

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

**ORDER WR 2007-0039-DWR**

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In the Matter of Application 12919B (Permit 12947B)

Mendocino County Russian River Flood Control and

Water Conservation Improvement District

**ORDER APPROVING PETITION FOR EXTENSION OF TIME**

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SOURCE: East Fork Russian River tributary to Russian River

COUNTY: Mendocino County

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**WHEREAS:**

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 12947B to Mendocino County Russian River Flood Control and Water Conservation Improvement District (Permittee) on January 21, 1975, pursuant to Application 12919B. The permit allows for a maximum diversion of 8,000 acre-feet (af) per year.
2. The permit required that construction work be completed by December 1, 1975, and that the water be applied to the authorized use by December 1, 1985.
3. The Division conducted a license inspection on July 7, 1992 and issued a license inspection report. On February 23, 1995, Division staff issued an addendum to the 1992 report, stating that staff was unable to determine the actual beneficial use of water under Permit 12947B because Permittee had not perfected its accounting methodology.
4. Permittee requested, and on September 15, 1998, the Division granted an extension of time to complete application of the water to the proposed use. The time extension order extended the time to complete full beneficial use to December 31, 2005.
5. Division records show that Permittee has been unsuccessful in providing the Division with satisfactory evidence that the 8,000 af authorized under Permit 12947B has been put to full beneficial use. Permittee requests a two-year extension of time to perfect its accounting methodology.
6. The Division issued Cease and Desist Order WR 2005-0001-DWR to Permittee on January 7, 2005 for failure to provide the Division with satisfactory evidence that the 8,000 af authorized under Permit 12947B had been put to full beneficial use.
7. On December 19, 2005, Permittee filed a petition for an extension of time within which to commence or apply water to beneficial use. The appropriate filing fees were included with the petition for extension of time. Permittee states in the petition for extension of time that construction of the project has been completed and the 8,000 af per annum (afa) of water has

been put to beneficial use. Permit 12947B requires that diversions be metered. Due to litigation, meter installation was delayed until 2005. Consequently, a two-year extension is needed to obtain meter records of use and to account for diversions pursuant to this permit.

8. Public notice of the request for an extension of time was issued on July 7, 2006, and no protests were received.
9. 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.
10. Permittee has shown that due diligence has been exercised. Permittee has been developing water at an accelerated pace due to the significant growth in the area within the last ten years. However, Permittee's technology necessary to verify how much water was being put to beneficial use has not kept pace with the rapid growth (refer to Cease and Desist Order WR 2005-0001-DWR).
11. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Litigation delayed meter installation. Permittee continues to perfect its accounting methodology to meet the requirements of Cease and Desist Order WR 2005-0001-DWR.
12. Permittee has shown that satisfactory progress will be made if a time extension is granted. Permittee submitted an Excel spreadsheet to the Division for the spring of 2005 in compliance with the monitoring requirements of Cease and Desist Order WR 2005-0001-DWR. The Division continues to work with Permittee to verify the correct information is submitted and that it includes the quantities of water coming into the East Fork Russian River and measuring inflow/outflow to storage in Lake Mendocino.
13. Permittee has shown good cause for the time extension.
14. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions determined to be in the public interest. The approval of the petition for time extension is contingent upon the inclusion of the following terms to protect the public interest:
  - The permit conditions relating to the continuing authority and water quality objectives of the State Water Board should be updated to conform to California Code of Regulations, title 23, section 780, subdivisions (a) & (b).
  - Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the Permittee aware of obligations resulting from these acts.
15. The State Water Board has delegated authority to the Chief of the Division to act on requests for an extension of time pursuant to Resolution No. 2007-0057. (Attachment to Resolution No. 2007-0057, § 4.2.2.) The delegated authority for extensions for municipalities is for time

extensions necessary to serve development allowable under the applicable land-use plan for the place of use identified in the permit.

16. Pursuant to the provisions of the California Environmental Quality Act, the Permittee issued a Notice of Exemption (NOE) based on Categorical Exemption under Class 1 pursuant to California Code of Regulations, title 14, sections 15301, 15306 and 15307. The exemption notice states:

This action is exempt because all of the Permittee's 8,000 afa of water has been put to full beneficial use through Uniform Water Supply Contracts that are based on historical use of the District's water, and water delivered to the Redwood Valley County Water District. The District is in the process of developing a water accounting program that will provide data on collection of water and use of the Permittee's 8,000 afa of water.

17. The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15301 after issuance of this order.

**NOW, THEREFORE IT IS ORDERED THAT THE STATE WATER BOARD DIVISION OF WATER RIGHTS APPROVES THE PETITION FOR EXTENSION OF TIME.**

**PERMIT 12947B IS AMENDED TO READ AS FOLLOWS:**

1. Condition 8 of the permit is 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, 2007.

(000009)

2. The continuing authority condition shall be updated to read as follows:

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 the 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)

3. The water quality objectives condition shall be updated to read as follows:

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)

4. The following Endangered Species Act condition shall be added:

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 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)

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
for *Victoria A. Whitney, Chief*  
*Division of Water Rights*

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