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

DIVISION OF WATER RIGHTS

ORDER WR 2010-0003-DWR

Ed Gozzarino, Richard Barnes, Tom and Beverly Tobias
William and Jennifer Marx, and Michael Thamer

LICENSES 5266 AND 5265 (APPLICATIONS 15769 AND 15770) AND PRE-1914 APPROPRIATIVE RIGHTS

SOURCE: Sugar Creek tributary to Scott River

COUNTY: Siskiyou County

ORDER AMENDING ORDER WR 2009-0062-DWR AND APPROVING 1707 PETITIONS FOR DEDICATION OF INSTREAM FLOWS AND FINDINGS ON PETITIONS FOR CHANGE

WHEREAS:

1. Sugar Creek is a tributary to the Scott River. Sugar Creek water rights have been adjudicated and are described in the Scott River Stream System Decree (Decree).

2. The Sugar Creek Flow Enhancement Project (Project) has the goal of protecting and restoring Coho salmon habitat and is part of the Statewide Coho Recovery Plan.

3. Petitions:

   On October 26, 2005, Ed Gozzarino, Richard Barnes, Tom and Beverly Tobias, William and Jennifer Marx and Michael Thamer (Petitioners) filed petitions pursuant to Water Code section 1707 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to change points of diversion and places of use under water rights listed in the Decree for the enhancement of fish and wildlife resources. Petitioners Marx and Gozzarino also sought to change the location of their diversion for consumptive use to the Darbee Ditch. These petitions are in furtherance of changes implemented under the Project.

4. The Petitioners are decreed four diversions with a total allocation of 15.9 cubic feet per second (cfs) to divert water from the locations identified in the table below. The locations of the points of diversion are specified on page 67 of the Decree.

Sugar Creek Water Diverters					
Current Owner	**Original Claimant**	**Diversion Number**	**Decreed Quantity in cfs**	**Diversion Name**	**Approximate River Mile (rm)**
Gozzarino	Bunting	181-15-B11	1.10 – 2nd priority 0.70 – surplus Total: 1.80	Bunting Ditch	1.2
Tobias/ Barnes	Tobias/ Barnes	179-15-B11	1.20 – 1st priority 1.40 – 7th priority 3.50 – 8th priority Total: 6.10	Fay Ditch	1.4
J. Marx/ B. Marx	Davis/ Peoples	178a-15-B11	0.50 – 8th priority 1.50 – 8th priority Total: 2.0 cfs	Davis/Peoples Ditch	2.0
Thamer	Darbee	173-15-B11	1.52 – 3rd priority 0.38 – 6th priority 1.20 – 8th priority 2.90 – surplus Total: 6.00	Darbee Ditch	3.3

5. Bases of Rights:

The Division's records show that Richard G. Barnes holds License 5266 (Application 15769) for direct diversion of 1.25 cubic foot per second (cfs) from March 1 to November 1 of each year for irrigation. License 5266 was issued on July 2, 1958, which predates issuance of the Decree.

The Tobias Family Trust holds License 5265 (Application 15770) for direct diversion of 2.25 cfs from March 1 to November 1 of each year for irrigation. License 5265 was issued on July 2, 1958, which predates issuance of the Decree.

Inasmuch as the Thamer, Marx and Gozzarino diversions are from ditches serving land that has no continuity to the stream system, the diversions cannot be based on riparian rights. Since there are no appropriative rights issued by the State Water Board for these diversions, the Court presumably recognized diversions based on pre-1914 appropriative rights.

Sugar Creek water rights are listed in Schedule B of the Decree. The diversion season for Schedule B water is from about April 1 to about October 15 of each year. (Decree, p. 8.) The points of measurement of the amounts of water allotted are at the point of diversion. (Decree, p. 5.)

