



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JUN 11 2013

In Reply Refer
KDM:A025516

Ms. Leah Orloff
Contra Costa Water District
P.O. Box H2O
Concord, CA 94524

Dear Ms. Orloff:

PROPOSED CHANGE IN METHOD OF MEASURING INFLOW TO LOS VAQUEROS RESERVOIR – PERMIT 20750 (APPLICATION 25516A)

On March 13, 2013, Contra Costa Water District (CCWD) requested approval to change the method of determining Kellogg Creek inflow to Los Vaqueros Reservoir. The currently authorized method is to measure actual inflow. However, enlargement of Los Vaqueros Reservoir has rendered this method impractical because the stream gauge location will be inundated when the expanded reservoir is filled to full capacity. CCWD developed a method of calculating reservoir inflow based on measurements of precipitation in the watershed.

On May 23, 2013, CCWD provided modeling verification data requested by Division of Water Rights staff. The verification data shows that the precipitation based model provides conservatively high values as compared to actual flow measurements. Accordingly, the new measurement method is approved.

If you require further assistance, please contact Katherine Mrowka at (916) 341-5363 or by email at kmrowka@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Katherine Mrowka, P.O. Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

Phillip Crader, Manager
Permitting and Licensing Section
Division of Water Rights

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

AMENDED PERMIT 20750

Application **25516A** of **Contra Costa Water District**
P.O. Box H20
Concord, CA 94524

filed on **September 30, 1977**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Tributary to:

Kellogg Creek

Old River thence
San Joaquin Delta Channels

within the County of **Contra Costa**.

2. Location of point of diversion:

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Projected Section	Township	Range	Base and Meridian
Los Vaqueros Dam North 2,129,559 feet and East 6,207,039 feet	NW ¼ of NW ¼	23	1S	2E	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Incidental Fish and Wildlife Preservation and/or Enhancement						
Water Quality						
Recreation						
Domestic						
Municipal						
Industrial						
Irrigation	Contra Costa Water District, Pittsburg, Antioch, Brentwood, Oakley, Los Vaqueros recreation area, and rural county subarea		2S 1S 1N 2N 3N	3W 2W 1W 1E 2E 3E 4E	MD	931
Incidental Hydroelectric Power Generation	Los Vaqueros Pipeline Energy Recovery facility within NW ¼ of NW ¼ of	34	2N	2E	MD	

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **115 cubic feet per second** by direct diversion and **9,640 acre-feet per annum** by storage from January 1 to December 31 of each year. The total amount of water to be taken from the source shall not exceed **9,640 acre-feet** per water year of October 1 to September 30. (0000005)
6. 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)
7. Construction work shall be completed by December 31, 1999. (0000008)
8. Complete application of the water to the authorized use shall be made by December 31, 2025. (0000009)

9. The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed.

(0000027)

10. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with Section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(000029A)

11. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

12. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources (DWR) as to safety, construction under this permit shall not be commenced until DWR has approved the plans and specifications for the dam.

(0360048)

13. In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

(0120050)

14. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

15. 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 San Joaquin River 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)

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 all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Board.

(0000100)

17. Diversion of water under this permit for use outside the county of origin shall be subject to rights initiated by applications for use within said county regardless of the date of filing said applications, as provided in Water Code Section 10505.5.

(0000999)

18. Before making any change in the project determined by the State Water Board to be substantial, Permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

(0090900)

19. Permittee shall, from March 1 through July 1 of each year, bypass a sufficient quantity of Kellogg Creek inflow into Los Vaqueros Reservoir to provide 0.67 cubic foot per second or the natural flow, whichever is less, for diversion under License 5173 at the authorized point of diversion under License 5173. Permittee shall bypass adequate flow to account for channel losses and evaporation upstream of the point of diversion under License 5173. Nothing in this permit term shall be construed as requiring release of stored water obtained from other sources or Kellogg Creek water stored prior to March 1 of each water year. Subject to the agreement of the holder of License 5173, Permittee may instead provide water in sufficient quantity from an alternate source or in an alternative regime during the March 1 through July 1 period, including purchased water, to approximate the quantity which would be available under License 5173 as unimpaired runoff in Kellogg Creek. Such alternative water supply may be substituted only if the place of use of the alternative water supply includes the place of use of License 5173.

(0220400)

20. Permittee shall release water from Los Vaqueros Reservoir at a rate equal to the estimated inflow to the reservoir, up to a maximum of 5 cubic feet per second. Permittee shall release sufficient water from the reservoir at all times to maintain existing perennial pools in the 1-mile reach immediately downstream of the dam.

