

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Permit 20185 (Application 28924)

Kenneth Nakamura

ORDER REVOKING WATER RIGHT

SOURCE: McKinney Creek

COUNTY: Calaveras

WHEREAS:

1. Kenneth Nakamura (Water Right Holder) is the water right holder or authorized agent for the water right holder of Water Right Permit 20185.
2. On February 14, 2012, the Water Right Holder requested that the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), revoke Water Right Permit 20185.
3. By signing the voluntary request for revocation, Water Right Holder waived the right to the hearing and notice requirements set forth in Water Code sections 1410 et seq.
4. The State Water Board has delegated the authority to revoke water rights to the Deputy Director of the Division pursuant to Resolution No. 2007-0057. The Deputy Director has redelegated this authority to the Assistant Deputy Director and Program Managers, pursuant to redelegation order dated October 4, 2007.

THEREFORE, IT IS ORDERED THAT WATER RIGHT PERMIT 20185 IS HEREBY REVOKED, 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.

It is Water Right Holder's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Water Right Holder is hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the points of diversion identified in this water right permit may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, Water Right Holder should consult with the Department of Fish and Game and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Water Right Holder must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Water Right Holder shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
Matt McCarthy, For

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUN 04 2012

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 20185 (Application 28924)
Kenneth Nakamura

**ORDER APPROVING EXTENSION OF TIME
AND AMENDING THE PERMIT**

SOURCE: McKinney Creek
COUNTY: Calaveras

WHEREAS:

1. Permit 20185 was issued to Norman Longaker and Violet Longaker on December 16, 1987, and subsequently assigned to Kenneth Nakamura, pursuant to Application 28924.
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 July 5, 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 by the Division within the protest period.
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. Permit 20185 includes Standard Permit Terms 47 and 51, requiring the maintenance of annual staff gage measurements and possible release of stored water to the holders of License 6204 (Jack Kessler and Glenda Kessler). By letter of February 2, 2002, Jack Kessler and Glenda Kessler indicated their agreement to the removal of these terms from Permit 20185. Thus, Conditions 14 and 15 will be deleted from Permit 20185.
6. 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 obtain a Stream/Lake Alteration Permit from the California Department of Fish and Game. Appropriate standard permit terms, advising the permittee of possible related obligations or requirements, will be added to Permit 20185.
7. 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 condition should be included in the permit requiring notification of the Chief of the Division of Water Rights if project activities uncover any buried archeological materials.

E
D

Da

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed: (a) by direct diversion: 400 gallons per day from January 1 to April 30 of each year for stockwatering purposes, and 8,500 gallons per day from March 1 to April 30 of each year for irrigation purposes, and (b) by storage: 6.6 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year as follows: (1) 0.4 acre-feet per annum in Bar L Reservoir #1 and 6.2 acre-feet per annum in Bar L Reservoir #2. The total amount of water taken from the source for all uses shall not exceed 8.3 acre-feet per water year of October 1 to September 30. (000005)

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. (000005I)

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

7. Construction work shall be completed by December 31, 1990. (0000008)

8. Complete application of the water to the authorized use shall be made by December 31, 1991. (0000009)

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

10. 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)

11. 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)

12. 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)

13. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoirs which is not authorized for appropriation under this permit may be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipes or alternative facilities to the Chief of the Division of Water Rights for approval. Before storing water under this permit in the reservoirs, permittee shall furnish evidence which substantiates that outlet pipes or alternative facilities have been installed. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

14. Permittee shall install and properly maintain in the reservoirs staff gages, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about October 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

Permittee shall allow Jack Kessler, or a designated representative, reasonable access to the reservoirs for the purpose of verifying staff gage readings and determining water levels in the reservoirs. (0070047)
(0100047)

15. Whenever the prior storage rights of Jack S. Kessler and Glenda J. Kessler under License 6204 issued pursuant to Application 17884 are not satisfied by April 30 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release water in the reservoirs below the previous October 1 staff gage readings, unless permittee has withdrawn water from the reservoirs for consumptive purposes since October 1. (0160051)

16. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Calaveras River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

17. No construction shall be commenced until permittee has obtained a building permit from Calaveras County, and no water shall be diverted until permittee has provided the State Water Resources Control Board with evidence that the requirements of the county permit have been met. (0360300)

18. The amount of water diverted under this permit shall be deducted from the amount of water authorized for diversion under Permit 15012 issued to Calaveras County Water District pursuant to Application 11792A. (000Q001)

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: **DECEMBER 16 1987**

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh
Chief, Division of Water Rights