

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

DIVISION OF WATER RIGHTS

In the Matter of License 5058 (Application 14479)

Kirk Scilacci and Michelle Scilacci

**ORDER APPROVING CHANGE IN POINT OF DIVERSION AND
ISSUING AMENDED LICENSE**

SOURCE: Coon Creek Tributary to Sacramento River

COUNTY: Placer County

WHEREAS:

1. License 5058 was issued pursuant to permitted Application 14479 on April 1, 1958, and was recorded with the County Recorder of Placer County on April 2, 1958. The State Water Resources Control Board (State Water Board) Division of Water Rights (Division) recorded this license, and subsequent orders issued thereto, in accordance Water Code section 1650.
2. The Division record of ownership for License 5058 shows the current holder of the license as Kirk Scilacci.
3. Currently, water from Coon Creek flows into Bunkham Slough, where it is diverted at Point of Diversion (POD) #2. The slough must be dredged or excavated annually to allow sufficient water to reach the pump, disturbing wildlife species within and adjacent to the slough. The existing pump is unscreened and is a potential hazard for juvenile and special-status fish. The pump will be removed from the slough and installed directly on Coon Creek at the new POD #1. A self-cleaning suction screen will be installed on the intake of the pump to prevent fish entrainment. Existing POD #1 will be abandoned.

The Licensee wants to maintain existing POD #2 in the license, but will remove the pump and cease diversion at this location. To provide the requested flexibility to use POD#2 in the future, the point of diversion will remain in the license but a fish screen will be required on all diversion facilities. The license will also have a standard condition preventing any act which results in the taking of a threatened or endangered species. In addition, the license will have a standard condition requiring that Licensee obtain a Lake or Streambed Alteration Agreement from the Department of Fish and Game (DFG) prior to instream construction or rehabilitation work.

4. On June 9, 2010, licensee filed a petition for change proposing to move the location of POD #1 by approximately 379 feet west of the current location on Coon Creek.
5. The State Water Board does not ordinarily require that notice be given or published in cases where the proposed change(s) do not have the potential to impair the water supply of other legal users of water or instream beneficial uses, except that in all cases the petitioner shall notify the DFG in writing of the proposed change(s). The petition was not publicly noticed.

6. Approval of the petition for change in POD would not change the point relative to diversion points of others or tributary sources on the same stream.
7. Although the license will have a condition requiring Licensee to obtain a Lake or Streambed Alteration Agreement with DFG for future instream work (such as dredging to restart diversion at POD#2), installation of the new pump at POD#1 has received the required authorization from DFG. A Lake or Streambed Alteration Agreement Notification received on June 10, 2010 by DFG was not processed in the statutory 60-day period, hence the project can now move forward without a formal agreement. However, DFG has indicated that the project must be the same one and conducted in the same manner as described in the notification. That includes completing the project within the proposed term and seasonal work period and implementing all mitigation and avoidance measures to protect fish and wildlife resources specified in the notification received by DFG.
8. The State Water Board has determined that the license shall be amended to include the following specific corrections or changes:
 - a. Delete POD #1 located by California Coordinate System of 1983, Zone 2, North 2,102,786 feet and East 6,731,059 feet, being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M.
 - b. Add new POD #1 located by California Coordinate System of 1983, Zone 2, North 2,102,754 feet and East 6,730,680 feet, being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M.
 - c. All diversion facilities must have an adequate fish screen.
 - d. Standard terms pertaining to the State Water Board's continuing authority, water quality objectives, protection of threatened and endangered species, and the need for a State Department of Fish and Game Lake or Streambed Alteration Agreement will be updated or added.
9. Under the California Environmental Quality Act (CEQA), Placer County Resource Conservation District (RCD) is the lead agency for preparation of environmental documentation for the project. On April 23, 2010, the RCD issued a Notice of Exemption (NOE) pursuant to Title 14, California Code of Regulations based on: Relation to Ministerial Projects Section 15300.1; Existing Facilities Exemption, Section 15301; Exceptions Section 15300.2; and Replacement or Reconstruction Section 15302. The licensee provided documentation that the project is improving an existing facility that will result in improved habitat conditions and survivability for Central Valley Steelhead and Chinook salmon within the Coon Creek watershed.

The State Water Board is a responsible agency for purposes of considering whether to approve the change petition that will allow the licensee to proceed with the proposed project. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regulations, Title 14, § 15096, subdivision. (a).) The State Water Board has considered the NOE in deciding whether to approve the petition and has determined that it will issue an NOE based on: Minor Alterations to Land Section 15304. The project will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts.

10. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal. Rptr. 346].) There is no evidence that approval of the petition will have any adverse impacts on public trust resources.
11. The State Water Board has determined the amended license does not constitute an initiation of a new right, and does not injure prior rights or the public trust resources of the State.
12. The State Water Board has delegated the authority to act on change petitions to the Deputy Director for Water Rights (Deputy Director) pursuant to Resolution No. 2007-0057. (Resolution No. 2007-0057, section 4.2.4) Resolution No. 2007-0057 authorizes the Deputy Director to redelegate this authority to the Assistant Deputy Director for Water Rights. This authority has been so redelegated.
13. The State Water Board will issue an NOE within 5 days of the date of this order.

