

PERMIT TERM 88

Title: Upper Putah Creek - **Direct Diversion plus Storage** TERMS AND CONDITIONS FOR CONTINUATION PERMITS AND NEW PERMITS PURSUANT TO SWRCB ORDER WR 96-002 (Section 7.1 WR 96-002, pg 11-15)

When Used: For direct diversion plus storage in Putah Creek and its tributaries upstream from the Solano Project of the USBR (drainage into Lake Berryessa).

Term: Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

(1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.

(2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.

(3) Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the SWRCB. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the SWRCB, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.

(4) Permittee shall maintain a device, satisfactory to the SWRCB, which is capable of measuring water directly diverted under this permit. A satisfactory device includes: For Pumping Stations: (1) In-line flow meter having instantaneous and total flow reading capability, or (2) Proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump. For Gravity Diversions: A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements. Permittee shall maintain monthly records of direct diversion from March 1 to July 15 of each year, or such other period as may be specified with written notice to the permittee by the watermaster.

(5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.

(6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.

(7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.

(8) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:

a. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.

b. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.

c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

(10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.

(12) Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.

(13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is ____ acre-feet per annum as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this 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.

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The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

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