

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

DIVISION OF WATER RIGHTS

In the Matter of Permits 20419 and 20418 (Applications 25435 and 25511)

California Department of Water Resources

**ORDER DENYING
PETITIONS FOR EXTENSION OF TIME**

SOURCE: Houston Creek tributary to East Fork of West Fork Mojave River

COUNTY: San Bernardino

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permits 20419 and 20418 to Crestline-Lake Arrowhead Water Agency (CLAWA) on January 30, 1990, pursuant to Applications 25435 and 25511, in accordance with State Water Board Decision 1619. The permits were subsequently assigned to the California Department of Water Resources (Permittee) on July 9, 1991.
2. Permit 20419 authorizes direct diversion of 2.59 cubic feet per second (cfs) from January 1 through December 31 each year, and 1,000 acre-feet (af) per annum by storage to be collected from November 1 of each year to May 31 of the succeeding year. The total annual diversion shall not exceed 1,000 af per year. The purpose of use is municipal.
3. Permit 20418 authorizes diversion in an amount not to exceed 0.78 cfs by direct diversion from January 1 to December 31 each year, and 302 af per annum by storage to be collected from November 1 through May 31 of the succeeding year. The purpose of use is municipal.
4. The permits require that construction work be completed December 31, 1993, and that the water be applied to the authorized use by December 31, 1994. The permits are subject to condition 20, which states that Permittee may only divert an amount of Houston Creek water stored in Silverwood Lake each year which does not exceed the amount of the return flows for that year, up to the maximum of 1,302 af authorized to be appropriated annually under Permits 20419 and 20418.
5. On February 6, 1997, Permittee submitted a letter requesting extensions of time until December 31, 2020 for both permits within which to apply water to beneficial use. Permittee submitted the required filing fees.
6. On March 3, 1997, Division staff notified Permittee that additional information was needed in order to process the petitions and listed nine questions from the standard petition form that had not been addressed in the February 6 letter submitted by the Permittee. Division staff also requested information to document water conservation measures and compliance with permit condition 16.

7. The Permittee's letter of July 10, 1997 explains that the time extensions are needed because the Permittee has been unable to fully utilize the permits due to the limits imposed by permit condition 20. Condition 20 limits the annual amount of water diverted from Houston Creek to the quantity of water CLAWA returns to the Mojave River from its combined water supply sources. The Permittee stated that complete use will occur when future growth within the CLAWA place of use increases water demand to where return flows from the combined diversions of State Water Project water, Houston Creek water, and other local sources match the allowable Houston Creek diversion in the permits.
8. On October 8, 2004, Division staff notified Permittee the Petitions for Extension of Time and Environmental Information for Petitions forms were not complete.
9. On November 30, 2004, Permittee submitted Petitions for Extension of Time and Environmental Information for Petition forms. The petitions state that no new construction will occur. The supplement to petition lists the maximum quantity diverted to date under both permits as 692 af per annum in water year 1991-1992.
10. Public notice of the petitions was issued on March 18, 2005. The U.S. San Bernardino National Forest protested on the basis of potential injury to public trust resources. The protest issue was resolved. No new permit conditions resulted from the protest.
11. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.
12. Permittee has shown that due diligence has been exercised, based on the data listed in Table 1. (August 8, 2006 email attachment from Permittee.)

TABLE 1									
Quantities in acre feet									
Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Houston Creek Flow Available	123	472	1,302	1,302	391	1,302	757	960	1,302
Return Flow	--	1,047	692	617	617	492	603	608	517
Local Water Diverted Under Permits	123	472	692	617	391	492	603	608	517
Year	1999	2000	2001	2002	2003	2004	2005		
Houston Creek Flow Available	13	264	671	0	471	337	1,302		
Return Flow	701	728	854	1,064	884	1,103	590		
Local Water Diverted Under Permits	13	264	671	0	471	337	590		

The permits require full beneficial use by 1994. The Permittee documented that water use increased during the period ending in 1994. Information on water use after 1994 is not considered in determining diligence pursuant to the permits because the State Water Board has not approved a time extension past December 31, 1994.

