

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

DIVISION OF WATER RIGHTS

In the Matter of Licenses 9727 and 9728 (Applications 15017 and 15406)

California Department of Fish and Game

**ORDER REVOKING LICENSES 9727 AND 9728**

SOURCE: Butte Creek tributary to Butte Slough thence Sacramento River

COUNTY: Butte

The facts and information upon which the revocations are based are as follows:

- 1. The State Water Board issued Licenses 9727 and 9728 on April 8, 1971. The Division of Water Rights' (Division) records show C. K. Farms and Quandt-Read (Licensees) as the owners of Licenses 9727 and 9728. The licenses authorizes the Licensees to divert as follows: ←

License 9727

License 9727 authorizes direct diversion of 6 cubic feet per second (cfs) from April 15 to September 15 of each year. The total amount diverted under this license together with that diverted under License 9728 shall not exceed 5,000 acre-feet per year.

The point of diversion is located South 61° 02' 51" West 2,726.79 feet from N¼ corner of section 16, T19N, R1E, MDB&M, being within SW¼ of NW¼ of said section 16.

The place of use is 775 acres net within a gross area of 902.9 acres within sections 15, 16, 17 and 21, T19N, R1E, MDB&M.

License 9728

License 9728 authorizes direct diversion of 22.2 cfs from April 1 to November 1 of each year. The total amount diverted under this license together with that diverted under License 9727 shall not exceed 5,000 acre-feet per year.

The point of diversion is located South 61° 02' 51" West 2,726.79 feet from N¼ corner of section 16, T19N, R1E, MDB&M, being within SW¼ of NW¼ of said section 16.

The place of use is 775 acres net within a gross area of 902.9 acres within sections 15, 16, 17, and 21, T19N, R1E, MDB&M.

2. Both licenses were assigned to Worth Bayles on March 10, 1975, and reassigned to the Department of Fish and Game on October 19, 1992.
3. The Licensee filed change petitions dated March 2, 1994, requesting to modify Licenses 9727 and 9728 to instream fish and wildlife preservation and enhancement. An October 17, 1994 contact report clarifies that water would be diverted to serve the Gray Lodge Wildlife Area, and the remaining portion of both rights would stay instream.

4. The Licensee advised the Division on September 10, 1996 that it had not used water from Butte Creek during the past year in order to avoid impacts to salmon. The pumping station is not screened.
5. The triennial Report of Licensee for 1996, 1997, 1998 for License 9727 indicates that no water was used during these years. The triennial Report of Licensee for 1996, 1997, 1998 for License 9728 indicates that water was used. A note on the reports for both licenses states that the water rights were being transferred to instream flow for fish use.
6. The Report of Licensee for 1999, 2000, 2001 for both licenses indicates that no water was used during these years. A note on the reports states that the Licensee was in the process of changing the use of the licenses from irrigation to instream use for fish passage. No reports were submitted after 2001.
7. During a November 3, 2003 telephone conversation, the Licensee stated that no water has been used under these rights since the Licensee acquired the rights in 1992, a period of approximately 11 years.
8. Division staff met with the Licensee on December 2, 2003. The meeting is documented in a February 29, 2004 memorandum to files. During the meeting, the Licensee was advised that historical and proposed project descriptions must be submitted, as well as documentation of past water use under each of the water rights and engineered maps for the petition projects. Division staff advised the Licensee that our records indicate that since the Licensee obtained the rights, no water has been diverted and put to beneficial use under these water rights. Water right licenses may be revoked for non-use for a period of five years. Division staff requested that the Licensee show cause for the delay in using water. The Licensee stated that water was not diverted due to potential impacts to salmonids.
9. Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."
10. On February 27, 2004, the Division requested that the Licensee provide the following information by April 13, 2004:
  - a. Complete historical and proposed project descriptions under each water right.
  - b. Engineered maps of the proposed projects subject to the change petitions.
  - c. Documentation of past water use, including the amount of water that has been diverted under each water right for the most recent five years of use.
  - d. Justification for the delay in using the water authorized under each water right. The Licensee has previously indicated that no diversion has occurred since 1994.
11. On April 15, 2004 the Licensee withdrew its change petitions.
12. The Licensee's April 15, 2004 submittal did not provide the requested documentation of past water use, including the amount of water that had been diverted under each water right for the most recent five years of use. The Licensee did not provide any records showing water diversion since acquisition of the water rights.

The Licensee's April 15 letter provided an overview of post-1994 restoration activities on Butte Creek that affected the Licensee's ability to exercise the subject water rights. The ongoing

restoration activities required the Licensee to change its water use from Butte Creek direct diversions to purchased water supplies for the Howard Slough Unit of the Upper Butte Basin Wildlife Area (UBBWA).

