

STATE WATER RESOURCES CONTROL BOARD  
 DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20275

Application 28104 of Haypress Hydroelectric, Inc.  
13293 Lower Grass Valley Road, Nevada City, California 95959

filed on April 5, 1984, 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:
(A,B) Haypress Creek	North Yuba River
(C) Milton Creek	Haypress Creek thence
	North Yuba River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridan
(A) Middle Diversion North 2,000 feet and East 950 feet from SW corner of Section 30	NW 1/4 of SW 1/4	30	20N	13E	MD
(B) Lower Diversion North 1,000 feet and East 1,200 feet from SW corner of Section 25	SW 1/4 of SW 1/4	25	20N	12E	MD
(C) Milton Diversion South 2,750 feet and East 2,650 feet from NW corner of Section 36	NE 1/4 of SW 1/4	36	20N	12E	MD

County of Sierra

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridan	Acres
Power	Middle Powerhouse within SW 1/4 of SW 1/4	25	20N	12E	MD	
	Lower Powerhouse within SE 1/4 of SW 1/4	26	20N	12E	MD	

The place of use is shown on map filed with the State Water Resources Control Board.

3-6-89 Reg'd to Manufacturers Home Inst  
Company of California;

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 68.4 cubic feet per second to be diverted from January 1 to December 31 of each year as follows:

18 cubic feet per second from Haypress Creek at the Middle Haypress diversion structure (point of diversion (A)) and a combined total of 50.4 cubic feet per second from Haypress Creek at the lower Haypress diversion structure (point of diversion (B)) and from Milton Creek at the Milton Creek diversion structure (point of diversion (C)).

The maximum rate of diversion under this permit together with the maximum rate of diversion under permit issued pursuant to Application 27178 shall not exceed 155.4 cubic feet per second. (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, 1990. (0000008)

9. Complete application of the water to the authorized use shall be made by December 1, 2000. (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. Prior to beginning any construction on the diversion works, permittee shall submit:

- a. Information substantiating that financing for the project has been secured and that all necessary funds, including equity, are available for expenditure.
- b. A final financial analysis based on the method of financing which will be used for project construction, unless financing will be by means of 30-year term industrial development bonds.

These submittals shall be made to the Chief, Division of Water Rights for approval to proceed with construction. (0470999)

15. 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)

16. For the protection of fish and wildlife, permittee shall bypass the following minimum instantaneous flows or the natural streamflow, if less, at each of the points of diversion as measured by the measuring devices required in this permit.

- o Middle Haypress Diversion Structure (Point of Diversion (A))
  - a. 12 cubic feet per second from November 1 through April 30;
  - b. 30 cubic feet per second from May 1 through July 15;
  - c. 15 cubic feet per second from July 16 through October 31.
- o Lower Haypress Diversion Structure (Point of Diversion (B))
  - a. 12 cubic feet per second from November 1 through April 14;
  - b. 40 cubic feet per second from April 15 through July 15;
  - c. 20 cubic feet per second from July 16 through October 31.
- o Milton Creek Diversion Structure (Point of Diversion (C))
  - a. 10 cubic feet per second from May 1 through July 31;
  - b. 5 cubic feet per second from August 1 through April 30.

(0140400)

17. Prior to the diversion of any water, permittee shall:

- a. Obtain the written approval of the Chief, Division of Water Rights regarding the design and location of measuring devices capable of providing a continuous and accurate record of the bypass flows specified in this permit as well as any spill;
- b. Obtain the written approval of the Chief, Division of Water Rights, that such devices have been properly installed and that operating and maintenance instructions are readily available to the permittee's operating personnel.

The measuring devices shall be properly maintained and operated so as to provide an accurate record of instream flow passing the diversion structures. (0360400)

18. Permittee shall collect streamflow data on a continuous basis and shall reduce this data to provide the following outputs:

- a. average daily flows;
- b. minimum instantaneous flow that occurred during that day;
- c. maximum instantaneous flow that occurred during that day. (0090400)

19. Streamflow data outputs and the raw data shall be kept on file by the permittee and shall be certified. Certification shall take one of the following forms:

- (1) Submittal of records maintained by a disinterested third party such as the United States Geological Service.
- (2) A statement made under the penalty of perjury by either the individual who prepared the records or under whose supervision the records were prepared stating that the attached records were either prepared by themselves or under their direct supervision and are true and correct.

