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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20852

Application 30453 of Kirkwood Associates, Inc. & U.S. Department of Agriculture (over)
c/o Martha Lennihan, 455 Capitol Mall, Suite 300, Sacramento, CA 95814-4406

filed on June 9, 1995, has been approved by the State Water Resources Control 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: Caples Lake

Tributary to: Caples Creek thence Silver Fork American River thence South Fork American River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POINT OF DIVERSION AND DIVERSION TO OFFSTREAM STORAGE North 2,750 feet and East 500 feet from SW corner of Section 23	SW¼ of NE¼	23	10N	17E	MDB&M
POINT OF DIVERSION TO STORAGE North 77° 59' and West 4,300 feet from SE corner of Section 18	SW¼ of SW¼	18	10N	18E	MDB&M
Point of Offstream Storage	NE¼ of SE¼	26	10N	17E	MDB&M

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3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Snowmaking	NE¼ of SE¼	27	10N	17E	MD	1.0
	SE¼ of SE¼	27	10N	17E	MD	20.9
	SW¼ of SE¼	27	10N	17E	MD	17.0
	NW¼ of SE¼	27	10N	17E	MD	5.3
	NE¼ of SW¼	27	10N	17E	MD	11.9
	SE¼ of SW¼	27	10N	17E	MD	11.6
	SW¼ of SW¼	27	10N	17E	MD	0.9
	NW¼ of SW¼	27	10N	17E	MD	2.8
	SE¼ of NW¼	27	10N	17E	MD	9.7
	SW¼ of NW¼	27	10N	17E	MD	5.0
	NE¼ of NW¼	34	10N	17E	MD	6.0
	SE¼ of NW¼	34	10N	17E	MD	3.8
	SW¼ of NW¼	34	10N	17E	MD	4.2
	NW¼ of NW¼	34	10N	17E	MD	7.3
	NE¼ of NE¼	34	10N	17E	MD	18.4
	SE¼ of NE¼	34	10N	17E	MD	10.1
	SW¼ of NE¼	34	10N	17E	MD	8.8
	NW¼ of NE¼	34	10N	17E	MD	18.9
	NE¼ of SE¼	34	10N	17E	MD	5.6
	NE¼ of NW¼	35	10N	17E	MD	3.9
	SE¼ of NW¼	35	10N	17E	MD	5.3
	SW¼ of NW¼	35	10N	17E	MD	1.7
	NW¼ of NW¼	35	10N	17E	MD	6.6
	NE¼ of NE¼	35	10N	17E	MD	3.9
	NW¼ of NE¼	35	10N	17E	MD	3.9
	SW¼ of SW¼	30	10N	18E	MD	5.5
					TOTAL	200

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, under this permit, exceed 2.4 cubic feet per second by direct diversion from November 1 to March 1 of each year and 250 acre-feet per annum by storage from November 1 of each year to June 30 of the succeeding year. The total amount of water to be taken from the source under this permit, shall not exceed 250 acre-feet per water year of October 1 to September 30. Water may be diverted at a combined rate of diversion of 4.2 cubic feet per second under this permit (2.4 cubic feet per second), and the permit issued pursuant to Application 30062 (1.8 cubic feet per second). (0000005)

6. The maximum rate of diversion to offstream storage shall not exceed 10.5 cubic feet per second. (000005J)

7. 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)

8. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 30062, shall not exceed 500 acre-feet per annum. (0000114)

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

10. Construction work shall be prosecuted with reasonable diligence and shall be completed by December 31, 2001. (0000008)

11. Complete application of the water to the authorized use shall be made by December 31, 2005. (00000909)

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

13. 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)

14. 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)

15. 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)

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

17. Permittee shall install flow measuring and recording equipment to measure and document water diverted from Caples Lake. Said measuring devices shall be properly maintained. (0060046)

18. Permittee shall maintain a continuous record of monthly diversions of water from Caples Lake sufficient to document compliance with the permit terms. The record shall be available to State Water Resources Control Board and to other interested parties upon request to the State Water Resources Control Board.

19. Permittee shall comply with the following provisions derived from the agreement between permittee and Pacific Gas and Electric Company executed on November 22, 1995 and filed with the State Water Resources Control Board, for so long as that agreement remains in effect.

(a) In the event FERC Project 184 is transferred from PG&E to El Dorado Irrigation District (EID) and/or El Dorado County Water Agency (EDCWA), Permittee's agreement with PG&E shall be superseded by the Permittee's October 23, 1995 agreement with EID and EDCWA. In the event of default by EID and/or EDCWA such that title to Project 184 reverts to PG&E, and that default is not in any manner cured, Permittee's right to divert and use water under this permit shall, once again, be conditioned upon Permittee's compliance with the provisions of this Term 19.

(b) Permittee shall provide reasonable ingress and egress to PG&E to all facilities within the Project 184 boundary associated with Permittee's diversions.

(c) If due to extraordinary circumstances Permittee is notified by PG&E that a safety or emergency condition exists or is imminent, which condition requires the cessation or reduction of Permittee's diversions from Caples Lake, Permittee shall discontinue or reduce diversions from Caples Lake as required.

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)

20. The State Water Resources Control 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)

21. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Resources Control Board shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators. (0000091)

22. No water shall be used under this permit until permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Valley Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

(1) the Regional Board issues a waiver pursuant to Section 13269, or

(2) the Regional Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops. (0290101)

23. 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 under this permit until permittee has entered into a stream or lake alteration agreement with the California 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)

24. Permittee shall comply with the following provisions which are derived from the "Mitigation and Monitoring Plan" adopted by Alpine County:

a. Construction of the diversion structure and supply pipeline within the high water line of Caples Lake shall occur at the end of the summer or early fall when the lake is at its lowest levels.

b. A fish screen, approved by the California Department of Fish and Game, shall be installed on the diversion structure in Caples Lake. In order to further reduce potential entrainment, the diversion structure shall be placed in deep water, well away from shoreline areas commonly inhabited by fry and juvenile fish.

c. During the construction of the Alternative 3 water supply pipeline crossing of Kirkwood Creek near Highway 88, all flows in Kirkwood Creek shall be continuously bypassed around the construction site. Design and construction of bypass facilities shall be coordinated with the California Department of Fish and Game.

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: JUNE 25 1996

STATE WATER RESOURCES CONTROL BOARD

Roger Johnson

for Chief, Division of Water Rights