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Environmental  
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# State Water Resources Control Board



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

**DIVISION OF WATER RIGHTS**

**TEMPORARY PERMIT**

**PERMIT 21159**

Application T031429 of Hot Spring Valley Irrigation District

**c/o Joe Battram  
P.O. Box 1420  
Alturas, CA 96101**

filed on May 12, 2003 has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

In May of 2003, the Hot Spring Valley Irrigation District (District) had urgent need of additional storage in Big Sage Reservoir because of drought conditions throughout the Modoc County area prior to May. Big Sage Reservoir has a 77,000 acre-feet capacity, but because of the drought conditions it contained only 7,200 acre-feet on April 30, 2003. The District's Licenses 9722 and 9723 (Applications 3353 and 22427) to store water in Big Sage Reservoir do not allow collection to storage during May. Unexpected heavy rainfall occurred during May of 2003. In order to collect the water in storage, the District requires a temporary permit for May.

The District timely filed a temporary permit application on May 12, 2003. The temporary permit application was noticed on June 3, 2003. The comment period for the notice ended on June 20, 2003. Objections and letters of support for the temporary permit were received, and these are described below. The SWRCB find that it is appropriate to issue a temporary permit for the period May 1 to May 30, 2003, thus providing a legal basis of right for the District's collection to storage.

The SWRCB finds that (1) the applicant had an urgent need for the water to be diverted and used; (2) the water was diverted and used without injury to any lawful user of water; (3) the water was diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) the proposed diversion and use was in the public interest.

There was no injury to prior right holders and no substantial impacts to fish or aquatic habitat due to collection to storage in Big Sage Reservoir during May of 2003 due to the late season precipitation and elevated flow conditions in Rattlesnake Creek and the Pit River during May. Rattlesnake Creek is a tributary of the Pit River located upstream of the Canby gage.

<b>Flows in Pit River Near Canby (USGS Gage # 11348500) (cfs)</b>					
<b>May 2003</b>					
Day	Flows	Day	Flows	Day	Flows
1	369	11	1780	21	444
2	332	12	1920	22	360
3	305	13	1850	23	271
4	392	14	1780	24	259
5	619	15	1610	25	255
6	876	16	1290	26	291
7	885	17	829	27	337
8	1,010	18	651	28	279
9	1,340	19	569	29	242
10	1,739	20	517	30	291
				31	295
<b>Average</b>	<b>774</b>	<b>Maximum</b>	<b>1,920</b>	<b>Minimum</b>	<b>242</b>

<b>Rainfall Data for Alturas Ranger Station</b>		
<b>Temperature Data for Alturas Ranger Station</b>		
May 2003 (data for May 1 through 28)	2.22 inches of rainfall	Lower than Normal Temperatures

The SWRCB received the following objections to issuance of a temporary permit:

- (1) Potential injury to the prior rights of Lawrence and Sandi Ray on Rattlesnake Creek. A June 10, 2003 letter from the Ray’s attorney Paul Minasian states that the Ray’s could have been irrigating during May if the District had not shut the reservoir gates, cutting off streamflow at the dam. The objection states that the Ray’s pasture was stressed due to lack of irrigation water. The Ray’s did not provide a statement of facts documenting the date(s) when (a) rainfall was inadequate to maintain the pasture, and (b) there was insufficient flow in Rattlesnake Creek to serve the Ray’s riparian right. The streamflow and rainfall data above and a May 27, 2003 statement from Mr. Minasian that “...the stored water may have been in excess of the riparian’s needs in the month of April and May...” document that there was no injury to the Ray riparian rights.
- (2) Richard Jennings requests that the water stored under the temporary permit be used solely within the District. This issue is addressed by inclusion of a permit condition limiting the place of use to the District boundaries.