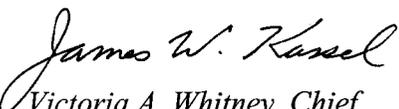
13. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. The Permittee identifies the obstacle to using additional water is the permit condition limiting diversions to the quantity offset by return flows. In Decision 1619 regarding Applications 25435 and 25511 of CLAWA, the State Water Board found that there is no water available in the Mojave River system for appropriation, but provided opportunity for CLAWA to demonstrate that its diversions could be offset by return flows. Thus, the requirement to offset diversions with return flows was included in the permits. Based on Decision 1619, the Permittee was aware that there is no unappropriated water and there is significant competition for available resources. Moreover, Permits 20419 and 20418 limited the time to develop the project and make full beneficial use to four years after permit issuance. Under those circumstances, Permittee should have expeditiously developed the project.
14. Permittee has not shown that satisfactory progress will be made if a time extension is granted. Permittee asserts that additional water use will occur once return flows from water obtained from the SWP, Houston Creek, and other local sources increased, thereby allowing additional Houston Creek diversion. The time to develop full beneficial use under the permits ended in 1994. In the 10 years since the time to complete use ended, there was no increase in water diversion beyond the levels that occurred during the permit period, 1990 through 1994 (see Table 1.) Therefore, a finding of satisfactory progress cannot be made.
15. Although diversions have not increased since 1994, the number of persons served has increased from 25,000 in 1996 to 34,000 in 2004 (see 1996 Progress Report and 2004 petition).
16. Permittee has not shown good cause for the time extension. Failure to develop treated wastewater is not a basis for time extension.
17. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions determined to be in the public interest.
18. The State Water Board has delegated the authority to act on requests for an extension of time to the Chief of the Division pursuant to Resolution No. 2007-0057. (Attachment to Resolution No. 2007-0057, section 4.2.7.)
19. Pursuant to Resolution No. 2007-0057, the State Water Board has delegated authority to the Chief of the Division to administer the duties required under the California Environmental Quality Act (CEQA). (Attachment to Resolution No. 2007-0057, section 4.10.)
20. Permittee is the lead agency pursuant to the CEQA and issued a Categorical Exemption on existing facilities in accordance with California Code of Regulations, Title 14, section 15301 on November 30, 2004 (SCH No. 2005078191).
21. Permits 20418 and 20419 should be inspected for license.

Application 25435
Application 25511
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Permit 20419
Permit 20418

NOW, THEREFORE, IT IS ORDERED THAT the State Water Board, Division of Water Rights, hereby denies the Petitions for Extension of Time.

STATE WATER RESOURCES CONTROL BOARD

for 
Victoria A. Whitney, Chief
Division of Water Rights

FEB 08 2008
Dated:

STATE OF CALIFORNIA
 WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20418

Application 25511 of Crestline-Lake Arrowhead Water Agency *(see below)*

24116 Crest Forest Drive, Crestline, CA 92325

filed on September 27, 1977, 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:

Houston Creek

East Fork of West Fork Mojave River

2. Location of point of diversion:

40-acre subdivision
of public land survey
or projection thereof

Section

Town-
ship

Range

Base
and
Meridian

SOUTH 16°30'WEST 2,600 FEET FROM NE CORNER OF SECTION 32

SE $\frac{1}{4}$ OF NE $\frac{1}{4}$

32

3N

4W

SB

County of San Bernardino

3. Purpose of use:

4. Place of use:

Section

Town-
Ship

Range

Base
and
Meridian

Acres

SERVICE AREA OF THE CRESTLINE
LAKE ARROWHEAD WATER AGENCY

MUNICIPAL

AS SHOWN ON MAP ON FILE WITH
THE STATE WATER RESOURCES
CONTROL BOARD

The place of use is shown on map on file 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 0.78 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year and 302 acre-feet per annum by storage to be collected from November 1 of each year to May 31 of the succeeding year. The total amount of water to be taken from the source shall not exceed 302 acre-feet per water year of October 1 to September 30. (0000005)

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 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, 1993. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1994. (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. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)
15. This permit shall be subject to and permittee shall comply with an agreement between permittee and State of California Department of Water Resources executed on May 9, 1989 (Silverwood Lake Storage Agreement) and as it may be amended and filed with the State Water Resources Control Board.
- Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)
16. Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Resources Control Board for approval within one year from the date of this permit or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period. All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein. (000029B)
17. Within six (6) months of the date of issuance of this permit, permittee shall submit a plan for monitoring the return flows of water diverted from Silverwood Lake to the Chief of the Division of Water Rights. (0490700)
18. Upon a finding that the return flow monitoring plan is adequate by the Chief of Division of Water Rights, the plan is incorporated by reference as a condition of this permit. (0490300)
19. After approval of the return flow monitoring plan, modifications of the plan may be made by the permittee after written notice of the proposed modification is received by the Chief of the Division of Water Rights and the Chief of the Division of Water Rights responds with a written finding of no objection. (0340300)
20. Permittee may only divert an amount of Houston Creek water stored in Silverwood Lake each year which does not exceed the amount of the return flows for that year, up to the maximum of 1,302 acre-feet authorized to be appropriated annually under this permit and the permit issued for Application 25435. (0360300)
21. Permittee may divert a maximum of 3.37 cfs under this permit and the permit issued for Application 25435 by direct diversion or the natural flow of Houston Creek as measured at gage 10260650 located downstream of Lake Gregory Dam on Houston Creek and adjusted pursuant to the Silverwood Lake Storage Agreement, whichever is less. (0430900)

22. This permit is specifically subject to the prior right claimed by Rancho Las Flores.

(000T001)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

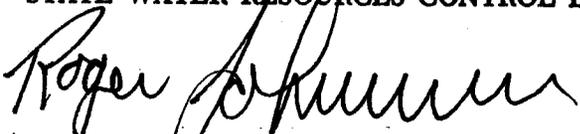
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

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 3 0 1990

STATE WATER RESOURCES CONTROL BOARD


Chief, Division of Water Rights