



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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SURNAME/FILES



Arnold Schwarzenegger
Governor

JUL 14 2008

In Reply Refer to:
363:LVL:A025917, A027087,
A027088, A027089

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B. J. Deis, A California Corporation
Attn: Everd A. McCain
McCain and Associates
P.O. Box 448
Susanville, CA 96130

Dear Mr. McCain:

**NOTICE OF PROPOSED REVOCATION OF PERMITS 18257, 19159, 19160 AND 19161
(APPLICATIONS 25917, 27087, 27088 AND 27089), WILLOW CREEK, IN LASSEN COUNTY**

Enclosed is a Notice of Proposed Revocation of water right Permits 18257, 19159, 19160 and 19161. You may request a hearing on the proposed revocation. Unless you request a hearing within 15 days from date of receipt of this letter, the State Water Resources Control Board (State Water Board) will revoke the permits without further notice. If the State Water Board conducts a hearing, the hearing will focus on whether the cause for revocation of Permits 18257, 19159, 19160 and 19161, as set forth in the Notice of Proposed Revocation, has been established.

It is the Permittee's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the points of diversion identified in these permits for which a valid basis of right cannot be documented may be subject to administrative civil liability of up to \$500 per day without further notice. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831. It is the Permittee's responsibility to consult with the Department of Fish and Game, and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Permittee must also consult the Department of Water Resources, Division of Safety of Dams if a jurisdictional size dam will be removed or breached (dam height 15 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

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If you have any questions, please telephone Laura Lavallee, the staff person assigned to this matter, at (916) 341-5422.

Sincerely,

ORIGINAL SIGNED BY

James W. Kassel
Assistant Division Chief

Enclosure

cc: Lahontan Regional Water Quality Control Board
Attn: Robert Dodds
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

California Department of Fish and Game
Northern California – North Coast Region
Attn: Jane Vorpapel
601 Locust Street
Redding, CA 96001

bcc: FIELD FILE, Katherine Mrowka

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

DIVISION OF WATER RIGHTS

In the Matter of Permits 18257, 19159, 19160 and 19161 (Applications 25917, 27087, 27088 and 27089)

B.J. Deis, A California Corporation

NOTICE OF PROPOSED REVOCATION

SOURCE: Willow Creek Tributary to Susan River

COUNTY: Lassen County

You are hereby notified that, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is proposing to revoke Permits 18257, 19159, 19160 and 19161 because the Permittee has failed to prosecute with due diligence and complete the work necessary to appropriate water under Permits 18257, 19159, 19160 and 19161, and has not made beneficial use of the water in accordance with the permits, the Water Code, and the State Water Board's regulations.

The proposed revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 18257 on May 13, 1981. The permit authorizes B.J. Deis, A California Corporation to divert a total of 60.7 acre-feet of water to storage in two onstream reservoirs, with 47 acre-feet in the lower onstream reservoir (Lake Buz) and 13.7 acre-feet in the upper onstream reservoir (Lake Skeet). The permitted purposes of use are Recreation, Stockwatering and Irrigation. Permit 18257 originally required that construction work be completed by December 1, 1984, and that the water be applied to the authorized use by December 1, 1985.

The State Water Board issued Permits 19159, 19160 and 19161 on March 23, 1984. Permit 19159 authorizes B.J. Deis, A California Corporation to divert a total of 91 acre-feet of water to storage in two offstream reservoirs, with 42 acre-feet in the northern offstream reservoir (Collection Reservoir) and 49 acre-feet in the southern offstream reservoir (Pressure Reservoir). The purposes of use under Permit 19159 are Recreation, Stockwatering and Irrigation and Power. Permit 19160 authorizes the diversion to storage of 13.7 acre-feet of water in Lake Skeet and the direct diversion of 80 cubic-feet per second (cfs). The purpose of use under Permit 19160 is Power. Permit 19161 authorizes the diversion to storage of 47 acre-feet of water in Lake Buz and the direct diversion of 80 cfs. The purpose of use under Permit 19161 is Power. Permits 19159, 19160 and 19161 originally required that construction work be completed by December 1, 1987, and that the water be applied to the authorized use by December 1, 1988.