6. Historic Streamflow Regime[1]:

Historically, stream resources in the section of Sugar Creek above the Bunting diversion at river mile (rm) 1.2 benefited from the Fay Ditch first priority right of 1.2 cfs and the Bunting second priority right of 1.1 cfs (2.3 cfs required in the stream between Darbee and Fay and 1.1 cfs from Fay to Bunting). The stream reach most critical to coho salmon rearing, however, received very little bypass flow at Bunting and only a small amount of water that naturally accrued to the stream

[1] Biological Justification to Support Proposed Changes to Points of Diversion and Purposes of Use of Decreed Water (Biological Justification), dated April 21, 2008, prepared by Department of Fish and Game (DFG), p. 4.

little bypass flow at Bunting and only a small amount of water that naturally accrued to the stream in that section. At some point in early summer, diversions into Fay Ditch typically stopped, leaving the junior right holders with the potential to divert the 1.2 cfs that had been used by Fay from the stream above the Fay Ditch (i.e., at Darbee Ditch and Davis/Peoples Ditch) provided the second priority right of Bunting (1.1 cfs) had been met. Again, this left the best coho salmon rearing habitat potentially unusable for coldwater fish and the second best rearing habitat between Darbee and Bunting diversions with a minimum flow of 1.1 cfs during the base flow period.

7. Project Goal and Description:[2]

The primary goal of the Project is to secure a commitment of a minimum of 1.2 cfs of flow below Darbee Ditch during the entire irrigation season. With this commitment, the stream below the Darbee diversion would be assured a minimum base flow of 1.2 cfs to the confluence of Sugar Creek with the Scott River (an increase of 0.1 cfs in the section from Darbee to Bunting and a 1.2 cfs increase below Bunting in the most important coho salmon rearing section). Changes in points of diversion for Bunting and Davis/Peoples and implementation of the low flow agreement that the Petitioners have entered into with the Department of Fish and Game (DFG), the Adaptive Management Agent, will result in additional flow beyond the minimum 1.2 cfs to the stream below Darbee Ditch in all but the driest of years.

Based on available information and recommendations by DFG Northern Region fisheries staff, DFG concluded that securing a minimum base flow of 1.2 cfs in Sugar Creek below the Darbee diversion would benefit and improve anadromous fish habitat for coho and steelhead by enhancing over summer rearing habitat in the creek, especially in the lowest 1.4 miles. Furthermore, because 1.2 cfs provides an improved base flow in Sugar Creek for the protection of fish and wildlife, DFG concluded that there is no adverse effect on fish and wildlife resources associated with moving the Bunting and Davis/Peoples points of diversion upstream to the Darbee Ditch, since the Fay Ditch instream dedication ensures the first priority Fay Ditch water right (1.2 cfs) would remain for instream beneficial use.during lower flow periods. Based on flow information provided, this instream dedication will begin when flows below Fay Ditch measure 10 cfs or less.

Petitioners, as a group, seek to modify all of their decreed water rights of every priority by dedicating a combined total of 6.0 cfs during certain times of the irrigation diversion season to instream beneficial use. (October 26, 2005 letter to Division from MBK Engineers.)

Streamflow in Sugar Creek will be increased due to: (a) the Darbee Ditch lining project and instream flow dedication, and (b) the Tobias/Barnes instream flow dedication.

The Project combined the four active water diversion ditches into two (the Fay and Darbee Ditches), and replaced the Darbee Ditch with pipe to the place of use in order to improve delivery efficiency.[3] In exchange, participating irrigators agreed to divert less water, leaving more water in Sugar Creek. The Project results in improved instream flows in Sugar Creek, especially during critical times (i.e., late summer and fall for over summering) and enhanced flow locations for the benefit of coho salmon and other anadromous fish. Water users have agreed to divert less than their decreed amounts. Three water rights combined in the Darbee Ditch (Thamer, Marx and Gozzarino) will divert 4.8 cfs less than the total adjudicated volume (they will divert 5.0 cfs rather than the combined adjudicated rate of 9.8 cfs), when adequate flows are present to meet all

[2] Id., pp. 4, 5.
[3] Although Gozzarino and Marx will participate in the 1707 flow dedication program when they divert at Darbee Ditch, they are retaining their original points of diversion for potential emergencies in the event of a problem with the Darbee pipeline, and for use at the end of the life of the pipeline project.

