

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

DIVISION OF WATER RIGHTS

In the Matter of License 1598 (Application 4832) and
License 4238 (Application 12958)

Alex R. Thomas III and Mary L. Thomas

ORDER CORRECTING THE AMENDED LICENSES

SOURCE: Russian River Tributary to the Pacific Ocean

COUNTY: Mendocino

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Amended Licenses 1598 and 4238 to Alex R Thomas III and Mary L. Thomas on December 5, 2007.
2. After the Division issued the amended licenses, Division staff discovered the California Coordinates to the Point of Diversion were incorrect.
3. No change in the actual Point of Diversion is involved.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY CORRECTS AMENDED LICENSE 1598 AND AMENDED LICENSE 4238 AS FOLLOWS:

1. The description of the Point of Diversion shall be corrected on both licenses to read:

By California Coordinate System of 1983, Zone 2, North 2,185,121 feet and East 6,225,225 feet, being within SW¼ of SE¼ of projected Section 16, T15N, R12W, MDB&M.

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:**

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: JUL 15 2008

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

DIVISION OF WATER RIGHTS

In the Matter of License 1598 (Application 4832) and
License 4238 (Application 12958)

Alex R. Thomas III and Mary L. Thomas

ORDER AMENDING THE LICENSES

SOURCE: Russian River Tributary to the Pacific Ocean

COUNTY: Mendocino

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued License 1598 to Agnes C. Thomas on October 23, 1935, pursuant to Application 4832.
2. The State Water Board issued an Order dated March 28, 1949 approving changes in the point of diversion and place of use under License 1598.
3. The State Water Board issued License 4238 to Agnes C. Thomas on March 21, 1956, pursuant to Application 12958.
4. Licenses 1598 and 4238 were subsequently assigned to Alex R. Thomas III and Mary Leitem Thomas (Licensees) on February 25, 1981.
5. The State Water Board issued an Order for change in the point of diversion under License 4238 on January 26, 1983.
6. The State Water Board issued an Order for change correcting the point of diversion under License 1598 on April 17, 1992.
7. Division staff inspected the water usage and pear orchard operation made under Licenses 1598 and 4238 on September 19, 2001. The Division inspection found that the description of the point of diversion was incorrect in the licenses and needed correction. Based on photographs in the Division's files, Division staff determined that the physical location of the point of diversion had not changed. During the inspection, Division staff also found that the Licensees were irrigating acreage not authorized under the licenses.
8. By memorandum dated May 30, 2002, Division staff further evaluated the Licensees' records and found that the typical duty of water placed on pears was 3.4 acre-feet per acre annually and that Licensees' calculated acreage for the place of use at 42 acres was reasonable.
9. Based on Division staff recommendations, the Licensees filed Petitions to Change the place of use for Licenses 1598 and 4238 on May 23, 2002. The petitions seek State Water Board approval to increase the place of use from 100 acres to 142 acres.
10. Division issued a public notice for the Petitions to Change the place of use on April 15, 2005.

11. The Division rejected the May 13, 2005 protest filed by the Department of Fish and Game (DFG) after explaining in a letter of March 5, 2007 the basis of the Division's calculation of the proposed annual diversion limitation on the licenses. In the May 13, 2007 letter, the Division stated that if DFG wished to continue with its protest, it needed to submit further information in support of its protest (pursuant to Water Code section 1332). DFG did not respond.
12. On May 11, 2006, the Licensees verbally informed Division staff that they concurred that a duty of 3.4 acre-feet per acre was sufficient to meet their irrigation demand. For the authorized 100 acres of pears irrigated under License 1598 and 4238, Licensees accepted a maximum annual limit of 340 acre-feet per year.
13. Division staff recommends that an inline flow meter be installed to ensure that water is not diverted in excess of the amount allotted in the licenses and that Licensees maintain monthly records of diversion.
14. The State Water Board currently places maximum annual limits on diversions when issuing new permits and licenses and when acting on petitions regarding existing permits and licenses. Therefore, a maximum annual limit of 36 acre-feet should be placed on License 1598; a maximum annual limit of 304 acre-feet should be placed on License 4238; and a combined maximum annual limit of 340 acre-feet should be placed on both licenses. Imposition of a maximum annual cap will also ensure that approval of the expanded place of use will not result in an increase in water use above that which has historically been used under the existing licenses.
15. The State Water Board currently places a term in all new permits and licenses and, when acting on petitions, adds a term to existing permits and licenses, allowing permittees and licensees to divert the equivalent of their continuous flow allowance for any 30-day period in a shorter time for irrigation.
16. The State Water Board currently places standard terms in all new permits and licenses and, when acting on petitions, adds these standard terms to existing permits and licenses.
17. The project is exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15301, Existing Facilities. This project involves negligible or no expansion of an existing use, and there are no unresolved protests. The additional acreage has been irrigated since the 1930s. Pears were planted in the 1960s. With conservation and installation of new sprinklers and pump, the amount of water used for the entire 142 acres is less than that allowed by the original licenses. The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this Order.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY AMEND LICENSE 1598 AND LICENSE 4238 AS FOLLOWS:

