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February 4, 2009

Victoria Whitney
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812-2000

2009 FEB -4 AM 11:24
DIV OF WATER RESOURCES
SACRAMENTO
STATE WATER RESOURCES CONTROL BOARD

NFP 3/12/09
Re: French Creek Decree ~~11478~~¹⁴⁴⁷⁸, Diversion No. 48

Dear Ms. Whitney:

NFP 3/12/09
We hereby submit this Petition to change the place of use and purpose of use for Diversion No. 48 as adjudicated in the French Creek Decree ~~11478~~¹⁴⁴⁷⁸ on behalf of John Spencer. The Petition proposes to add instream beneficial uses from the present point of diversion to the confluence of French Creek and Scott River to Diversion No. 48.

In accordance to the draft "Scott River Instream Flow Water Right Transactions Petitions Checklist" dated April 30, 2008, please find enclosed:

- A 1707 Petition for Change of place of use and purpose of use with a narrative summary of the project;
- An Environmental Information for Petition form;
- An engineered place of use map for the proposed stream reach to benefit from this 1707 dedication;
- A Biological Justification in support of the proposed project authored by the California Department of Fish and Game;
- A Statement of Water Diversion and Use signed by the applicant verifying his use of the involved water right for the past five years;
- A Declaration by Joe Scott, Watermaster for the water right involved in the Petition attesting to the applicants use of the involved water right;
- A check made out to the State Water Resources Control Board in the amount of \$850.00 for associated filing and review fees;
- A check made out to the California Department of Fish and Game in the amount of \$850.00 for associated filing and review fees.

*Check \$850
check \$850 for 7/4*

February 4, 2009
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As explained in Attachment 2 to the Environmental Information Form, we believe that the project being proposed is exempt from CEQA pursuant to the California Code of Regulations §§ 15301(i), 15304 and 15061(b)(3).

We request an opportunity to meet with you and State Water Board staff at your earliest convenience to discuss the proposed project and whether there is any additional information we can provide you with to facilitate your review of the enclosed Petition.

Yours truly,



TERESA W. CHAN

Encls.

c: Katherine Mrwoka
Steve Herrera
Sari Sommarstrom, Scott River Water Trust

PETITION FOR CHANGE
(WATER CODE 1707)

Application _____ Point of Diversion, _____ Point of Rediversion, Place of Use, Purpose of Use
Permit _____ License _____ Statement or Other _____

I (we) hereby petition for change(s) noted above and shown on the accompanying map and described as follows:

Point of Diversion or Rediversion (Give coordinate distances from section corner or other ties as allowed by CCR, tit. 23, section 715, and the 40-acre subdivision in which the present and proposed points of diversion lie.)

Present _____

Proposed _____

Place of Use (If irrigation, then state number of acres to be irrigated within each 40-acre tract.)

Present See Attachment

Proposed See Attachment

Purpose of Use

Present See Attachment

Proposed See Attachment

Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See Water Code section 1707)? Yes

(yes/no)

• GIVE REASON FOR PROPOSED CHANGE: To increase flows in French Creek for instream benefit.

• WILL THE OLD POINT OF DIVERSION OR PLACE OF USE BE ABANDONED? No
(yes/no)

• WATER WILL BE USED FOR
Domestic, Stockwatering, industrial, Power, Irrigation & PURPOSES.
instream uses.

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of Oral Agreement with
(ownership, lease verbal or written agreement) Owner,

Are there any persons taking water from the stream between the old point of return flow and the new point of Beverly Platt
return flow? No.

(yes/no)

If by lease or agreement, state the name and address of party(s) from whom access has been obtained.

Beverly Platt

3916 Hwy 3
Etna, CA 96027

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

See files of State Water Resources Control Board

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.

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

Dated January 14, 2009 at ETNA, California

[Signature]
Signature(s)

530 467-5192
Telephone No.

NOTE: All petitions must be accompanied by the fee (see fee schedule at 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 the petition. 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 to Accompany
Petition for Change
French Creek Decree 14478 - Diversion No. 48

John Spencer

Purpose of use

Present:

Domestic, stockwatering, industrial, power, irrigation.

Proposed:

Domestic, stockwatering, industrial, power, irrigation, and instream beneficial uses (fish, wildlife and recreation).