For the Marx, Thamer and Gozzarino 1707 dedications, the place of use is Sugar Creek between Darbee Ditch and the confluence of Sugar Creek with the Scott River. For the Tobias/Barnes dedication, the place of use will be Sugar Creek between the Fay Ditch and the confluence with Scott River.

Public notice of the change was issued on April 4, 2006 and no protests were received.

Darbee Ditch Lining Project:

Beginning in 2004, the Darbee Ditch pipeline replaced the earthen Darbee Ditch. The Darbee pipeline carries the combined adjudicated flow in an 18-inch pipeline. Although the pipeline can carry 7.8 cfs, a fixed opening orifice was installed at the mouth of the pipeline to limit diversions into the pipeline to a maximum of 5.0 cfs. (April 10, 2006 memorandum from Rob Donlan to Gary Black.) The conserved water is dedicated to instream use by Darbee pipeline water users (Thamer, Marx and Gozzarino), providing up to 4.8 cfs. (Ibid.)

Petitioners Thamer, Marx, and Gozzarino will also reduce or cease diversions during low flow periods and will dedicate the forgone diversions to fish and wildlife enhancement uses in Sugar Creek. The specific timing and quantity of the instream uses will be cooperatively developed by DFG and the water users through an ongoing Adaptive Management Program, which will be implemented and enforced through agreements between DFG and the Petitioners pursuant to section 1600 *et seq.* of the Fish and Game Code. DFG has submitted an agreed upon flow schedule that will form the basis of the agreements.

As part of this project, Marx and Gozzarino will be served by turnouts from the Darbee pipeline. Marx and Gozzarino have petitioned to add the Darbee Ditch as another point of diversion for their rights, while retaining their decreed diversion locations on the Davis/Peoples Ditch (Marx) and Bunting Ditch (Gozzarino).

Tobias/Barnes Project:

The Petitioners seek authorization to dedicate a portion, or all, of the Tobias/Barnes water right, depending on time period and available flow, to instream beneficial uses within Sugar Creek. Tobias/Barnes will dedicate the first priority right (1.2 cfs) for instream beneficial use during all times in which the flows below Fay Ditch are 10 cfs or less. The Tobias/Barnes petition states that the specific instream flow dedications and diversion operations will be implemented through agreements or arrangements between Sugar Creek water users and DFG through an ongoing adaptive management program, which will be implemented and enforced through agreements between DFG and the Petitioners.

8. Scott River Decree and Priority:

Any changes to the Sugar Creek flow schedule must be consistent with the Decree. Sugar Creek is listed in Schedule B of the Decree. Per the Decree, Schedule B is divided into 40 independent tributary streams or stream groups named and designated as Schedules B1 through B40. Rights set forth in each of the 40 independent tributary streams or stream groups in Schedule B are independent of all of the rights in the other streams or stream groups in Schedule B. Per the Decree, exercise of rights in Schedule B will not have an effect on rights in Schedules C and D great enough to warrant reduction of diversions when rights in Schedules C and D are not being fulfilled. Therefore the rights in Schedule B may be exercised independently from the rights in the other schedules, except that rights set forth in surplus priority class in Schedule B are junior in priority to all numbered priority classes in this decree and to the rights set forth in Paragraph 45, and diversion under said surplus priority class rights must cease when any downstream rights

except those in surplus class are not being satisfied. Surplus class diverters have a second fishery flow requirement, established in Paragraph 25, and must allow an amount equal to the amount being diverted to flow past the diversion facility for the benefit of fish.

Paragraph 45 of the Decree establishes instream flows for the Scott River within the Klamath National Forest, as set forth in the tables below. Fort Jones is located downstream of the confluence of Sugar Creek with the Scott River. Therefore, the flow schedules listed below are senior in priority to the surplus class rights of the Petitioners.

Scott River Flow Requirement Below Fort Jones					
Period Allotment, in cfs	January 200	February 200	March 200	April 150	May 150
Period Allotment, in cfs	June 1 - 15 150	June 16 - 30 100	July 1 - 15 60	July 16 - 31 40	August 30
Period Allotment, in cfs	September 30	October 40	November 200	December 200	

The Decree specifies that the flows in the table above are the minimum necessary to provide subsistence-level fishery conditions, and can occur only in critically dry years without resulting in depletion of the fishery resource. (Decree, para. 45.)