- (3) Potential injury to the riparian rights of J.C. Moore on the Pit River. The Moore objection does not include a statement of facts documenting the date(s) when (a) rainfall was inadequate to maintain his pasture, and (b) there was insufficient flow in the Pit River to serve his riparian right. To the contrary, the objection states that this year the late rains flushed and cleaned the stream channels. Based on the streamflow and rainfall data above, the SWRCB concludes that there was no injury to the Moore riparian rights.
- (4) Gary and Nancy Monchamp state they do not object to the temporary permit, but want the water stored pursuant to the temporary permit released at a later date to serve downstream riparian rights on the Pit River in Big Valley. Released, stored water cannot be diverted pursuant to riparian rights.
- (5) Potential injury to the riparian rights of Tom Gifford on the Pit River. The objection does not include a statement of facts documenting the date(s) when (a) rainfall was insufficient to maintain Mr. Gifford's pastures, and (b) there was insufficient flow in the Pit River to serve his riparian right. Mr. Gifford seeks to have the water stored pursuant to the temporary permit released during the summer to serve downstream riparian rights in Big Valley. Released, stored water cannot be diverted pursuant to riparian rights.

The SWRCB received the following letters of support for the temporary permit:

- (1) Ed and Cindy Mohr stating the storage in Big Sage Reservoir was useful in that stream levels near Canby were high enough to do considerable damage to riverbanks and irrigation levies. Had the water stored in Big Sage Reservoir during May continued downstream, more damage would have occurred. Furthermore, the water was not needed for irrigation during May.
- (2) Big Valley Water Users stating that due to a wet April and May, the Big Valley Water Users, as a group, does not object to the storage.

On May 27, 2003, the SWRCB contacted the Department of Fish and Game (DFG). DFG staff did not identify any effects upon fish, wildlife or instream beneficial uses associated with the temporary permit application.

It is in the public interest to issue the temporary permit.

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

1. Source of water

Source

**Rattlesnake Creek**

Tributary to

**Pit River**

within the County of Modoc

2. Location of point of diversion and rediversion

By California Coordinate System of 1927 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
East 2,376,050 feet; North 820,950 feet	NW¼ of SE¼	7	43N	12E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Stockwatering	Big Sage Reservoir	7	43 N	12 E	MD	
Irrigation,	Within the boundaries of Hot Spring Valley Irrigation District	7	43 N	12 E	MD	10,000

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 5,000 acre-feet per annum to be collected to storage from May 1 to May 31, 2003.

(000005A)

6. Collection to storage pursuant to this permit expires on May 31, 2003. The quantity of water collected to storage pursuant to this permit must be put to beneficial use by October 30, 2003 within the area identified in condition 4. This temporary urgency permit does not authorize carryover storage for any water collected pursuant to this permit after October 30, 2003.

7. Permittee shall report to the SWRCB by December 1, 2003 (a) the total quantity of water diverted under this temporary permit, (b) the quantity put to beneficial use by October 30, 2003.  
(0510900)
8. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 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)
9. The SWRCB may supervise diversion and use of water under this temporary permit for the protection of lawful users of water and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this temporary permit.  
(0510600)
10. This temporary permit is issued and permittee takes it subject to California Water Code, Division 2, Chapter 6.5, section 1425 et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the SWRCB  
(0510800)
11. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this temporary permit including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB 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 SWRCB may be exercised by imposing specific requirements over and above those contained in this temporary permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

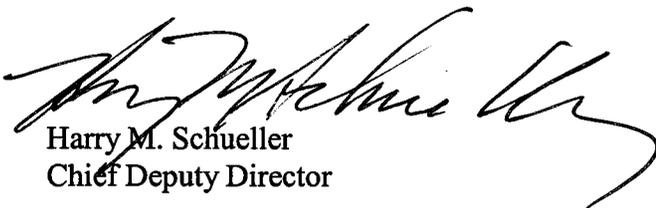
  
(0000012)
12. Issuance of this temporary permit shall not be construed as indicating SWRCB approval of water right permits requested under other pending applications.  
(0510999)

***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).*



Harry M. Schueller  
Chief Deputy Director

Dated: **AUG 06 2003**