

DIVISION OF WATER RIGHTS

In the Matter of Permit 20922 (Application 29889)

Kris Nikolauson

ORDER REVOKING PERMIT

SOURCE: MIDDLE BUTTE CREEK TRIBUTARY TO LITTLE BUTTE CREEK THENCE BUTTE CREEK

COUNTY: BUTTE

WHEREAS:

1. Kris Nikolauson (permittee) is the water right holder of water right Permit 20922.
2. Permit 20922 allows the storage of 15 acre-feet per annum to be diverted at a maximum rate of 0.5 cubic foot per second (cfs) to offstream storage from Middle Butte Creek. During the construction of the reservoir, permittee rerouted the Middle Butte Creek stream bed around the pit reservoir building site and reportedly discovered percolating ground water.
3. Division of Water Rights (Division) staff inspected the permittee's projects on three occasions in response to complaints. The first two inspections found that the permittee had diverted water from Middle Butte Creek in violation of permit terms and conditions. The last inspection, conducted on November 5, 2002, found that the permittee had removed the surface diversion from the creek. Division staff also could find no evidence to support a determination that the subsurface flow into the permittee's reservoir was a subterranean stream flowing through a known and definite channel as defined in Section 1200 of the Water Code. Division staff's flow measurements of surface flows above and below the permittee's reservoir suggested that all surface flows were being bypassed.
4. The permittee's time to make full beneficial use of water under Permit 20922 elapsed on December 31, 2006.
5. On June 29, 2009, the Division received a Revocation Request form in which the permittee requested that the State Water Resources Control Board (State Water Board) revoke Permit 20922.
6. Permittee's position is that his reservoir stores only the spring flow that he developed on the property from percolating ground water and that no water is diverted from Middle Butte Creek. Consequently, the permittee concludes that his reservoir is not subject to the permitting authority of the State Water Board.
7. By signing the voluntary request for revocation, permittee waived the right to the hearing and notice requirements set forth in Water Code sections 1410 and 1410.1.

Therefore it is ordered that Permit 20922 is hereby revoked by the State Water Board, 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.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JOHN O'HAGAN FOR:

Victoria A. Whitney, Deputy Director
Division of Water Rights

Dated: OCT 05 2009

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20922

Application 29889 of Kris Nikolauson

Post Office Box 882, Magalia, CA 95954

filed on January 14, 1991, 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:

<u>Middle Butte Creek</u>

_____ | Tributary to:

<u>Little Butte Creek thence</u>

<u>Butte Creek thence</u>

<u>Butte Slough thence</u>

<u>Sacramento River</u>

_____ |
|---|--|

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
By California Coordinate System, Zone 2 North 796,450 feet and East 2,110,550 feet	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	14	23N	3E	MD

County of Butte

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Irrigation	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	14	23N	3E	MD	2
Fire Protection						
Recreational						

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 15.0 acre-feet per annum to be collected from December 1 of each year to March 31 of the succeeding year. (000005C)

6. 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)

7. The maximum rate of diversion to off stream storage shall not exceed 0.5 cubic foot per second. (000005J)

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

9. Construction work shall be prosecuted with reasonable diligence and shall be completed by December 31, 2001. (0000007)

10. Construction work on the reservoir shall be confined to the period of June 1 through October 1.

11. Complete application of the water to the authorized use shall be made by December 31, 2006. (0000008)

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. During the season specified in this permit, the total quantity and rate of water diverted and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion and use specified in this permit. To the extent that the permittee claims riparian, overlying, pre-1914 appropriative or other rights to use the water covered by this permit, the permittee shall not be entitled to water in excess of the amount authorized in this permit. Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021)

17. This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing. (0000042)

18. For the protection of fish and wildlife, permittee shall bypass a minimum of 1 cubic foot per second. The total streamflow shall be bypassed whenever it is less than 1 cubic foot per second. (0000060)

19. 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 Sacramento 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)

20. No water shall be diverted under this permit until permittee has installed or constructed a diversion device, satisfactory to the State Water Resources Control Board, which will automatically bypass one cubic foot per second of streamflow. The device shall be designed such that the total diversion capacity does not exceed 0.5 cubic foot per second. Before starting construction, permittee shall submit plans and specifications of the diversion device to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the diversion device has been installed. Said device shall be properly maintained by permittee. (0360900)
(0560900)

21. Permittee shall install and maintain an outlet facility of adequate capacity satisfactory to the State Water Resources Control Board to bypass reservoir overflow into Middle Butte Creek. Before starting construction, permittee shall submit plans and specifications of the outlet facility to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet facility has been installed. Said device shall be maintained by permittee. (0050043)

22. Storage of water under this permit shall not begin until certification is submitted to Chief of the Division of Water Rights that the Butte County Director of Public Works, the United States Natural Resources Conservation Service, or a civil engineer registered by the State of California has approved the plans and specifications for the dam, or has otherwise certified as to the safety of the dam, and any modification, reconstruction, or enlargement of the dam that is under the direction of said party. (036K002)

23. Permittee shall obtain a grading permit, prior to any construction work, pursuant to Chapter 13 of the Butte County Code. Copies of the engineering plans and specifications, soils engineering report, and erosion and sediment control plan, all prepared and signed by a licensed civil engineer, along with a copy of the grading permit shall be forwarded to the State Water Resources Control Board.

In the event that Butte County determines the project is exempt from County regulation, permittee shall comply with the following conditions:

Permittee shall submit a copy of the notification of exemption prepared by Butte County to the State Water Resources Control Board.

An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Chief of the Division of Water Rights prior to starting construction. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented as indicated in the schedule. Evidence includes photographs showing the project area vegetation and slopes.

A spoils disposal plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Chief of the Division of Water Rights prior to starting construction. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the spoils disposal plan has been implemented as indicated in the schedule. Evidence includes either spoils disposal documents or photographs showing the spoils stabilized on permittee's property. (0400500)

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 18 1997**

STATE WATER RESOURCES CONTROL BOARD

Roger Plummer
for Chief, Division of Water Rights