Copies of the streamflow records, including certification, shall be submitted to the State Water Resources Control Board at the request of the Chief, Division of Water Rights within the time frame specified by the Chief, Division of Water Rights.

Copies of the streamflow records, including certification, and the daily power generation records 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. (1100400)

20. Permittee shall conduct a post-project study to determine the project's impacts on fishery habitat and fish populations.

The permittee shall prepare a study plan in consultation with the California Department of Fish and Game. The plan shall be approved by the Chief, Division of Water Rights before the project commences operation.

The plan shall include, but not be limited to, the identification of the target life stages to be studied, study sites and the timing, frequency and duration of field measurements. The methodology to be used for the study shall be described. The study shall include representative control sites outside the stream segments affected by the project. The study shall be for not less than three years and additional years will be required if, in the judgment of the Chief, Division of Water Rights, atypical runoff or other events affect the validity of the study.

The study shall commence during the first year of project operation and the results of the study shall be sent to the Chief, Division of Water Rights, within 90 days after the study is complete. (0400500)

21. Continuous recording thermographs shall be installed and maintained in the affected reaches of Haypress and Milton Creeks. Post-project winter surveys for ice formation shall be conducted along each affected stream reach. These surveys shall be conducted a minimum of two times during each winter of post-project monitoring and shall take place when water temperatures are below 32°F when minimum flows are being bypassed. Control sites outside each affected reach shall be surveyed at the same time to establish whether project operations are affecting ice formation. The surveys shall describe whether subsurface ice was observed and whether dead, dying or stranded fish were observed. The survey report shall be submitted to the Chief, Division of Water Rights, for evaluation and approval within 60 days from the date the survey is complete. (0400500)
22. An automatic control device shall be installed so that water, in excess of bypass flows, shall first be diverted from the lower Haypress diversion structure (point of diversion (B)) and then, as needed, from the Milton Creek diversion structure (point of diversion (C)). (0050400)
23. Permittee shall install fish screens that have been approved in advance by the California Department of Fish and Game on all intake structures. The screens shall be properly maintained by permittee. A fish ladder, approved by the Department of Fish and Game, shall be installed at the Milton Creek diversion structure (point of diversion (C)). (0050500)
24. To prevent fish stranding, increases in the amount of water diverted shall be gradual and at a rate not to exceed 30 percent of the total streamflow per hour. (0150400)
25. 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 the permittee. (0000063)
26. Once every water year, permittee shall allow a 24-hour bypass of flow equal to or exceeding the 5 percent exceedence level based on an annual flow duration curve at each point of diversion. These bypass flows shall be made in each water year as soon as possible, but in the event the 5 percent exceedence does not occur by May 31, the entire stream flow shall be bypassed for a 24-hour duration on June 1, provided that such a bypass will result in a greater instream flow than has occurred previously that same water year. (0140400)
27. In wetland areas adjacent to Milton Creek, the Milton Creek low-pressure conduit shall be elevated and placed on concrete piers. If an alternative pipeline route which could eliminate the impacts on wetland habitat is identified in the future, this alternative shall be pursued. Prior to construction, permittee shall coordinate construction of the Milton Creek low-pressure conduit with the California Department of Fish and Game, the U. S. Forest Service, and the County of Sierra. (0360500)
28. Permittee shall, by a method acceptable to the Central Valley Regional Water Quality Control Board and the Department of Fish and Game, remove sand and sediment from the pools immediately upstream from the diversion structures on Haypress and Milton Creeks and from the afterbay at the upper end of the lower Haypress diversion conduit to a site acceptable to the aforementioned agencies. All accumulated materials greater than or equal to one-half inch in greatest dimension shall be returned in an approved manner to Haypress and Milton Creeks downstream from the diversion structures. (0400500)
29. 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)

30. The State Water Resources Control Board reserves jurisdiction over this permit to amend the bypass flows as a result of studies described in this permit. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

(000M001)

**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: **OCTOBER 26 1988**

**STATE WATER RESOURCES CONTROL BOARD**

*Walter J. Pettit*  
Chief, Division of Water Rights