

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

ORDER WR 2012-0007-EXEC

In the Matter of Permit 11356 (Application 12178)
Fallbrook Public Utility District

ORDER APPROVING PETITION FOR EXTENSION OF TIME

SOURCE: Tucolota Creek

COUNTY: San Diego

BY THE BOARD:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 11356 to the Fallbrook Public Utility District (Fallbrook or Permittee) on May 2, 1958, pursuant to Application 12178. The permit was subsequently assigned to the U.S. Bureau of Reclamation on June 18, 1974. The permit was transferred back to Fallbrook on February 10, 1999. The permit authorizes storage of 10,000 acre-feet per annum (afa) to be collected from November 1 of each year to June 1 of the succeeding year. The place of use is 226,665 acres within a gross area of 920,472 acres within the boundaries of the San Diego County Water Authority (Water Authority).
2. The permit requires that construction work be completed by December 31, 1990 and that the water be applied to the authorized use by December 31, 1996.
3. Permittee requested, and on February 2, 1998, the Division granted, an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required that water be fully used by December 31, 2008.
4. On December 18, 2008, Permittee filed a petition for an extension of time within which to commence or complete construction work or apply water to beneficial use. The petition fee was paid. Permittee is requesting a 40-year extension of time.

Permittee is a member of the Water Authority, which in turn is a member of the Metropolitan Water District of Southern California (MWD). Water under Permit 11356 is stored in Lake Skinner, an existing 44,000 af reservoir owned and operated by MWD. Lake Skinner is used primarily as a regulating reservoir to deliver imported water from the Colorado Canal and the Diamond Valley Reservoir to a water treatment plant adjacent to Lake Skinner. After treatment, water is delivered to the nearby aqueducts that serve Fallbrook and the Water Authority. The petition form indicates that 1,261 af of water had been put to beneficial use.

The petition indicates that the only reason that full use has not yet occurred is weather. Due to the flashy nature of local hydrology, many years are dry and of limited productivity. Permittee

diverts water to storage pursuant to the permit whenever and to the extent there is water available to do so.

5. Public notice of the request for an extension of time was issued on February 23, 2009 and no protests were received.
6. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.
7. During the original development period under the water right, Permittee did not construct the authorized facility. On November 20, 2001, the Division approved a change in source, point of diversion and place of use in order to change the authorized storage facility to MWD's Lake Skinner and change the place of use to the Water Authority's service area.

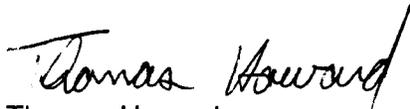
Storage could not be initiated, however, until Permittee entered into an agreement with MWD and the Watermaster appointed by the federal District Court. Lake Skinner matters are vetted through the Watermaster Steering Committee, which consists of the major Santa Margarita River water users, and are the subject of Court required notice and review. On February 16, 2005, the Court approved the agreement with MWD. Water use under the permit began on February 18, 2005. (June 28, 2011 letter from Permittee to Division.) Thus, Permittee has shown that due diligence has been exercised during the most recent time extension period.
8. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permittee could not store water in Lake Skinner until the federal District Court authorized it to do so. This issue has been addressed.
9. Permittee has shown that satisfactory progress will be made if a time extension is granted. Permittee has provided hydrologic data projecting that full beneficial use will occur if a water year similar to the 1980 water year occurs.
10. Permittee has shown good cause for the time extension.
11. On October 25, 1999, Permittee adopted a Mitigated Negative Declaration (MND) (SCH No.99061086) for the Lake Skinner Project to comply with the California Environmental Quality Act. On April 28, 2003, Permittee approved an Addendum to the MND and concurrently issued a Notice of Exemption for the Change Petition described above. In May of 2009, Permittee issued a Second Addendum to the MND for the Petition for Extension of Time. On June 26, 2009, Permittee filed a Notice of Determination (NOD) with the State Clearinghouse and the County of Riverside for the MND as it related to the time extension petition. Concurrently, Permittee filed a Notice of Exemption for the extension of time with the State Clearinghouse and the County of Riverside, citing the common sense exemption (Guidelines § 15061(b)(3)). No mitigation measures were included in the Second Addendum.
12. The State Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to

the environment. The State Water Board will file an NOD within five days from the issuance of this order.