The U.S. Forest Service has a second right for instream flows within the Klamath National Forest for incremental fish flows and for recreational, scenic, and aesthetic purposes, as listed below:

Scott River Flow Requirement Below Fort Jones					
Period Allotment, in cfs	January 226	February 226	March 226	April 276	May 276
Period Allotment, in cfs	June 1 - 15 134	June 16 - 30 184	July 1 - 15 132	July 16 - 31 152	August 47
Period Allotment, in cfs	September 32	October 96	November 158	December 226	

Gozzarino and Thamer cannot divert under their surplus class rights unless all of the requirements listed above are met.

9. Dedications to Instream Flow Pursuant to Water Rights of Petitioners:

Pursuant to the Decree, the point of measurement for diversions from Sugar Creek is the site of each diversion facility (ditch) on Sugar Creek. The Petitioners seek to dedicate to the fishery water that was formerly lost as ditch losses. The Petitioners will be required to measure diversions and 1707 dedications. Water dedicated to instream flows is not available for appropriation by junior diverters.

a. First priority water may be dedicated pursuant to the rights of Tobias and Barnes, who share a joint and equal right to a total of 1.20 cfs.

b. Second priority water may be dedicated pursuant to the right of Gozzarino (originally Bunting) in the amount of 1.10 cfs.

c. Third priority water may be dedicated pursuant to the right of Thamer (originally Darbee) in the amount of 1.52 cfs.

d. There are no fourth or fifth priority water rights for which a change has been requested.

e. Sixth priority water may be dedicated pursuant to the right of Thamer (originally Darbee) in the amount of 0.38 cfs.

f. Seventh priority water may be dedicated pursuant to the rights of Tobias and Barnes, who share a joint and equal right to a total of 1.40 cfs.

g. Eighth priority water may be dedicated pursuant to the rights of Tobias and Barnes, who share a joint and equal right to a total of 3.50 cfs; J. Marx with a right to 0.50 cfs; B. Marx with a right to 1.50 cfs; and Thamer with a right to 1.20 cfs.

h. Surplus water may be dedicated pursuant to the rights of Thamer who holds a right to 2.90 cfs, and the rights of Gozzarino who holds a right to 0.7 cfs. However, such surplus water is not a factor in the low flow agreement contemplated in the agreement with DFG. (April 10, 2006 Memorandum from Robert Donlan, counsel for Petitioners, to Gary Black.)

The Petitioners petitioned to dedicate up to a total of 6.0 cfs pursuant to Section 1707 of the Water Code. The location of 4.8 cfs of the instream flow dedications are from the Darbee Ditch to the confluence with the Scott River. Some diversions will be relocated to Darbee Ditch in order to make use of more efficient diversion facilities at this location in order to implement the instream flow dedication program. The Darbee Ditch lining project resulted in 4.8 cfs less in ditch loss, thereby allowing Thamer, Marx and Gozzarino to dedicate 4.8 cfs to instream flow at this location. These Petitioners intend to continue irrigating with a portion of their rights.

The location of 1.2 cfs of the instream flow dedications are from the Fay Ditch point of diversion down to the confluence with the Scott River.

The request to dedicate water to the environment pursuant to Section 1707 of the Water Code should be approved for the rights listed in (a) through (h).

10. Dedicating water under the 1707 petitions is consistent with the Decree because the projects will be (a) operated in accordance with water rights recognized in the Decree, (b) will be subject to any seasonal diversion limits established in the Decree, and (c) not change the priorities of rights.

11. No legal users of water will be injured by the change because: (a) there were no protests asserting injury, and (b) no water users on Schedule B11 of the Decree are adversely affected because their water diversions are located either upstream or downstream of the affected stream reach. Consequently, there will be no reduction in instream flows for diversion by others on Schedule B11.