A. PERMITTEE HAS FAILED TO PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMITS

1. Progress under Permit 18257 between 1981 and 2006:

- a) Annual progress reports submitted by Permittee indicate that that Buz Dam was constructed three times over the years, failing each time during heavy but predictable storm events, the most recent time in January 2006. Skeet Dam was constructed once in 2005, and it too failed in 2006.

SURNAME	<i>Deis</i>	<i>CMR</i>	<i>CMR</i>	<i>Kassel</i>
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- b) Permittee reported beneficial use at Lake Buz for recreation (starting in 1990) and stockwatering (starting in 1991), but these uses have been sporadic at best due to the multiple failures of the dams. Permittee has not reported any use of water for the purpose of Irrigation.
- c) Although the Permittee claims recreational uses within Lake Skeet from July 25, 2005, Division staff observed an almost empty lake bed on October 25, 2005. In addition, the first opportunity to legally store water in Lake Skeet under Permit 18257 was December 1, 2005 (the start of the annual collection season). Because the dam began failing on December 16, 2005, with complete failure by January 2, 2006, there was insufficient time to accomplish seasonal storage and beneficial use from Lake Skeet under Permit 18257.
- d) Permittee requested, and the Division granted three extensions of time to complete all construction work (including repairs to Buz Dam) and apply the water to full beneficial use under Permit 18257. Extensions were granted on May 20, 1986, July 11, 1990, and December 15, 1995. The final time extension order required all construction to be complete by December 31, 2001, and that water be placed to full beneficial use by December 31, 2005.
- e) On May 12, 2003, more than a year after the time to complete construction under Permit 18257 had expired but prior to the time to complete beneficial use was to expire, Permittee filed a petition with the State Water Board requesting an additional extension of time. By Division order dated January 8, 2008, the Deputy Director for Water Rights (Deputy Director) denied the Permittee's petition for extension of time, citing his failure to show that Permittee: (1) exercised due diligence, (2) could not have reasonably avoided obstacles that prevented compliance with previous time requirements, and (3) would have made satisfactory progress if granted an extension of time. Permittee submitted a timely petition for reconsideration of the denial, which the State Water Board rejected by Executive Order WR 2008-0021, citing that the petition for reconsideration failed to raise substantial issues. Therefore the December 31, 2005 deadline to complete application of water to beneficial use remains effective.

2. Progress under Permit 19159 between 1984 and 2006:

- a) Annual progress reports submitted by the Permittee indicate that construction of Collection and Pressure Reservoirs was not completed until 2003 and 2005, respectively, approximately 20 years after issuance of the permit.
- b) Permittee has reported no beneficial use under the permit, and the power facilities necessary to bring water to the reservoirs (authorized under Permits 19160 and 19161) have not yet been built.
- c) Permittee requested, and the Division granted, two extensions of time to commence or complete construction work and apply the water to full beneficial use under Permit 19159. Extensions were granted on September 11, 1989 and August 31, 1994. The final time extension order required construction to be complete by December 31, 1998, and that water be placed to full beneficial use by December 31, 2003.
- d) On May 12, 2003, more than four years after time to complete construction under Permit 19159 expired but prior to the time to complete beneficial use was to expire, Permittee filed a petition with the State Water Board requesting an additional extension of time.

3. Progress under Permit 19160 between 1984 and 2006:

- a) Permittee's annual reports indicate no work completed or beneficial use made under Permit 19160. There was no substantial progress on the power generation facilities at Lake Skeet and no power use at all. Any progress on the construction on the dam/lake would have been accomplished under Permit 18257.
- b) Permittee requested, and the Division granted, two extensions of time to commence or complete construction work and apply the water to full beneficial use under Permit 19160. Extensions were granted on September 11, 1989 and August 31, 1994. The final time extension order required construction to be complete by December 31, 1998, and that water be placed to full beneficial use by December 31, 2003.
- c) On May 12, 2003, more than four years after time to complete construction under Permit 19160 expired but prior to the time to complete beneficial use was to expire, Permittee filed petitions with the State Water Board requesting an additional extension of time.