(0160400)

21. Permittee shall maintain a daily record of direct diversion and collection to storage under this permit and submit such record to the Division of Water Rights on an annual basis. The record of water use under the permit may not be combined with diversion or storage records for water use under other rights maintained by the Permittee. (0090900)

22. For the protection of fish and wildlife resources in Kellogg Creek downstream of the Los Vaqueros Dam, Permittee shall:

a. Install a temporary pipe to divert Kellogg Creek streamflow around the area that will be disturbed during construction of the Los Vaqueros Dam and convey water diverted back into Kellogg Creek downstream of the construction area during dam construction. This temporary diversion shall be operated in a manner which will minimize sedimentation of Kellogg Creek below the dam during dam construction.

b. Implement measures to prevent downstream water quality impacts during construction and operation, including restricting stream crossings to low-flow seasons, prohibiting use of streamflow for construction activities, prohibiting operation of construction equipment in flowing water outside the Los Vaqueros Reservoir inundation area, and employing suitable design criteria for stream crossing structures.

c. Immediately following cessation of temporary diversion of Kellogg Creek, Permittee shall implement the release schedule specified in Condition 20 above.

d. No water shall be diverted under this permit until Permittee has installed devices or provided other means satisfactory to the State Water Board, to measure: (1) Kellogg Creek natural flow into

Los Vaqueros Reservoir; and (2) minimum Kellogg Creek streamflows required by this permit. The Permittee shall be responsible for monitoring compliance with the minimum streamflow requirements of this permit.

(0400500)
(0060062)

23. Permittee shall comply with all legally binding requirements of the California Department of Fish and Game, the United States Fish and Wildlife Service, and the National Marine Fisheries Service imposed under either the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544) or the California Endangered Species Act (Fish and Game Code Sections 2050 to 2098), with respect to the Los Vaqueros Project.

(0600500)

24. Permittee shall comply with the "Programmatic Agreement Among the U.S. Bureau of Reclamation (Reclamation), Contra Costa Water District, the California State Historic Preservation Office and the Advisory Council on Historic Preservation Regarding the Implementation of the Los Vaqueros Project", executed on February 3, 1993, and shall comply with it as it may be amended in the future. Permittee also shall comply with all historic property treatment plans prepared under the Programmatic Agreement.

Permittee shall continue to consult Reclamation, U.S. Army Corps of Engineers, the Deputy Director for Water Rights, the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding cultural resources until all stipulations of the Programmatic Agreement have been completed to the satisfaction of the agencies. Permittee also shall comply with the "Procedure for the Protection of Historic and Cultural Properties" (36 CFR 60) and the implementing regulations of the Advisory Council on Historic Preservation, 36 CFR 800.

Permittee shall comply with the Memorandum of Understanding executed July 21, 1993 between Contra Costa Water District and seven of the Native Americans Most Likely Descendants regarding treatment of Native American human remains and the selection of Native American monitors.

(0430300)

25. Permittee shall comply with mitigation measures 7-1 through 7-19 and 8-1 through 8-12 set forth at pages 19-5 through 19-8 of the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) dated September 27, 1993. Permittee also shall comply with mitigation measures 1 through 13 under "Additional Environment Commitments Related to the Fish and Wildlife Coordination Act Report" set forth at pages 19-13 through 19-14 of the Final EIR/EIS. The Deputy Director for Water Rights may grant a variance from any of these mitigation measures after making a finding that the variance will have no significant adverse effect on the environment. Any request for a variance shall include the reasons for the variance, environmental information necessary to demonstrate that it will not adversely affect the environment, and proof that the Permittee has notified all interested parties of the request.

(0400500)

26. Permittee shall in cooperation with the U.S. Bureau of Reclamation implement the mitigation monitoring and reporting measures for Bay-Delta fishery resources, Bay-Delta water quality, vegetation resources, wildlife resources, cultural resources, and to comply with the Fish and Wildlife Coordination Act (16 U.S.C. Section 661 et seq.), which are set forth in the Environmental Commitments and Mitigation Monitoring and Reporting Plan for the Los Vaqueros Project Stage 2 Environmental Impact Report/Environmental Impact Statement, dated October 27, 1993. Permittee in cooperation with Reclamation shall provide a report to the Deputy Director for Water Rights by April 1 of each year detailing the results of the previous year's monitoring, plans for the current year's monitoring, and the status of implementation of each mitigation measure required by this decision.

