

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21207

Application 30657 of **Lake Madrone Water District**
PO Box 61
Berry Creek, CA 95966

filed on **October 21, 1997**, has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source

Tributary to

Berry Creek

North Fork Feather River

thence Feather River

thence Sacramento River

within the County of **Butte**

2. Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Lake Madrone onstream Reservoir; North 722,700 feet and East 2,166,000 feet	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	27	21N	5E	MD

3. Purpose of use	4. Place of use	Section (Projected) *	Townshi	Range	Base and Meridian	Acres
Recreational Fish and Wildlife Preservation and/or Enhancement Fire Protection	At Lake Madrone S ½ of NW ¼ NW¼ of SE ¼ SW¼ of N E ¼ NE¼ of SW ¼	27	21N	5E	MD	

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 200 acre-feet per annum to be collected from March 1 to April 15 of each year.
(000005C)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(000005I)

7. The capacity of the reservoirs covered under this permit shall not exceed 200 acre-feet.
(000005N)

8. Complete application of the water to the authorized use shall be made by December 31, 2009.
(000009)

9. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the SWRCB

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law.

(0000021)

10. Permittee shall comply with the following provisions derived from the agreement between permittee and Berry Creek Water Users Incorporated (BCWU) executed on March 27, 1999, and filed with the SWRCB:

- (a) Permittee will notify BCWU in advance of planned changes in lake water level.
- (b) Permittee will not operate Lake Madrone in a manner that deprives downstream landowners along Canyon Creek of the use of water. During drought years, permittee will maintain an outflow of water at the dam which is no less than the inflow to Lake Madrone
- (c) The water in Lake Madrone is to be used for recreational purposes (swimming, fishing, and boating) and fire protection only.
- (d) Permittee is responsible for all costs of maintenance or improvements to the dam or Lake Madrone, including, but not limited to, silt removal, weed control, and valve maintenance.
- (e) If it comes to the attention of the Permittee's Board of Directors that pollution of the water in Lake Madrone or the water flowing into Lake Madrone is occurring, permittee will attempt to notify the polluter that pollution is occurring and will report the pollution to the Butte County Health Department.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

11. After the initial filling of the storage reservoirs, permittee's right under this permit extends only to water necessary to keep the reservoirs full by replacing water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

(0000040)

12. The permittee shall maintain the existing outlet pipe through the dam in proper working order

(000S001)

13. Lake Madrone shall be kept open to the public for recreational use subject to a reasonable charge for any services or facilities that are provided by permittee. Failure to allow public access may result in revocation of the permit or reduction in the amount of water that may be stored.

Permittee shall post signs at the eastern boundary of the parcel of property on which the dam is located and near the entrance to the spillway stating "Public Fishing Access." Permittee shall allow reasonable public access to the surface of Lake Madrone for fishing from the banks of the parcel on which the dam is located and shall provide access for fishing from small non-motorized craft which can be safely launched from that location.

(0000045M)

14. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage reading on or about October 1 of each year. Such readings shall be supplied to the SWRCB with the next progress report submitted to the SWRCB by permittee.

(0070047M)

(0100047M)

15. Permittee shall comply with all requirements of the Department of Water Resources Division of Safety of Dams.

(000048BM)

16. Permittee shall provide sufficient bypass through the siphons or gate valve to pass water through the dam for fishery needs downstream in compliance with the existing Cleanup and Abatement Order. Permittee shall bypass the greater of one (1) cubic-foot per second (cfs) or approximately twenty percent (20%) of the inflow. The inflow shall be calculated and recorded daily by utilizing the area capacity curve, staff gage measurements, outflow measurements, and reasonable estimates of evaporation. This will result in a one-day delay in setting flow releases.

(0000051M)

17. Permittee shall maintain a staff gage at a location satisfactory to the Chief of the Division of Water Rights and an outflow measuring device, which are suitable for determining bypass flows required by the conditions of this permit.

(0060062M)

18. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the

Sacramento-San Joaquin Delta are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the SWRCB, made after notice to interested parties and opportunity for hearing.

(0000090)

19. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

- (a) Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the SWRCB for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
- (b) Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The SWRCB shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The SWRCB will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

20. Bypass flow ordinarily shall occur only through the surface siphon valve and the overflow spillway when necessary. If, at any time, Permittee intends to discharge water through the gate valve, then Permittee must first file a Report of Waste Discharge with the California Regional Water Quality Control Board (RWQCB) pursuant to California Water Code section 13260. Thereafter, water may be diverted only during such times as all requirements prescribed by the RWQCB or SWRCB are being met. No point source discharges of waste to surface water shall be made unless Waste Discharge Requirements are issued by the RWQCB or the SWRCB.

(0290101M)

21. Permittee must comply with the conditions imposed upon Feather River Forest Homes in the judgment entered by the Superior Court for Butte County on July 7, 1933 in Cameron et al. v. Feather River Forest Homes, et al. (Superior Court No. 14014).

(0540300)

22. Permittee shall comply with Cleanup and Abatement Order issued on November 29, 1984, by the Regional Water Quality Control Board for the Central Valley Region until the first Report of Waste Discharge is filed and Waste Discharge Requirements are issued.

(0300300)

23. Permittee shall allow Berry Creek Water Users Incorporated and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0480800)

24. The SWRCB may require the release of water, which cannot be verified as having been collected to storage prior to October 1 of each year.

(0200700)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

(A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(B) The amount authorized for appropriation may be reduced in the license if investigation warrants.

(C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.

(D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.

(E) 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 SWRCB 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 SWRCB 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 SWRCB 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 SWRCB 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 SWRCB 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.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB 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 SWRCB 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.

(G) 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 Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code),

in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RESOURCES CONTROL BOARD

Chief, Division of Water Rights