

STATE WATER RESOURCES CONTROL BOARD  
2008 DEC 29 PM 1:31  
DIVISION OF WATER RIGHTS  
SACRAMENTO

## PETITION FOR EXTENSION OF TIME

### WATER USERS:

Application 30300 Permit 21019

Water Code section 1396 requires an applicant to exercise due diligence in developing a water supply for beneficial use. The State Water Resources Control Board (State Water Board), in considering requests for extension of time, will review the facts presented to determine whether there is good cause for granting an extension of time to complete the project. Where diligence in completing the project is not fully substantiated, the State Water Board may set the matter for hearing to determine the facts upon which to base formal action relating to the permit. Formal action may involve:

1. Revoking the permit for failure to proceed with due diligence in completing the project.
2. Issuing a license for the amount of water heretofore placed to beneficial use under the terms of the permit.
3. Granting a reasonable extension of time to complete construction work and/or full beneficial use of water.

The time previously allowed in your permit within which to complete construction work and/or use of water has either expired or will expire shortly.

Please check below the action you wish taken on this permit.

- The project has been abandoned and I request revocation of the permit.  
\_\_\_\_\_  
Signature
- Full use of water has been made, both as to amount and season, and I request license be issued.  
\_\_\_\_\_  
Signature
- The project is not yet complete. I request the State Water Board's consideration of the following petition for an extension of time.

### PETITION FOR EXTENSION OF TIME If START of construction has been delayed

Complete items 1, 2, and 3.

1. What has been done since permit was issued toward commencing construction?

N/A

2. Estimate date construction work will begin. N/A

3. Reasons why construction work was not begun within the time allowed by the permit.

N/A

**PETITION FOR EXTENSION OF TIME  
If construction work is proceeding**

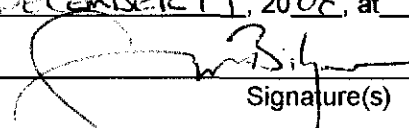
If construction work and/or use of water is proceeding but is not complete, an extension of time may be petitioned by completing items 4 through 16. Statements must be restricted to construction or use of water only under this permit.

- 4. A Four (4) - year extension of time is requested to complete construction work and/or beneficial use of water. (Must be consistent with the time frame allowed in California Code of Regulations sections 840 through 844)
- 5. How much water has been used? Please refer to Attachment "A" acre-feet/year \_\_\_\_\_ cfs
- 6. How many acres have been irrigated? Approximately 1500 at the most
- 7. How many houses or people have been served water? N/A
- 8. Extent of past use of water for any other purpose. N/A
- 9. What construction work has been completed during the last extension? N/A
- 10. Approximate amount spent on project during last extension period. \$ N/A
- 11. Estimate date construction work will be completed. One (1) year
- 12. Estimated year in which water will be fully used. 2011
- 13. Reasons why construction and/or use of water were not completed within time previously allowed. Please refer to Attachment "A"

**If the use of water is for municipal (including industrial) and irrigation supplies and is provided or regulated by public agencies and use of the water has commenced, but additional time is needed to reach full use contemplated, the following information must be provided.**

- 14. What water conservation measures are in effect or feasible within the place of use?  
\_\_\_\_\_
- 15. How much water is being conserved or is it feasible to conserve using these conservation measures?  
\_\_\_\_\_ acre-feet per annum.
- 16. How much water per capita is used during the maximum 30-day period? \_\_\_\_\_ gpd.

***I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.***

Dated: DECEMBER 19, 2008, at RENO, NEVADA, ~~California~~  
 \_\_\_\_\_  
Signature(s) (775) 352-7800  
Telephone No.

Gregory M. Bilyeu, 9480 Double Diamond Pkwy, Suite 200, Reno, NV 89521  
PLEASE PRINT YOUR NAME AND ADDRESS

**NOTE:** All petitions must be accompanied by the **filing fee (see fee schedule at [www.waterrights.ca.gov](http://www.waterrights.ca.gov))** made payable to the State Water Resources Control Board (State Water Board) and an **\$850 fee** made payable to the Department of Fish and Game must accompany all but the first petition for an extension of time. Separate petitions are required for each water right. Separate State Water Board fees are required if both a change and time extension petition are being filed.

**ATTACHMENT "A"**  
**To**  
**Extension of Time Request**  
**For**  
**Application 30300, Permit 21019**

**Question 5.**

Based on available gauging records, the following amounts of water have been used under this permit.

