STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20063

(over)

Application 28465 of Malacha Power Project, Inc.

P.O. Box 250, Fall River Mills, California 96028

filed on May 29, 1985, 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: Pit River

Tributary to: Sacramento River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town-ship	Range	Base and Meridan
North 2470 feet and East 2080 feet from SW corner of Section 27	NE¼ of SW¼	27	37N	7E	MD

County of Lassen

3. Purpose of use:	4. Place of use:	Section	Town-ship	Range	Base and Meridan	Acres
Power	Muck Valley Power Plant within SW¼ of NW¼	11	36N	6E	MD	

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 700 cubic feet per second to be diverted from January 1 to December 31 of each 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 31, 1990. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1999. (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 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)

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. During the season specified in this permit, the rate of diversion and use of water under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the rate of diversion and use specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the rate of diversion and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the Board.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021)

15. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)

16. For the protection of fish and wildlife, permittee shall at all times bypass a minimum flow of 50 cubic feet per second or the natural streamflow, whichever is less. (0140060)

17. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

18. Permittee shall, prior to construction, file a Report of Waste Discharge pursuant to Water Code Section 13260 with the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) and shall comply with all Waste Discharge Requirements issued by the Regional Board. If the Regional Board waives issuance of Waste Discharge Requirements, the permittee shall comply with Parts I and II of the "Guidelines for Protection of Water Quality During Construction and Operation of Small Hydro Projects" (Guidelines) as contained in the Water Quality Control Plans of the Central Valley Basin.

Specific requirements set forth in this permit shall prevail over any specific or general requirements in the referenced Guidelines in the event of conflict.

When complying with the Guidelines, pursuant to this condition, the permittee shall not commence construction until the Erosion Control Plan and any baseline data required by the Guidelines have been submitted to and approved in writing by the Regional Board; and before commencing sluicing operations, the permittee shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan. (0000102)

19. Water diverted under this permit is for nonconsumptive use and is to be released to the Pit River within the SW¼ of NW¼ of Section 11, T36N, R6E, MDB&M. (0000111)

20. Permittee shall install and maintain a trash rack, satisfactory to the California Department of Fish and Game, at the diversion intake structure. (0360500)

21. Prior to construction of the diversion structure, permittee shall prepare and receive approval from the U.S. Bureau of Land Management, the California Department of Fish and Game and the California Regional Water Quality Control Board-Central Valley Region of a specific plan for the release of silts, sands and gravel from the diversion structure. Such plan shall be incorporated into the design and operation of project facilities. (0360300)

22. Electric utility and transmission lines shall be designed in accordance with the U.S. Fish and Wildlife Guidelines for protection of raptors. (0360500)

23. Permittee shall prepare a wildlife mitigation plan, in consultation with the U.S. Bureau of Land Management, U.S. Fish and Wildlife Service and California Department of Fish and Game, to provide animal crossings every 300 feet along the exposed penstock. Animal crossing design shall be approved by the California Department of Fish and Game, the U.S. Bureau of Land Management and the U.S. Fish and Wildlife Service. The plan shall be implemented prior to diversion of water under this permit. (0400500)

24. The diversion pipeline and its appurtenances shall be buried or bermed where possible along its path to ensure that adverse impact on deer routes and long-term adverse environmental impacts of the pipeline will be minimal. (0360500)

25. In the oak-woodland zone, permittee shall restrict the width of the penstock construction corridor to a maximum of 50 feet. (0400500)

26. In the oak-woodland zone, permittee shall flag and protect from damage as many oak trees as possible that are 12 inches or greater in diameter breast height and located in the penstock corridor. In the oak-woodland zone outside of the penstock corridor, oak trees 12 inches or greater in diameter breast height shall be removed only when absolutely necessary. (0400500)

27. Areas disturbed by project construction shall be revegetated in accordance with methods approved by the U.S. Bureau of Land Management. (0400500)

28. If previously unidentified archeological historic resources are discovered during construction, all land clearing or disturbing activities affecting these resources shall be terminated. A qualified archeologist, in consultation with the State Historic Preservation Office and the California Indian Heritage Council, shall document the resources discovered, determine the significance of potential adverse effects, and provide suitable mitigation to avoid or reduce potential impacts.

Unsurveyed areas resulting from expansion of the project or realignment of the surface facilities or related project features shall be evaluated by a qualified archeologist in consultation with the State Historic Preservation Office and the California Indian Heritage Council. (0380500)

29. In accordance with Section 1603 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. Permittee shall comply with all terms and conditions of the Section 1603 permit intended to prevent construction impacts which would be deleterious to instream uses. (0360500)

30. Permittee shall, prior to construction, obtain a U.S. Army Corps of Engineers 404 Permit and shall comply with all terms and conditions intended to prevent construction impacts which would be deleterious to instream uses. (0360300)

31. Permittee shall consult and coordinate with the U.S. Bureau of Land Management regarding the visual quality mitigations necessary to meet visual quality objectives. (0360300)

32. To protect visual quality, project facilities, including the powerhouse, exposed portions of the penstock, and transmission line towers, shall be constructed of materials or painted with colors that will blend with the surrounding landscape. (0400500)

33. Vegetative screening with native species shall be used where necessary to meet U.S. Bureau of Land Mangement visual management criteria. (0400300)

34. After use, temporary access roads on construction areas shall be regraded to conform with the surrounding landscape. (0400500)

35. Vegetation removal along the transmission line corridor shall not exceed 65 feet in width and the corridor edges shall be sculptured to reduce visual contrasts. (0400500)

36. Permittee shall consult with appropriate state and local officials and comply with requirements for the handling, storage, and use of explosive materials required during construction. (0400300)

37. Permittee shall specifically consult with the California Department of Transportation and obtain all necessary permits. (0360300)

38. 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 under this permit 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 Sections 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. (000I001)

39. 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.] (000J001)

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: MAY 1 1987

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh

Chief, Division of Water Rights