Place of Use

Present:

Irrigation:

Use is Within	Section	Township	Range	B.&M.	Acres
SW¼ of SE¼	2	T41N	R9W	M.D.	0.8
NW¼ of NE¼	11	T41N	R9W	M.D.	17.6
SW¼ of NE¼	11	T41N	R9W	M.D.	10.4
NE¼ of NW¼	11	T41N	R9W	M.D.	12.4
SE¼ of NW¼	11	T41N	R9W	M.D.	12.0
				Total	53.2

Proposed:

Irrigation: no change.

Instream beneficial uses (fish and wildlife, recreation), from point of diversion (upper) to confluence of French Creek and Scott River (lower), as follows:

<u>Map Point</u>	<u>Description</u>
Upper Limit & POD 48	Located N.2,399,460 and E. 6,327,200 California Coordinate System, Zone 1, NAD 83, being within the NW¼ of SW¼ of Section 11, T41N, R9W, MDB&M.
Lower Limit	Downstream Limit of in-stream beneficial use: Located N. 2,400,440 and E. 6,329,100 California Coordinate System Zone 1, NAD 83; being within the NW¼ of the SE¼ of Section 11, T41N, R9W, MDB&M.

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

ENVIRONMENTAL INFORMATION FOR PETITIONS

Petition for Change

Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

Multiple horizontal lines for providing a description of proposed changes or work remaining to be completed.

See Attachment No. 1

ENVIRONMENTAL INFORMATION FOR PETITIONS

2. COUNTY PERMITS

a. Contact your county planning or public works department and provide the following information:

Person contacted: _____ Date of contact: _____

Department: _____ Telephone: (____) _____

County Zoning Designation: _____

Are any county permits required for your project? YES NO If YES, check appropriate box below:

Grading permit Use permit Watercourse Obstruction permit Change of zoning

General plan change Other (explain): _____

b. Have you obtained any of the required permits described above? YES NO

If YES, provide a complete copy of each permit obtained.

See Attachment No. ____

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

a. Check any additional state or federal permits required for your project:

Federal Energy Regulatory Commission U.S. Forest Service Bureau of Land Management

Soil Conservation Service Dept. of Water Resources (Div. of Safety of Dams) Reclamation Board

Coastal Commission State Lands Commission Other (specify) _____

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

See Attachment No. ____

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? YES NO

If YES, explain: _____

See Attachment No. ____

ENVIRONMENTAL INFORMATION FOR PETITIONS

- d. Have you contacted the California Department of Fish and Game concerning your project? YES NO
If YES, name and telephone number of contact: _____

4. ENVIRONMENTAL DOCUMENTS

- a. Has any California public agency prepared an environmental document for your project? YES NO
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: _____
- b. If NO, check the appropriate box and explain below, if necessary:
- The petitioner is a California public agency and will be preparing the environmental document.*
 - I expect that the SWRCB will be preparing the environmental document.**
 - I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: _____

* Petitioner expects the project to be exempt from the requirements of CEQA. _____

See Attachment No. 2

* **Note:** When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** **Note:** CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?
 YES NO
If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

See Attachment No. _____

- b. Will a waste discharge permit be required for your project? YES NO
Person contacted: _____ Date of contact: _____

- c. What method of treatment and disposal will be used? _____

See Attachment No. _____

6. ARCHEOLOGY

- a. Have any archeological reports been prepared on this project? YES NO
b. Will you be preparing an archeological report to satisfy another public agency? YES NO
c. Do you know of any archeological or historic sites located within the general project area? YES NO

ENVIRONMENTAL INFORMATION FOR PETITIONS

If YES, explain: _____

See Attachment No. ____

7. ENVIRONMENTAL SETTING

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- Along the stream channel immediately downstream from the proposed point(s) of diversion.
- Along the stream channel immediately upstream from the proposed point(s) of diversion.
- At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: 1-14-09

Signature: 

**Attachment 1 to Accompany
Environmental Information Form for
Petition for Change to French Creek Decree 14478 - Diversion No. 48**

John Spencer

Project Description

The project identified below is proposed by the Scott River Water Trust, with funding from the Bella Vista Foundation. The project proposes changes to a specific decreed water in French Creek in the Scott River Stream system, and a short-term water lease to improve and protect instream flows for fish habitat under Water Code section 1707. The Scott River system's fish habitat supports runs of coho salmon (designated as Threatened under the federal and state Endangered Species Acts) as well as Chinook salmon and steelhead.

