

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

**ORDER**

APPLICATION 27773 PERMIT 19127 LICENSE \_\_\_\_\_

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE  
AND AMENDING THE PERMIT

**WHEREAS:**

1. Permit 19127 was issued to David G. DeMera on March 6, 1984 pursuant to Application 27773.
2. Permit 19128 was subsequently assigned to Mill and Sulphur Creek Power Plant Partnership.
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 proceeded with diligence and good 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 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE  
WATER TO THE PROPOSED USE  
SHALL BE MADE ON OR BEFORE

December 31, 1995

(0000009)

2. 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.

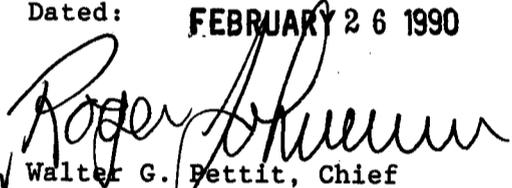
The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

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

P 19127

3-15-85

Airgd to Mee + Sulphur Creek Power Plant Partnership

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

## PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19127

Application 27773 of David G. DeMera *(over)*  
Star Route 116A, Carlotta, California 95528

filed on June 14, 1983, 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:

(1) Sulphur Creek

Mill Creek thence

Van Duzen River

(2) Mill Creek

Van Duzen River

2. Location of point of diversion:

	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridan
(1) South 2,000 feet and East 1,500 feet from NW corner of Section 15	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	15	1N	5E	H
(2) South 2,100 feet and East 2,000 feet from NW corner of Section 15	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	15	1N	5E	H

County of Humboldt

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridan	Acres
Power	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	11	1N	5E	H	

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 25 cubic feet per second to be diverted from October 1 of each year to June 15 of the succeeding year. (0000005)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
8. Construction work shall be completed by December 1, 1987. (0000008)
9. Complete application of the water to the authorized use shall be made by December 1, 1988. (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. The equivalent of the continuous flow allowance for any 14-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed. (0000021)

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. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, North Coast Region, or by the State Water Resources Control Board.
- Failure of permittee to comply with this term will subject the permit to revocation, after opportunity for hearing. (0000100)
17. Water diverted under this permit is for nonconsumptive uses and is to be released to Van Duzen River within NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 11, T1N, R5E, HB&M. (0000111)
18. For the protection of fish and wildlife, permittee shall all year bypass a minimum of 0.25 cubic foot per second in Mill Creek and 0.25 cubic foot per second in Sulphur Creek, provided that the combined flow downstream from the confluence of Mill and Sulphur creeks shall not be less than 1.5 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amounts. The diversion structures shall be constructed so that the required minimum releases are bypassed automatically and continually. (0140060)
19. The combined streamflow release shall be monitored by a recording gage located at a site to be agreed upon by the California Department of Fish and Game downstream from the confluence of Mill and Sulphur creeks. The daily record of maximum and minimum flows shall be provided to the California Department of Fish and Game annually by December 31 of each year for the preceding October 1 - September 30 water year. (0140500)
20. The proposed powerhouse water discharge area (tail race) shall be designed and constructed in such a way as to not impact recreational boating. (0000999)
21. All area denuded for project construction shall be reseeded with plant species of value to wildlife. Denuded slopes shall be covered with a mulch or other protective reseeding technique as soon as practicable after active work at the site. Slope protection shall be repeated as necessary to ensure erosion prevention. (0400500)
22. Transmission lines shall be designed and constructed so that they are not a hazard to raptors. (0400500)
23. Instream construction shall be limited to the low flow period from July through September. (0000999)
24. If unforeseen damages occur to fish and wildlife because of project construction or operation, permittee shall modify project facilities or operations as deemed necessary by the Department of Fish and Game and the U. S. Fish and Wildlife Service. (0400500)
25. Permittee shall, for the life of the project, permit access without prior notification to agents of the Department of Fish and Game and U. S. Fish and Wildlife Service for the purpose of ensuring proper operation and maintenance of fish and wildlife protective measures. (0000999)

26. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Section 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications. (000 I 001)

27. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission Requirements. (000 J 001)

**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: MARCH 6 1984

STATE WATER RESOURCES CONTROL BOARD

*Raymond Wash*

Chief, Division of Water Rights