12. The Marx 1707 dedication will occur at the Darbee Ditch. Petitioners William and Jennifer Marx propose to add the Darbee Ditch point of diversion for consumptive use and retain their original point of diversion, Decree diversion 178a-15-B11, at the Davis/Peoples Ditch. The Petitioners have a 2.0 cfs eighth priority water right. The Darbee Ditch is located at Decree diversion 173-15-B11, which is roughly 1.5 miles upstream of the Davis/Peoples Ditch. This stretch of Sugar Creek is not in the first 1.4 miles recognized by DFG as the best anadromous fish summer rearing habitat.

Pursuant to this order, the Thamers will be reducing their diversions at Decree diversion 173-15-

B11 by a combined amount of 1.9 cfs when they are dedicating water to the environment pursuant to the 1707 petition. Relocation of the Marx diversion to the Darbee Ditch, as requested, results in a new 2.0 cfs diversion at the same location where the 1.9 cfs environmental dedication occurs. As described in the Project Goal and Description section 7 of this order, the Marx diversion will be reduced during low flows, per an adaptive management agreement with DFG.

13. The Gozzarino 1707 dedication will occur at the Darbee Ditch. Petitioner Ed Gozzarino proposes to add the Darbee Ditch as a second point of diversion for consumptive use and retain the original point of diversion, Decree diversion 181-15-B11, the Bunting Ditch. The Petitioner has a 2nd priority right to 1.1 cfs. The Petitioner also has a 0.7 cfs surplus flow right. The proposed new point of diversion at Decree diversion 173-15-B11 is roughly two miles upstream of the existing point of diversion. This stretch of Sugar Creek is not in the first 1.4 miles recognized by DFG as the best anadromous fish summer rearing habitat.

As above, the Thamers will be reducing their diversions at Decree diversion 173-15-B11 by a combined amount of 1.9 cfs when they are dedicating water to the environment pursuant to the 1707 petition. Relocation of the Gozzarino diversion to the Darbee Ditch, as requested, results in a new diversion of up to 1.8 cfs at the same location where the 1.9 cfs environmental dedication occurs. As described in the Project Goal and Description section 7 of this order, the Marx diversion will be reduced during low flows, per an adaptive management agreement with DFG.

14. The State Water Board finds that: (a) changing the rights for purposes of the 1707 petition, and (b) changing the point of diversion of Marx and Gozzarino to the Darbee Ditch, will not increase the amount of water that the Petitioners are entitled to use, initiate a new right, or unreasonably affect any legal user of water. The State Water Board further finds that the changes are in the public interest, will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources and will otherwise meet the requirements of Division 2 of the Water Code.

15. Good cause has been shown for granting the 1707 petitioned changes listed in finding 5(a) through (h), and changing the point of diversion of Marx and Gozzarino to the Darbee Ditch. DFG issued a Class 7, 8 and 33 Notice of Exemption (NOE) from the California Environmental Quality Act (CEQA) (Cal. Code Regs., tit. 14, §§ 15307, and 15308) for the 1707 petition project on March 29, 2007, stating that the flow enhancement project will have no significant effects on the environment.

16. Pursuant to the CEQA, the State Water Board is issuing a NOE based on: (1) small habitat restoration project (Cal. Code Regs., tit. 14, sec. 15333), (2) actions by regulatory agencies for protection of Natural Resources (Cal. Code Regs., tit. 14, sec. 15307), and (3) actions by regulatory agencies for protection of the environment (Cal. Code Regs., tit. 14, sec. 15308) for the 1707 petitions. The 1707 petitions dedicate flow to the environment.

The NOE also describes that the petitions to move the points of diversion of Marx and Gozzarino are exempt from CEQA under the existing facilities exemption. (Cal. Code Regs., tit. 14, section 15301.) The piping project was built during the period July 1, 2002 through June 20, 2004. The petitions were filed on October 26, 2005, after the changes occurred. There will be negligible or no expansion of use beyond that existing at the time of the State Water Board's determination for the Marx and Gozzarino changes in point of diversion because petitioners have already made the requested changes. Therefore, using a baseline of the time of application, they do not constitute a change for purposes of CEQA. There is no change in the place of use of water.