Mr. John Spencer holds a water right for diversion at number 48 (POD 48) pursuant to the French Creek Decree, Siskiyou County ("Decree").¹ The Decree includes all surface water diversion within the French Creek sub-watershed to its confluence with the Scott River. At that point the provisions of the Scott River Decree take jurisdiction². This is a water right for direct diversion of up to 0.76 cfs (~340 gpm) for beneficial use on 53.2 acres. The Decree allows that "All allotments . . . are for continuous use without regard to season but are limited during the period of October 1 of each year to March 31 of the succeeding year to the amount required for domestic, stock water and other beneficial uses."³ Diversions within the French Creek stream system are administered as part of the Scott River Watermaster Service Area under the California Department of Water Resources, Northern District.

Mr. Spencer files this Petition to add to the places and purposes of use under the subject water right. Pursuant to this Petition for Change, diversions from POD 48 will be curtailed under certain conditions for the benefit of instream resources in French Creek. Decisions about whether and when diversion will be curtailed will be made by the Scott River Water Trust and the water rights holder in coordination with the Watermaster, based on natural flow conditions and other relevant considerations. Petitioner may use other decreed water rights under the Scott River Decree to meet consumptive water demands during periods when instream use is being made of the subject water right. Based on past experience, it is expected that curtailment of diversion would typically occur by early July in dry years and by August in wetter years (if needed to benefit fish habitat). The portion of French Creek that will benefit is an approximately 2,100 foot reach between the authorized POD 48 and the confluence with Scott River.

¹ Judgment No. 14478 entered into the Superior Court of the State of California in and for the County of Siskiyou on July 1, 1958 (French Creek Decree).

² Judgment No. 30662 entered into the Superior Court of the State of California in and for the County of Siskiyou on January 16, 1980 (Scott River Decree).

³ Paragraph 12 of the French Creek Decree.

**Attachments to Accompany
Environmental Information Form for
Petition for Change to French Creek Decree 14478 - Diversion No. 48**

