

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

In the Matter of Permit 17399A (Application 24522A)

Kurt Ashurst

ORDER APPROVING EXTENSION OF TIME AND AMENDING THE PERMIT

SOURCE: Russian River

COUNTY: Mendocino

WHEREAS:

1. Permit 17399A was issued to F. Kennedy Puccetti and Beverley A. Puccetti on January 11, 1984, and subsequently assigned to Kurt Ashurst, pursuant to Application 24522A.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board (SWRCB) on June 27, 2000.
3. The permittee has proceeded with diligence and good cause has been shown for extension of time. Public notice of the request for extension of time was issued on September 15, 2000 and no protests were received.
4. The SWRCB has determined that the petition for extension of time does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. Additionally, the permittee may be required to meet Fish Screening requirements administered by the California Department of Fish and Game (DFG). Appropriate standard permit terms, advising the permittee of possible related obligations or requirements, will be added to Permit 17399A.
6. There is the possibility that buried archeological deposits may be present and accidental discovery could occur. In compliance with the California Environmental Quality Act, which states that a Lead Agency is required to make a provision for historical or unique archeological resources accidentally discovered during construction or operation of

projects, a term should be included in the permit requiring notification of the Chief of the Division of Water Rights (Division) if project activities uncover any buried archeological materials.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 17399A IS AMENDED TO READ AS FOLLOWS:

1. Conditions 7 and 8 of Permit 17399A are amended to read:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2011.

(0000009)

2. The following Endangered Species, Fish Screening Requirements and Archeological conditions are added to Permit 17399A.

This permit 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 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)

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

(0000213)

Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and

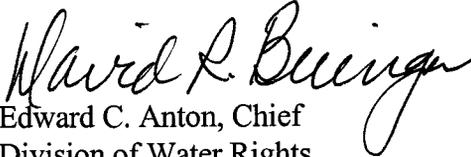
split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division.

(0000215)

3. All other terms and conditions of Permit 17399A are still applicable.

Dated: **OCT 31 2001**

STATE WATER RESOURCES CONTROL BOARD

for 
Edward C. Anton, Chief
Division of Water Rights

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

ORDER

APPLICATION 24522A PERMIT 17399A LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT

1. Permit 17399A was issued to F. Kennedy Puccetti and Beverley A. Puccetti on January 11, 1984 pursuant to Application 24522A.
2. Permit 17399A was subsequently assigned to Kurt W. and Catherine Ashurst.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
4. The permittee has recently acquired the project and reasonable cause has been shown for said extension of time.
5. Permit Condition 12 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE December 31, 1993 (000008)

2. Condition 7 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE December 31, 1994 (000009)

3. Condition 12 of the permit be amended to read:

Pursuant to California 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 the State Water Resources Control 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 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 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 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 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)

Dated: FEBRUARY 26 1990


Walter G. Pettit, Chief
Division of Water Rights

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

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 17399A

Application 24522A of F. Kennedy Puccetti and Beverley A. Puccetti *over*
1320 University Road, Hopland, California 94559

filed on January 11, 1974, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

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

1. Source:

Tributary to:

Russian River

Pacific Ocean

| 2. Location of point of diversion: | 40-acre subdivision of public land survey or projection thereof | Section | Township | Range | Base and Meridan |
|--|---|---------|----------|-------|------------------|
| Direct Diversion North 2,000 feet and and West 350 feet from SE corner of Projected Section 18 | NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 18 | 13N | 11W | MD |
| Storage & Rediversion North 1,500 feet and East 2,500 feet from SW corner of Projected Section 17 | NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 17 | 13N | 11W | MD |

County of Mendocino

| 3. Purpose of use: | 4. Place of use: | Section | Township | Range | Base and Meridan | Acres |
|--------------------|------------------|---------|----------|-------|------------------|-------|
| Irrigation | SE $\frac{1}{4}$ | 17 | 13N | 11W | MD | 22 |
| | SW $\frac{1}{4}$ | 17 | 13N | 11W | MD | 18 |
| | | | | | Total | 40 |
| | | | | | | |
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The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (A) by direct diversion: 0.67 cubic foot per second from May 15 to November 15 of each year. and (B) by storage: 7 acre-feet per annum to be collected from November 15 of each year to May 15 of the succeeding year.

The total amount of water to be taken from the source for all uses under this permit and/or in combination with Permit 17399B shall not exceed 87 acre-feet per water year of October 1 to September 30. (0000005)

6. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed. (0000027)

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.

The maximum rate of diversion to offstream storage shall not exceed 0.67 cubic foot per second. (0000005)

7. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

8. Construction work shall be completed by December 1, 1986. (0000008)

9. Complete application of the water to the authorized use shall be made by December 1, 1987. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the 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 the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses, prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (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) to 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 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 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 Board determines, after notice to affected parties and opportunity for hearing, that such action takes into account the public interest and is necessary to protect public trust uses. All such actions shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the 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 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)

14. 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)

15. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee. (0000063)

16. For the protection and preservation of fishlife and the maintenance of water-related recreational uses, permittee shall divert only when the flow in the Russian River exceeds 150 cubic feet per second and only at a rate not exceeding said excess, ceasing all diversion when the flow in the river is 150 cubic feet per second or less. River flows shall be measured at the nearest U.S.G.S. Gaging Station on the river. (0140068)

17. Availability of water for appropriation under this permit during the critical period of July 1 through October 31 is dependent upon water remaining available under the 10,000 acre-foot per annum allocation of water from Coyote Valley Reservoir (Lake Mendocino) for use in the Russian River Valley in Sonoma County. If subsequent studies show that the above-mentioned allocation has been fully used before use is completed under this permit, a license shall be issued only for the amount of water, if any, which has been put to use under this permit and which is included in the allocation. (0000081)

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).

Dated: JANUARY 11 1984

STATE WATER RESOURCES CONTROL BOARD

Raymond Wash

Chief, Division of Water Rights

5-8-87 Asgd to Diana L. Ford
12-5-88 Asgd to Kurt W. Ashurst and Catherine L. Ashurst