THEREFORE, IT IS ORDERED:

The attached Amended License 5058 is issued, superseding former License 5058 issued on April 1, 1958. The priority of Amended License 5058 is September 11, 1951.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 01 2011



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 14479
Page 1 of 4

PERMIT 9332

LICENSE 5058

THIS IS TO CERTIFY, That

Kirk Scilacci and Michelle Scilacci
Scilacci Farms
45834 Heritage Ranch Road
Baker City, OR 97814

has the right to the use of the waters of **(1) Coon Creek, (2) Bunkham Slough** in **Placer County** tributary to **(1) Sacramento River, (2) Coon Creek** for the purpose of **Irrigation use**.

Amended License 5058 supersedes the license originally issued on **April 1, 1958**, 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 9332**. The priority of this right dates from **September 11, 1951**. Proof of maximum beneficial use of water under this license was made as of **June 21, 1956** (the date 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 about April 1 to about October 1 of each year. The maximum water diverted under this license shall not exceed 547.4 acre-feet per year.**

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with other vested rights.

THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

- 1) By California Coordinate System of 1983, Zone 2, North 2,102,754 feet and East 6,730,680 feet, being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M.
- 2) By California Coordinate System of 1983, Zone 2, North 2,102,386 feet and East 6,730,859 feet, being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M.

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

30 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M

120 acres total, as shown on map dated September 7, 1951, on file with the State Water Board.

The right under this license is of equal priority with the rights initiated by Application 14478 and Application 14480.

No water shall be diverted under this license until licensee has constructed a fish screen or has proposed and constructed an alternative. Any alternative must comply with the Department of Fish and Game criteria and receive their written approval. Licensee shall submit a copy of the State Department of Fish and Game's written approval of the plans and design calculations to the Division of Water Rights within 30 days from the date of the approval. Construction, operation, and maintenance of any required facility are the responsibility of the licensee. If the fish screen or any alternative is rendered inoperative for any reason, the licensee shall notify the Deputy Director for Water Rights immediately and shall restore the equipment to service as soon as possible.

(0000213)

No water shall be diverted under this license except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the California Department of Fish and Game and National Marine Fisheries Service to protect juvenile central valley steelhead and salmon species listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) and the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). Construction, operation and maintenance costs of the required facility are the responsibility of the licensee.

(0000214)

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 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 2089) 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.

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 therefor 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:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 01 2011



STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 14479

PERMIT 9332

LICENSE 5058

THIS IS TO CERTIFY, That Floyd R. Bonnifield
Lincoln, California

has made proof as of June 21, 1956
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
Coon Creek in Placer County
tributary to Sacramento River

for the purpose of irrigation use
under Permit 9332 of the State Water Rights Board and that said right to the use of said water has been
perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the
terms of the said permit; that the priority of the right herein confirmed dates from September 11, 1951;
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed one and five-tenths (1.5)
cubic feet per second to be diverted from about April 1 to about October 1 of
each year.

The equivalent of such continuous flow allowance for any thirty-day period
may be diverted in a shorter time if there be no interference with other vested
rights.

- The points of diversion of such water are located as follows:
1. due north one hundred (100) feet from center of Section 34, T13N, R5E,
MDB&M being within $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of said Section 34,
 2. due south one hundred (100) feet from center of Section 34, T13N, R5E,
MDB&M being within $NE\frac{1}{4}$ of $SW\frac{1}{4}$ of said Section 34.

A description of the lands of the place where such water is put to beneficial
use is as follows:

30 acres in $SW\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres in $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres in $NE\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
30 acres in $NW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 34, T13N, R5E, MDB&M
120 acres total

The right under this license is of equal priority with the rights initiated
by Application 14478 and Application 14480.

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 Rights Board in accordance with law and in the
interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of
diversion of said water.

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

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.

This license is granted and 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 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 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 therefor 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.

Dated: APR 1 '58

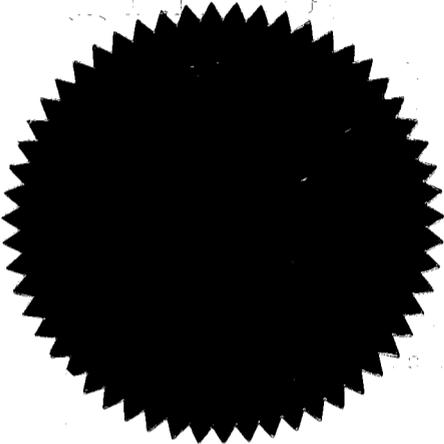
STATE WATER RIGHTS BOARD

L. K. Hill

L. K. Hill

Executive Officer

6-7-99 Asgd to Zeta Bonnielfield



LICENSE 5058	LICENSE TO APPROPRIATE WATER
STATE OF CALIFORNIA	ISSUED TO Floyd R. Bonnielfield
STATE WATER RIGHTS BOARD	DATED APR 1 1958

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