4. Progress under Permit 19161 between 1984 and 2006:

- a) Permittee's annual reports indicate very little work was accomplished or beneficial use made under Permit 19161. Reports show only minimal progress was made on the power generation facilities at Lake Buz (installation of a penstock and some preliminary installation work on transmission lines for power) and no power use at all. Any progress on the construction of Buz Dam or Lake Buz would have been accomplished under Permit 18257.
- b) Permittee requested, and the Division granted, two extensions of time to commence or complete construction work and apply the water to full beneficial use under Permit 19161. Extensions were granted on September 11, 1989 and August 31, 1994. The final time extension order required construction to be complete by December 31, 1998, and that water be placed to full beneficial use by December 31, 2003.
- c) On May 12, 2003, more than four years after time to complete construction under Permit 19161 expired but prior to the time to complete beneficial use was to expire, Permittee filed petitions with the State Water Board requesting an additional extension of time.

5. On September 19, 2005, the Division opened Complaint No. (18-27-01) to investigate allegations by the Lahontan Regional Water Quality Control Board (Regional Board) that the Permittee was violating the terms of its permits. The Division's investigation of the complaint included a physical inspection of the project by Division staff on October 25, 2005. Division staff confirmed the following status of the project (under all four permits) as of October 25, 2005:

- a) Lake Buz was full and spilling and the lake had occasionally been used for recreation since the dam was last repaired. Term No. 17 of Permit 18257 and Term No. 16 of Permit 19159 require the design, approval by the Division, and installation of measuring devices in the creek to ensure minimum bypass flows are met before any diversion of water is authorized pursuant to these permits. No such device had been proposed, approved, or installed prior to the diversion of water to storage. No evidence was available to support a finding that stockwatering uses had recently occurred or irrigation uses had ever occurred.
- b) Skeet Dam was almost complete (Permittee was scheduled to place a concrete cap on the dam the following week), but was impounding only a minimal amount of water below the outlet pipe elevation. No beneficial use had occurred.
- c) Construction of Pressure Reservoir was complete and while both it and Collection Reservoir were storing water collected from diffused surface runoff, facilities to divert water to storage from Willow Creek had not been constructed.

6. Starting on December 16, 2005, first the upper dam (Skeet Dam) and then the lower dam (Buz Dam) began failing due to runoff from significantly intense rainfall. Complete failure of both dams occurred on or before January 2, 2006. On June 28, 2007, Division staff made a follow-up inspection of the project and found that stabilization work on Skeet Dam and Buz Dam was underway and nearing completion. Neither dam was capable of seasonally storing water at that time. Division staff documented the findings of the investigation of Complaint (18-27-01) in a Report of Investigation dated October 3, 2007.
7. Based on the Progress Reports submitted by Permittee and Division staff's observations documented in the Report of Investigation, Permittee failed to complete construction of the project by the December 31, 2001 deadline for Permit 18257 or the December 31, 1998 deadline for Permits 19159, 19160 and 19161.
8. Permittee has never beneficially used water under Permit 18257 for the purpose of irrigation (its primary use), or for any purpose of use under Permits 19159, 19160 and 19161, and therefore has not made full beneficial uses of the water as contemplated in the permits and in accordance with the Water Code and rules and regulations of the State Water Board.
9. Permittee stated that construction progress was held up because of the following reasons:
 - a) The limited amount of time (approximately four months) available to work on the project due to winter snows and limitation for working in the streambed imposed by the Department of Fish and Game.
 - b) A lawsuit between Permittee and the County of Lassen regarding when a special use permit issued by the County for construction of an airport expired resulted in legal expenses and a temporary injunction that prevented Permittee from any construction on the property for two years (1993 – 1995). Although Permittee eventually prevailed in the legal proceedings that lasted seven years, Permittee was concerned that any precedent set by the court decision might prejudice the Permittee's land use permit for hydroelectric power generation (a beneficial use under related water right permits).
 - c) Obtaining necessary permits from the US Army Corps of Engineers, the Regional Board and the Department of Fish and Game took three years.
 - d) Design of Lake Skeet Dam required knowledge of the physical and legal location of the Permittee's property lines. Under an agreement with Bureau of Land Management (BLM) in 1994, BLM was to survey the property lines and relocate a road in exchange for an easement onto Permittee's property. BLM did not complete a survey of the property until 2004.
10. Permittee has had 23 years to construct the project and complete application of water to beneficial use. During this time Permittee constructed Buz Dam three times only to have the dam fail each time. Permittee also constructed Skeet Dam, but it too failed shortly after construction. The Division issued three time extensions for Permit 18257 and two time extensions for Permits 19159, 19160 and 19161 to complete construction of the project and application of beneficial use. The Permittee attributes delays to a lawsuit and to time required in obtaining environmental permits, yet these delays constitute at most ten of the 23 years since issuance of the permit. Permittee also attributes delays because BLM took too long to undertake a survey of Permittee's property, however Permittee could have relied on another party to complete this task and the principal party of the corporation is a Registered Civil Engineer who owns a consulting firm that does surveying work. Lastly, Permittee attributes delays because construction of the project is only possible during four months of the year due to weather limitations and Fish and Game imposed constraints. The ability of the Permittee to build dams a total of four times, is evidence that sufficient time was available to build two dams to withstand the levels of flow that have occurred several times over the past 23 years.