(0400500)

27. No diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from Permittee's diversion at any time the Reclamation and DWR have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or redirection of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law.

(0350900)

ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.

(0000010)

- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

- D. 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 State Water 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 State Water 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 State Water 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 State Water 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 State Water 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)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water 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 State Water 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)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the California State Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, Permittee shall provide the Division of Water Rights a copy of a waiver signed by the California State Department of Fish and Game.

(0000063)

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 therefore 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 his 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).

STATE WATER RESOURCES CONTROL BOARD

For James W. Kassel

Victoria A. Whitney
Deputy Director for Water Rights

Dated: **MAR 25 2010**

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 20750 (Application 25516)
of Contra Costa Water District

**ORDER APPROVING ADDITION OF PURPOSE OF USE
AND ISSUING AMENDED PERMIT**

SOURCE: Kellogg Creek tributary to Old River
COUNTY: Contra Costa

WHEREAS:

1. On July 16, 2009 Contra Costa Water District (CCWD) and the U.S. Bureau of Reclamation (Reclamation) jointly filed petitions to include incidental power generation as a purpose of use under CCWD Permits 20749 and 20750 (Applications 20245 and 25516A) and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316). The incidental power will be generated at the Los Vaqueros Pipeline Energy Recovery (LUPER) facility, adjacent to the Contra Costa Canal Pumping Plant No. 4. Public notice of these petitions was not issued pursuant to California Code of Regulations, Title 23, section 795(a). Addition of incidental hydropower generation using water routed through the existing Los Vaqueros pipeline will not change the timing, location, amount, or rate of diversions under the permits. The proposed project adds incidental power as a use and does not otherwise change the use of the water diverted. CCWD and Reclamation notified the California Department of Fish and Game (DFG) of the proposed change and DFG did not object.
2. On February 13, 2009, CCWD filed a Notice of Exemption (NOE) for the proposed LUPER project. The project is considered exempt under CEQA Guidelines Section 15328 which exempts small hydroelectric projects at existing facilities, provided that the capacity of the proposed facility is 5 megawatts or less, will not be located in an environmentally sensitive area, and will not adversely impact water quality or fish habitat. Further, as defined in 18 CFR 380.4(a)(14), exemptions for small conduit hydroelectric facilities have been determined by the Federal Energy Regulatory Commission (FERC) to not have a significant effect on the human environment, either individually or cumulatively. Therefore, these projects do not require the preparation of an Environmental Assessment or an Environmental Impact Statement in compliance with the National Environmental Policy Act. As defined by FERC, consideration of the environmental effects of a small conduit hydroelectric facility is limited to the area contained within the project boundaries. The proposed project meets FERC Conduit Exemption requirements as it does not change the timing, location or amount of water delivered through the existing Los Vaqueros pipeline conveyance system and is entirely located on non-federally owned property with the exception of the buried power line. Reclamation will approve a categorical exclusion for the buried power line and interconnection to Contra Costa Canal Pumping Plant No. 4 that is located on its property. The State Water Board will issue an NOE for the incidental power project.
3. The petitioned change does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

Pursuant to other petitions filed by CCWD and Reclamation on August 9, 2007, the Division of Water Rights is updating the conditions of Permit 20749 (Application 20245) of CCWD to reflect the fact that Los Vaqueros Reservoir has been built. Inasmuch as the same terms are included in Permit 20750, they are similarly updated.

4. An amended Permit 20750 shall be issued, which incorporates the terms of the order below. The term numbers in the amended permit reflect changes in the Division's standard format and do not match the numbers in the original permit.

THEREFORE, IT IS HEREBY ORDERED THAT CONTRA COSTA WATER DISTRICT'S PERMIT 20750 (APPLICATION 25516) IS AMENDED AS FOLLOWS:

1. The condition of the permit related to the purpose of use shall be amended to include incidental hydroelectric power generation at: California Coordinates, NAD 83, Zone 3, North 2,182,439 feet and East 2,201,417 feet, being within the NW ¼ of NW ¼ of Section 34, T2N, R2E, MDB&M.

2. Condition 16 of the permit is updated as follows:

Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

3. Condition 18 of the permit is updated as follows:

In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

(0120050)

4. Condition 19 of the permit is updated as follows:

No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a Lake and Streambed Alteration Agreement between the California Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a Lake and Streambed Alteration Agreement is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by the California Department of Fish and Game.

(0000063)

5. All other permit terms and conditions not specifically modified or added by this Order shall remain in effect.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **MAR 25 2010**