13. A term has been added to require measurement of water diverted under the permit to comply with Water Code section 1605.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD HEREBY APPROVES THE PETITION FOR EXTENSION OF TIME. THE ATTACHED AMENDED PERMIT, WHICH INCORPORATES THE TIME EXTENSION, IS ISSUED.

STATE WATER RESOURCES CONTROL BOARD



Thomas Howard
Executive Director

Dated: **MAY 25 2012**

Attachment

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

DIVISION OF WATER RIGHTS

AMENDED PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 11356

Application 12178 of

Fallbrook Public Utility District
P.O. Box 2290
Fallbrook, CA 92088

Therefore, **Application 12178** filed on **November 28, 1947** has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: Tucalota Creek <hr/> <hr/> <hr/>	Tributary to: Santa Gertrudis Creek thence <hr/> Murrieta Creek thence <hr/> Santa Margarita River thence <hr/> Pacific Ocean <hr/>
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within the County of San Diego

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 6	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,157,944 feet and East 6,311,209 feet	SW ¼ of SE¼	3	7S	2W	SB

Location of place of storage

By California Coordinate System of 1983 in Zone 6	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Lake Skinner North 2,157,944 feet and East 6,311,209 feet	SW ¼ of SE¼	3	7S	2W	SB

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Municipal						
Domestic	920,472 acres within the boundaries of the San Diego County Water Authority as shown on map dated February 2, 2005, filed with the State Water Board.					
Irrigation	A net 226,665 acres within a gross acreage of 920,472 acres within the boundaries of the San Diego County Water Authority as shown on map dated February 2, 2005, filed with the State Water Board.					

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **10,000** acre-feet per annum to be collected from **November 1** of each year to **June 1** of the succeeding year. (0000005C)
6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (0000005I)
7. Complete application of the water to the authorized use shall be made by December 31, 2048. (0000009M)
8. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code (Water Code), supplemented by any additional information that may be required by the State Water Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein. (0000029A)
9. For the protection of downstream percolation and prior rights holders, this permit does not authorize diversion of:
 - (a) the initial 40 acre-feet per month of the natural inflow to Lake Skinner.
 - (b) when natural inflow is greater than 40 acre-feet per month, the percentage of such inflow which is equal to $109.3 \times e^{-0.002318Q}$, where Q is the monthly inflow.

Permittee shall be required to release additional water to the extent that these measures are insufficient to supply downstream diverters under prior rights. (0000051M)
10. Permittee shall maintain the existing outlet pipe for Lake Skinner Reservoir in proper working order. (0000000S)
11. A device capable of measuring bypass flows required by the conditions of this permit shall be properly maintained. Records of the amount of water diverted, withdrawn for use, and bypassed shall be maintained by Permittee and provided with the Progress Reports by Permittee. (0060062BM)

12. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue. (0000025)
13. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)
14. The issuance of this amended permit shall not be construed as placing a limitation on any riparian right or decreed right to the waters of the Santa Margarita River held by the permittee or any user of the water appropriated hereunder. (0000115M)
15. In order to prevent degradation of the quality of water, Permittee shall comply with Water Code Section 13260 and any waste discharge requirements imposed by the California Regional Water Quality Control Board, San Diego Region, or by the State Water Board, with respect to water diverted to storage pursuant to this permit. Failure of Permittee to comply with this term will subject the permit to revocation, after opportunity for hearing. (0290101)
16. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Chief, Division of Water Rights. (0000030)
17. The State Water Board reserves jurisdiction over this permit to impose further conditions in the public interest pursuant to Water Code Sections 1243, 1243.5, and 1257, and pursuant to the Board's public trust authority to include measures necessary to mitigate significant environmental impacts of the project. All such conditions and measures shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution. Action by the Board will be taken only after notice to interested parties and an opportunity for hearing. (000000M)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of

diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee 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 permit and to determine accurately water use as against reasonable water requirements 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 permittee 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.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee 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.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or candidate 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 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 state and federal Endangered Species Acts for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605. (0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game. (0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit 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 1391. Every permit 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 permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, 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 permit 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 permittee 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 permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy
Deputy Director for Water Rights

Dated: May 25 2012