11. Permittee cannot continue with and complete the construction of this project because, by Division order of January 8, 2008, the Deputy Director for Water Rights (Deputy Director) denied the Permittee's latest petitions for extensions of time under Permits 18257, 19159, 19160 and 19161. The order cited that the Permittee failed to show that he: (1) exercised due diligence, (2) could not have reasonably avoided obstacles that prevented compliance with previous time requirements, and (3) would have made satisfactory progress if granted an extension of time. Permittee submitted a timely petition for reconsideration of the denial, which the State Water Board rejected by Executive Order WR 2008-0021, citing that the petition for reconsideration failed to raise substantial issues. Therefore the December 31, 2001 (Permit 18257) and December 31, 1998 (Permits 19159, 19160 and 19161) deadlines to complete construction of the project, and the December 31, 2005 (Permit 18257) and the December 31, 2003 (Permits 19159, 19160 and 19161) deadlines to complete application of water to beneficial use remain in effect.
12. Even though more than 26 years has passed since the issuance of Permit 18257, the Permittee cannot clearly define how the water will be placed to beneficial use. The final plan for the use of water for irrigation has not been identified other than an indication that the water might be used for either a golf course or to irrigate alfalfa. However, use of the land for either a golf course or irrigated agriculture is still many years away. Permittee has clearly not exercised due diligence and should be required to reevaluate his water use needs and submit a new application for a water right permit rather than rely on a permit for a 23 year-old project that is still not constructed and for which beneficial use of water has been minimal and not in compliance with the terms and conditions of the permits.

B. PERMITTEE HAS NOT APPLIED THE WATER TO BENEFICIAL USE CONSISTENT WITH THE TERMS AND CONDITIONS OF THE PERMITS

1. Progress Reports submitted by Permittee and Division staff's Report of Investigation contain evidence to support a conclusion that during the last five years, the only possible beneficial use of water by Permittee was for incidental recreation in Lake Buz under Permit 18257. However, authorization for diversion and use of water under Permit 18257 is subject to Term No. 17. Term No. 17 requires that no water shall be diverted under the permit until Permittee has installed a device, satisfactory to the State Water Board, which is capable of measuring the flow required by the conditions of the permit. Permittee has never submitted plans for a measuring device and no device was in place at the time of the October 25, 2005 inspection. Therefore any use of water under Permit 18257 was inconsistent with the terms and conditions of the permit.
2. Chapter 9, Article 3, paragraph 1611 of the California Water Code states that "If the board determines that the construction and condition of the works or the use of water therefrom are not in conformity with ... the terms of the permit, it may revoke the permit in the manner provided (under the Water Code)".

C. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMITS 18257, 19159, 19160 AND 19161 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:

1. Permittee has failed to prosecute with due diligence, and complete the work necessary to appropriate water under Permits 18257, 19159, 19160 and 19161 and has failed to apply to beneficial use water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.
2. Permittee violated Term Nos. 17 and 19 of Permit 18257, Term No. 17 of Permit 19159, and Term No. 14 of Permits 19160 and 19161.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights is proposing revocation of Permits 18257, 19159, 19160 and 19161. As required by Water Code section 1410.1, you are hereby notified that unless the Division receives a written request for a hearing, signed by or on behalf of the Permittee, the State Water Board will revoke Permits 18257, 19159, 19160 and 19161. The written request for hearing must be postmarked or delivered no later than 15 days from the receipt of this notice. You may request a hearing by delivering or mailing the request to the State Water Board at the following address within the time period provided: Division of Water Rights, P. O. Box 2000, 1001 I Street, Sacramento, CA 95812-2000.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*James W. Kassel, Assistant Division Chief
Division of Water Rights*

Dated: **JUL 14 2008**

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