1. The description of the point of division shall be corrected on both licenses to read:
By California Coordinate System of 1983, Zone 2, North 2,184,559 feet and East 6,225,524 feet, being within SW $\frac{1}{2}$ of SE $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M.
2. The following term shall be added to License 1598:
The maximum amount diverted under this license shall not exceed 36 acre-feet per year.
3. The following term shall be added to License 4238:
The maximum amount diverted under this license shall not exceed 304 acre-feet per year.

4. The following term shall be added to both licenses:

The maximum amount diverted under this license and License [1598 or 4238] shall not exceed 340 acre-feet per year.

5. The place of use under both licenses shall be changed to read:

0.4 acre within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
21.0 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
22.5 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
38.0 acres within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
34.0 acres within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
9.0 acres within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
3.5 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T15N, R12W, MDB&M
1.1 acres within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T15N, R12W, MDB&M
9.5 acres within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T15N, R12W, MDB&M
3.0 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T15N, R12W, MDB&M

142 acres total, as shown on a map on file with the State Water Board.

6. The following term shall be added to both licenses:

No water shall be diverted under this license until the licensee installs and maintains an in-line flow meter, acceptable to the Chief of the Division of Water Rights, that is capable of measuring the instantaneous diversion rate and the cumulative amount diverted under this license. Licensee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these monthly records with the triennial Report of Licensee, or whenever requested by the Division.

7. The following term shall be added to both licenses:

The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed.

8. The following standard terms shall be added to both licenses:

- The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.
- Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.
- Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.
- Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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 State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board 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.
- The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board 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 State Water Board 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.
- This license does not authorize any act that results in the taking of a threatened or endangered species or any act that 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 licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.
- If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney, Chief
Division of Water Rights

Dated:

DEC - 5 2007



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

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 12958
Page 1 of 4

PERMIT 7730

LICENSE 4238

THIS IS TO CERTIFY, That

Alex R. Thomas III and Mary L. Thomas
P. O. Box 748
Ukiah, CA 95482

have the right to the use of the waters of the **Russian River** in **Mendocino County**
tributary to the **Pacific Ocean**
for the purpose of **Irrigation use**.

Amended License 4238 supersedes the license originally issued on **March 21, 1956**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of **Permit 7730**. The priority of this right dates from **March 3, 1949**. Proof of maximum beneficial use of water under this license was made as of **January 13, 1955, April 9, 1991, and September 19, 2001** (the dates of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **one and five tenths (1.5) cubic feet per second to be diverted from May 1 to September 30 of each year. The maximum amount diverted under this license shall not exceed 304 acre-feet per year.**

The maximum amount diverted under this license and License 1598 (Application 4832) shall not exceed 340 acre-feet per year.

The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 2, North 2,185,121 feet and East 6,225,225 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

0.4 acre within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
21.0 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
22.5 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
38.0 acres within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
34.0 acres within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
9.0 acres within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 16, T15N, R12W, MDB&M
3.5 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T15N, R12W, MDB&M
1.1 acres within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T15N, R12W, MDB&M
9.5 acres within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T15N, R12W, MDB&M
3.0 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T15N, R12W, MDB&M

142 acres total, as shown on a map on file with the State Water Board.

No water shall be diverted under this license until the licensee installs and maintains an in-line flow meter, acceptable to the Division, that is capable of measuring the instantaneous diversion rate and the cumulative amount diverted under this license. Licensee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these monthly records with the triennial report of licensee, or whenever requested by the Division.

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The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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 State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board 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.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board 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 State Water Board 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.

This license does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531- 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license 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 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any license 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 licensee 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 licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:**

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: JUL 15 2008