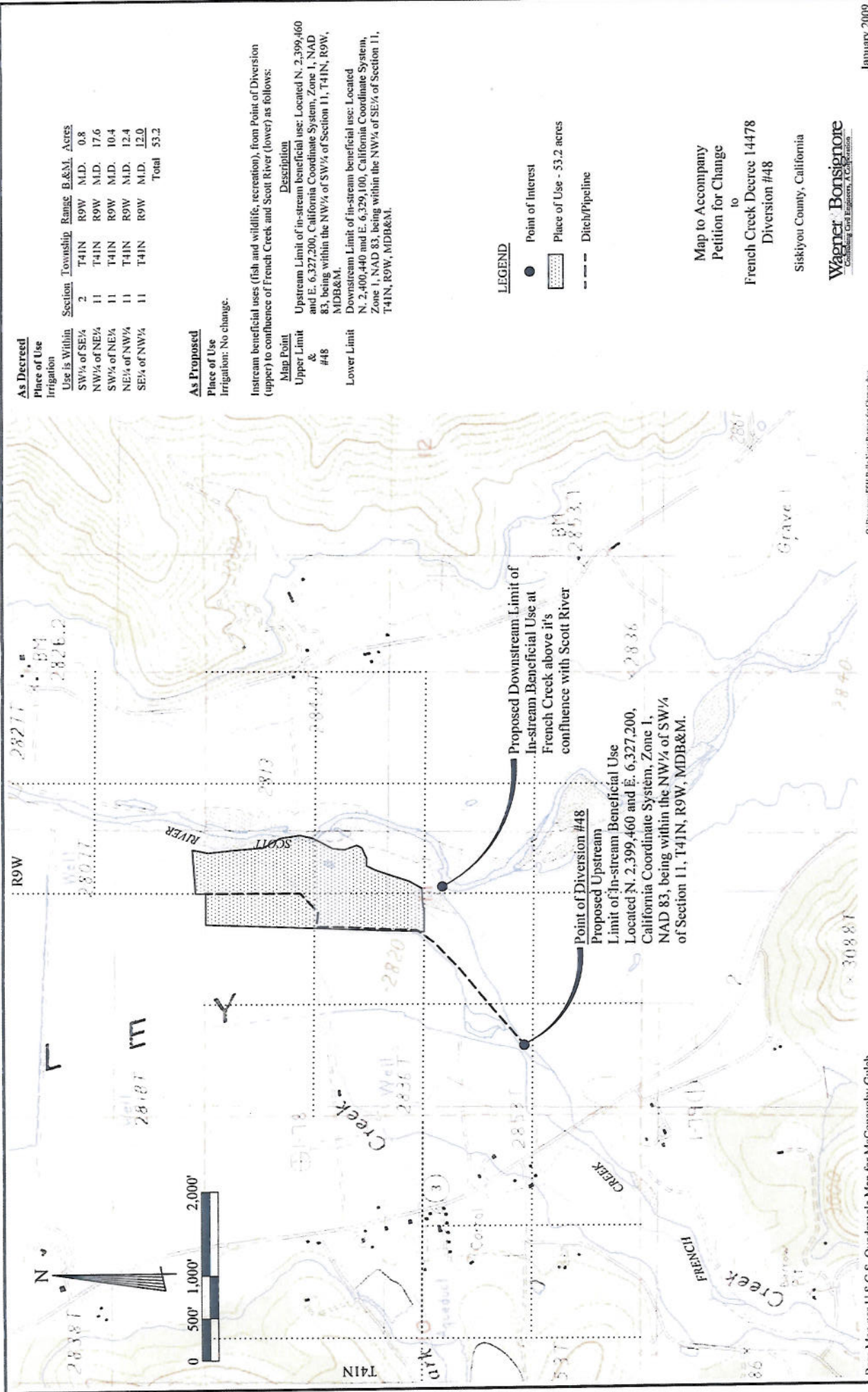
John Spencer

Attachment 2

4. Environmental Documents

The Petitioner's proposed project will add beneficial instream use as a purpose of use to the Petitioner's existing water right for direct diversion of up to 0.76 cfs, and add as a place of use the reach of French Creek from the current point of diversion to the confluence of the Scott River. During periods where the applicant forgoes use of his 0.76 cfs allotment of water from French Creek, Petitioner will continue to divert under other decreed water rights under the Scott River Decree.

The project is being proposed by a private diverter and funded by a non-profit organization. Petitioner believes that the State Water Board approval of the petition is exempt from CEQA pursuant to the California Code of Regulations sections 15301(i) (existing facilities exemption), 15304 (minor alterations to land exemption) and 15061(b)(3) (common sense exemption).



As Decreed

Place of Use	Section	Township	Range	B.&M.	Acres
Irrigation	2	T41N	R9W	M.D.	0.8
SW¼ of SE¼	11	T41N	R9W	M.D.	17.6
NW¼ of NE¼	11	T41N	R9W	M.D.	10.4
NE¼ of NW¼	11	T41N	R9W	M.D.	12.4
SE¼ of NW¼	11	T41N	R9W	M.D.	12.0
					Total 53.2

As Proposed
 Place of Use
 Irrigation: No change.

Instream beneficial uses (fish and wildlife, recreation), from Point of Diversion (upper) to confluence of French Creek and Scott River (lower) as follows:

Map Point
 Upper Limit #48
 Description
 Upstream Limit of in-stream beneficial use: Located N. 2,399,460 and E. 6,327,200, California Coordinate System, Zone 1, NAD 83, being within the NW¼ of SW¼ of Section 11, T41N, R9W, MDB&M.

Lower Limit
 Description
 Downstream Limit of in-stream beneficial use: Located N. 2,400,440 and E. 6,329,100, California Coordinate System, Zone 1, NAD 83, being within the NW¼ of SE¼ of Section 11, T41N, R9W, MDB&M.

- LEGEND**
- Point of Interest
 - ▨ Place of Use - 53.2 acres
 - Ditch/Pipeline

Map to Accompany
 Petition for Change
 to
 French Creek Decree 14478
 Diversion #48
 Siskiyou County, California

Wagner Bonsignore
 Consulting Geographers & Cartographers