- The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

- There would be no significant adverse impacts on endangered, rare or threatened species or their habitat.
- There are no environmental protests.
- There are no hazardous materials at or around the project site that may be disturbed or removed, and
- The Department of Fish and Game did not identify any public trust impacts associated with 1707 petition.

17. The instream flow dedication is subject to the terms and conditions of the Scott Creek Adjudication, including limits on diversion based on priority of rights.

18. The State Water Board has delegated the authority to the Deputy Director for Water Rights to administer the duties required under CEQA for the Water Rights program, to the extent authorized under CEQA Guidelines § 15025 pursuant to Resolution No. 2007-0057, section 4.10. The Deputy Director has re-delegated this authority to the Assistant Deputy Director.

19. The State Water Board has delegated the authority to act on change petitions to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057, section 4.2.4. The Deputy Director has re-delegated this authority to the Assistant Deputy Director.

NOW, THEREFORE, IT IS ORDERED:

1. The State Water Board finds that the petitions to change the Marx and Gozzarino points of diversion to the Darbee Ditch are in accordance with applicable law insofar as the Thamer and Tobias/Barnes instream dedications and the low flow diversion reductions described in the Adaptive Management Agreements between Gozzarino, Thamer and Marx and DFG are being implemented and the flow is at least 1.2 cfs at the Fay Ditch point of diversion. The State Water Board will file a report with the court recommending approval as required by paragraph 64 of the Decree.

2. The petitions to dedicate water to instream flows pursuant to section 1707 of the Water Code are approved for the water rights listed in the following table. License 5266 of Richard G. Barnes and License 5265 of Tobias Family Trust are also modified to allow dedication of water to instream flows in accordance with this order.

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Current Owner	Original Claimant	Original Diversion Number	Quantity Available for Instream Use (cfs)	Points of Diversion
Gozzarino	Bunting	181-15-B11	1.10 – 2nd priority 0.70 – surplus Total: 1.10	181-15-B11 Bunting Ditch 173-15-B11 Darbee Ditch/a
Tobias/ Barnes	Tobias/ Barnes	179-15-B11	1.20 – 1st priority 1.40 – 7th priority 3.50 – 8th priority Total: 6.10	179-15-B11 Fay Ditch (No Change)
J. Marx/ B. Marx	Davis/ Peoples	178a-15-B11	0.50 – 8th priority 1.50 – 8th priority Total: 2.0	178a-15-B11 Davis/Peoples Ditch 173-15-B11 Darbee Ditch/a
Thamer	Darbee	173-15-B11	1.52 – 3rd priority 0.38 – 6th priority 1.20 – 8th priority 2.90 0 surplus Total: 6.00	173-15-B11 Darbee Ditch (No Change)

a/ Gozzarino and Marx diversions at the Darbee Ditch point of diversion are authorized only when any water diversion restrictions described in the Adaptive Management Agreement between Thamer, Marx and Gozzarino and DFG are being implemented, and the flow is at least 1.2 cfs at the Fay Ditch point of diversion.

3. The 1707 dedication to instream flow shall include the stream reaches set forth below. All coordinates are based on California Coordinate System of 1983, Zone 1:

- Gozzarino, Marx and Thamer – Darbee Ditch at North 2,363,629 feet and East 6,322,646 feet to confluence of Sugar Creek with Scott River at North 2,373,577 feet and East 6,335,466 feet.

- Tobias/Barnes – Fay Ditch at North 2,368,386 feet and East 6,329,940 feet to confluence of Sugar Creek with Scott River at North 2,373,577 feet and East 6,335,466 feet.

This corresponds to the following locations in the Decree:

- Gozzarino, Marx and Thamer – Darbee Ditch at diversion number 173-15-B11 which is North 2,300 feet and West 2,500 feet from SE corner of Section 15, T40N, R9W, MDB&M to confluence of Sugar Creek with Scott River.

- Tobias/Barnes – Fay Ditch at diversion number 179-15-B11 which is North 1,200 feet and West 800 feet from SE corner of Section 11, T40N, R9W, MDB&M to confluence of Sugar Creek with Scott River.