2001	411 acre-feet
2002	653 acre-feet
2003	1096.2 acre-feet
2004	712 acre-feet
2005	1062.9 acre-feet
2006	Unknown (gauge destroyed
2007	850 acre-feet (partial year data)

**Question 13.**

When Permit 21019 was issued the terms required that the Permittee install "measuring devices which are capable of measuring inflow to the reservoir and the flows needed to satisfy BLM's right under Nevada Certificate 14970." (Permit Terms 13)

Permit Term 12 required that the Permittee bypass water at Smoke Creek Reservoir which "together with accretions to Smoke Creek between the reservoir and BLM's place of use, is sufficient to provide a minimum flow of 5 cubic feet per second at the BLM's place of use." The BLM had previously installed a gauge on Smoke Creek near the beginning of their place of use in Nevada however when Permit 21019 was issued, this gauge had not been operational for several years.

The plans for these devices were required to be submitted to the Chief of the Division of Water Rights for review and approval within three (3) months of the issuance of the Permit. The previous Permittee, Rock Springs Ranches, LLC was notified on January 8, 2002 that they were out of compliance with the permit terms in that they had failed to submit the required plans for review. A response to this notification was provided to the Division on February 6, 2002. This response outlined the proposed plan and schedule for installing the required measuring devices. In addition, reservoir levels and storage data for 2001 were submitted.

On March 18, 2002 the Division of Water Rights responded to the February 6, 2002 submittal stating that Rock Springs Ranches, LLC was still out of compliance with Permit Term 13. Based on that response an updated plan was submitted to the Division on April 17, 2002 advising that the gauges had been installed and all deficiencies associated with the prior submittals had been corrected. This was followed up with the submittal of stream gauging data reports submitted to the Division November 5, 2002 for the 2002 irrigation season and on March 24, 2004 for the 2003 irrigation season. In addition, annual progress reports were submitted for Permit 21019 through the year 2007.

The Division never responded to the April 17, 2002 plan submittal but based on subsequent phone conversations with Division staff (in particular Mr. Jose Alacon) and follow up submittals of stream flow measurements, the Permittee was assured that all terms and conditions of the permit were being complied with.

In the spring of 2006 however the gauge located upstream of the inflow to Smoke Creek Reservoir was destroyed due to high runoff events. The staff gauge in Smoke Creek Reservoir was also destroyed by ice. At the same time the ownership of the Smoke Creek Ranch (and Permit 21019) was transferred to Jackrabbit Properties, LLC the current Permittee.

Jackrabbit Properties, LLC hired a different consultant to install new measuring devices on Smoke Creek and revise its method of monitoring inflows and outflows into Smoke Creek Reservoir. A new upstream gauge on Smoke Creek was installed in March 2007 and a new staff gauge installed in the reservoir in May 2007. Records from these gauges have been maintained and were submitted to the Division of Water Rights in September 2008.

In July 2008 the BLM filed a complaint against Jackrabbit Properties, LLC alleging that they were not receiving 5 cfs of the flow of Smoke Creek at its property. Jackrabbit Properties, LLC denied the allegations in that protest as detailed in their answer dated September 5, 2008.

A field investigation was held on October 29, 2008 with Chuck Rich and David LaBrie representing the Division of Water Rights. After inspecting the conditions on the ground, discussing the permit terms and the history surrounding the operation of the Smoke Creek Reservoir, as well as the hydrological conditions associated with the drought during the 2008 calendar year, Mr. Rich referenced the March 18, 2002 letter from the Division and stated for the first time that the Division had never approved the plan for the measuring devices and that therefore the Permittee was out of compliance with Permit Term 13. He did not reference the April 17, 2002 plan submittal provided by Rock Springs Ranches.

Upon questioning of why the Division had not responded at any time during the intervening years, particularly in light of subsequent submittals to the Division regarding stream flow data as well as conversations with Division personnel, Mr.

Rich conceded that the Division itself had erred in not advising either Permittee of the non-compliance issue.

Mr. Rich further advised that he considered the current set up for the gauging water levels in the reservoir and determining outflow from the reservoir as inadequate. This was predicated partially on an inability to have "instantaneous" determination of flows. He stated that a new plan for the installation and operation of measuring devices would have to be submitted to the Division for approval prior to making an application for licensing.

With this information in hand, Jackrabbit Properties, LLC is submitting this Petition for Extension of Time. Jackrabbit Properties, LLC and the prior Permittee have operated in good faith with regards to placing the water under Permit 21019 to beneficial use and with regards to the operation and by-passing of flows from Smoke Creek Reservoir. Improvements to the flows of Smoke Creek have improved overall as evidenced by the increase in riparian habitat within the BLM's place of use.

However the BLM has never replaced its gauge on its property to determine whether or not it is actually receiving its 5 cfs. This makes it difficult, if not impossible to determine whether or not the Permittee is complying with the terms of this permit. It should be noted that under its Nevada permit, the BLM is not "guaranteed" a constant 5 cfs flow to the water of Smoke Creek as actual streamflow conditions vary depending upon the time of year and hydrological conditions.

Granting the additional time requested under this Petition for Extension of Time will allow for the settlement of the complaint with the BLM and the submittal, approval and implementation of a new plan for the gauging and monitoring of the streamflow in Smoke Creek.