point of diversion 4 is changed by removing the associated proposed off-stream reservoir.
3. Point of diversion 1 is changed by removing the collection of water to storage as a method of diversion and removing the associated proposed onstream reservoir. The method of diversion for point of diversion 1 is changed to diversion to offstream storage.
4. The maximum amount of water requested for diversion is changed to 147 acre-feet per year.
5. The place of use is changed to 204 acres as described in the map dated April 2025 and summarized as follows:
 - a. 71 acres within projected Section 16;
 - b. 93 acres within projected Section 17;
 - c. 23 acres within projected Section 20; and,
 - d. 17 acres within projected Section 21;
 - e. All within Township 10 North, Range 5 West, Mount Diablo Base and Meridian.

STATE WATER RESOURCES CONTROL BOARD

Matthew McCarthy
Senior Environmental Scientist
Division of Water Rights

Dated: June 11, 2025