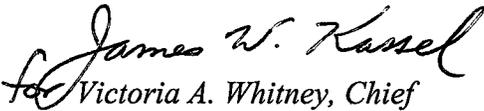
13. On February 6, 2007, the Licensee informed the Division that it has not yet analyzed its water rights on Butte Creek to decide how to restructure the licenses (via the petition process) for fish restoration purposes. The Licensee did not provide any records showing that it has diverted water since acquisition of the water rights.
14. On May 21, 2007, Licensee was provided notice by certified mail of the proposed revocation. The notice provided the Licensee the opportunity to object to the proposed revocation and request a hearing. The Licensee filed a timely request for hearing, but subsequently indicated that inclusion of specific language in the order on revocation would resolve its concerns. The requested language is included in the last paragraph of this order.

Based on the above facts, the Division concludes that:

1. Licensee has failed to observe the terms and conditions of Licenses 9727 and 9728.
2. Licensee has not, or has ceased to, put the water granted under Licenses 9727 and 9728 to a useful or beneficial purpose.
3. Licensee has not applied the water to beneficial use for at least five consecutive years. Licensee's water right should, therefore, be revoked pursuant to Water Code section 1675. The unused water should revert to the public and be regarded as unappropriated public water pursuant to Water Code section 1675.

**Therefore, it is ordered** that Licenses 9727 and 9728 are hereby revoked by the State Water Board pursuant to Water Code section 1675, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability. In revoking these licenses, the Board recognizes the unique value of Butte Creek to anadromous fish species, and in particular to the State and federally-listed threatened spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and the federally threatened Central Valley steelhead (*Oncorhynchus mykiss*). In making this recognition, the Board provides notice that any new appropriation from Butte Creek or its tributaries must demonstrate compatibility with the conservation of anadromous fish species including, but not limited to the spring run Chinook and Central Valley Steelhead. In addition, because of the State and federally listed species within this watershed, any applications for appropriation must be in compliance with both the California Endangered Species Act (CESA) and Federal Endangered Species Act (ESA), and any appropriation may require incidental take authorization from NOAA Fisheries and/or the California Department of Fish and Game.

## STATE WATER RESOURCES CONTROL BOARD

  
for Victoria A. Whitney, Chief  
Division of Water Rights

Dated: **JUL 14 2008**



STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## License for Diversion and Use of Water

APPLICATION 15406

PERMIT 9803

LICENSE 9728

THIS IS TO CERTIFY, That

C. K. FARMS AND QUANDT-READ *asgs*  
c/o CARL QUANDT,  
1621 NEAL DOW AVENUE, CHICO, CALIFORNIA 95926

HAVE made proof as of NOVEMBER 12, 1970 (the date of inspection)  
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of  
BUTTE CREEK IN BUTTE COUNTY

tributary to BUTTE SLOUGH THENCE SACRAMENTO RIVER

for the purpose of IRRIGATION USE  
under Permit 9803 of the Board and that the right to the use of this water has been perfected  
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the  
priority of this right dates from JULY 8, 1953 and that 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 TWENTY-TWO AND TWO-TENTHS (22.2) CUBIC FEET PER SECOND,  
TO BE DIVERTED FROM APRIL 1 TO NOVEMBER 1 OF EACH YEAR. THE EQUIVALENT OF SUCH  
CONTINUOUS FLOW ALLOWANCE FOR ANY 30-DAY PERIOD MAY BE DIVERTED IN A SHORTER  
TIME IF THERE IS NO INTERFERENCE WITH OTHER VESTED RIGHTS.

THE TOTAL AMOUNT DIVERTED UNDER THIS LICENSE TOGETHER WITH THAT DIVERTED UNDER  
ANY LICENSE ISSUED PURSUANT TO APPLICATION 15017 SHALL NOT EXCEED 5000 ACRE-  
FEET PER YEAR.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

SOUTH 61° 02' 51" WEST 2,726.79 FEET FROM N1/4 CORNER OF SECTION 16, T19N, R1E,  
MDB&M, BEING WITHIN SW1/4 OF NW1/4 OF SAID SECTION 16.

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

775 ACRES NET WITHIN A GROSS AREA OF 902.9 ACRES WITHIN SECTIONS 15, 16, 17,  
AND 21, T19N, R1E, MDB&M, AS SHOWN ON MAP FILED WITH STATE WATER RESOURCES  
CONTROL BOARD.

LICENSEE SHALL BYPASS AT THE POINT OF DIVERSION 10 CUBIC FEET PER SECOND  
OR THE NATURAL FLOW OF THE STREAM WHENEVER IT IS LESS THAN 10 CUBIC FEET PER  
SECOND AT ALL TIMES DURING THE PERIOD FROM NOVEMBER 1 OF EACH YEAR THROUGH  
MAY 31 OF THE SUCCEEDING YEAR TO MAINTAIN FISH LIFE.

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

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 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 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.

is 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 8 1971

STATE WATER RESOURCES CONTROL BOARD

K. L. Woodward  
Chief, Division of Water Rights