4. The combined total consumptive use and dedication to the environment pursuant to the 1707 petition under all bases of right shall not exceed the decreed quantity. The points of measurement of the total diversion shall be at the confluence of the named ditch and Sugar Creek: (a) Darbee Ditch for Thamer; (b) Darbee Ditch and Bunting Ditch for Gozzarino;

(c) Davis/Peoples Ditch and Darbee Ditch for Marx; and (d) Fay Ditch for Tobias and Barnes. Nothing in this order shall be construed as modifying the decreed diversion quantities.

5. Water set aside pursuant to the 1707 petitions is not available for appropriation. The water retains the priority of right identified in the table included in this order, vis-a-vis other persons listed in the Decree.

6. Barnes and Tobias shall use their first priority water right of 1.2 cfs for instream purposes only whenever flow in Sugar Creek below Fay Ditch is 10 cfs or less.

7. The Petitioners shall install and maintain measuring devices, satisfactory to the State Water Board, which are capable of measuring the instantaneous rate of diversion and the cumulative quantity of water: (a) available for diversion under the decreed rights, (b) diverted into the ditches for consumptive use and (c) available for diversion but allowed to remain instream pursuant to the 1707 dedications. Within 30 days of issuance of this order, Petitioners must submit a measurement plan for the review, modification and approval of the Deputy Director for Water Rights. The Petitioners shall ensure that the measuring devices are operational at all times during the diversion season.

(0510900)

8. On at least a triennial basis, starting January 1 of the third year following issuance of this order, the Petitioners shall report to the State Water Board annual diversions: (a) for consumptive purpose of use, (b) the quantity dedicated to the environment, pursuant to the 1707 petitions, and (c) the total quantity diverted under each right. No credit for instream flow dedications shall accrue for any year in which the Petitioners fail to timely document the quantity set aside for the environment. This information shall be submitted with the Report of Licensee for Licensees 5265 and 5266 in lieu of the January 1 submittal date to document the 1707 dedication for the licensed rights.

(0510900)

9. The State Water Board may supervise diversion and use of water under this order for the protection of lawful users of water and instream beneficial uses and for compliance with the conditions. The Petitioners 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 the project works to determine compliance with the terms of this order.

10. This order does not authorize any act which results in the taking of a threatened, endangered or candidate 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 applicable Endangered Species Act for the project authorized under this permit.

(0000014)

11. Nothing in this order shall be construed as finding that the Petitioners have or have not maintained their pre-1914 or post-1914 appropriative rights by continuous, beneficial use.

STATE WATER RESOURCES CONTROL BOARD

for James W. Kassel

Victoria A. Whitney
Deputy Director for Water Rights

Dated: JAN - 5 2010

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 15769 PERMIT 9931 LICENSE 5266

(OVER)

THIS IS TO CERTIFY, *That* Glenn C. Barnes and Betty P. Barnes
Star Route
Etna, California

ha ve *made proof as of* October 3, 1957 *(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of* Sugar Creek in Siskiyou County

tributary to Scott River

for the purpose of irrigation use *under Permit* 9931 *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* March 10, 1954 *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 twenty-five hundredths (1.25) cubic feet per second to be diverted from about March 1 to about November 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 point of diversion of such water is *located:*
South five hundred (500) feet and west four hundred fifty (450) feet from E¼ corner of Section 11, T40N, R9W, MDB&M, being within NE¼ of SE¼ of said Section 11.

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

40 acres within NW¼ of NE¼ of Section 23, T41N, R9W, MDB&M
25 acres within NE¼ of NE¼ of Section 23, T41N, R9W, MDB&M
10 acres within SE¼ of NE¼ of Section 23, T41N, R9W, MDB&M
25 acres within SW¼ of NE¼ of Section 23, T41N, R9W, MDB&M
100 acres total

The right under this license is of equal priority with the right under the license issued on Application 15770, Permit 9932.

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: JUL 2 1958

L. K. Hill
L. K. Hill
Executive Officer

12/30/96 assigned to Richard G. Barnes and Nancy J. Barnes (S.E.)

LICENSE 5266

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE TO APPROPRIATE WATER

ISSUED TO Glenn C. Barnes and Betty P. Barnes

DATED JUL 2, 1958

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