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

DIVISION OF WATER RIGHTS

TEMPORARY PERMIT FOR DIVERSION AND USE OF WATER

TEMPORARY PERMIT 21215

Application **T031705** of **California Department of Transportation**
c/o David Melendrez
1656 Union Street
Eureka, CA 95501

filed on **April 25, 2008** is approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

The California Department of Transportation (CalTrans) filed a temporary permit application on April 25, 2008, under Water Code section 1425. CalTrans requires a temporary water supply to construct the Confusion Hill Highway Realignment Project and realign sections of U.S. 101 that are slide-prone and subject to damage by rockslide.

The State Water Board may issue a temporary permit if the State Water Board finds that: (1) the applicant has an urgent need for the proposed diversion and use of water, (2) the water may be diverted and used without injury to any lawful user of water, (3) the water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses, and (4) the proposed diversion and use is in the public interest. (Wat. Code, § 1425, subd. (b).)

CalTrans proposes to divert from a segment of the South Fork Eel River that is a component of the California Wild and Scenic Rivers System. Consistent with the California Wild and Scenic Rivers Act, the State Water Board's regulations prohibit the approval of an application that would impair the extraordinary scenic, recreational, fishery, or wildlife values of a component of the Wild and Scenic River System. (Cal. Code Regs.,tit. 23, § 734, subd. (b); see also Pub. Resources Code, § 5093.56.) The State Water Board's regulations also provide that an application that proposes an appropriation in connection with the construction of a water diversion facility on a component of the Wild and Scenic Rivers System will not be accepted for filing unless the Secretary of the Resources Agency determines that the facility is needed to supply water for domestic use and the facility will not adversely affect the free-flowing condition of the river. (Cal. Code Regs., tit. 23, § 734, subd. (c); see also Pub. Resources Code, § 5093.55.) In this case, however, CalTrans does not propose to construct a water diversion facility. Instead, CalTrans proposes to divert water by filling a temporary tank using a temporary pump and a drafting hose that will be removed from the river after each time the tank is filled. The water tank will be used to fill water trucks. Under the circumstances of this case, the State Water Board concludes that the use of a portable device to divert water on a temporary basis does not constitute the construction of a diversion facility within the meaning of the Wild and Scenic Rivers Act, and therefore CalTrans' application for a temporary permit may be accepted and approved, provided that other statutory requirements are met.

The State Water Board has delegated to the Chief of the Division of Water Rights the authority to act on applications for temporary permits in accordance with Water Code sections 1425-1431 where no objections are outstanding. (State Water Board Resolution 2007-0057, para. 4.2.9.) The notice of application for this temporary permit was issued on May 16, 2008.

The Applicant Has an Urgent Need for the Water
The State Water Board finds that the applicant has an urgent need for the water to be diverted and used. Ten closures during the 2002/2003 winter season occurred as a result of rockslide in the project vicinity. A catastrophic slide at Confusion Hill could close U.S. 101 in both directions for six months or more, based on

the Final Environmental Impact Report and Environmental Assessment for the realignment project. Approval of the temporary permit application will allow CalTrans to proceed with the construction of the project without delay.

The Water May Be Diverted and Used without Injury to any Lawful User of Water
The water will be diverted and used without injury to any lawful user of water. CalTrans' proposed diversion is subject to limits on the instantaneous rate of diversion, and the total quantity of water that may be diverted. In addition, CalTrans does not propose to divert when instream flows in the South Fork Eel River as measured upstream of CalTrans' points of diversion are 14 cubic feet per second (cfs) or less. The State Water Board will require CalTrans to comply with these limitations as conditions of this permit.

The 14 cfs bypass flow, plus contributions from downstream tributaries, will be adequate to meet the demands of downstream water right holders. The stream reach from CalTrans' points of diversion to the confluence with the East Branch South Fork Eel River is roughly 13 miles in length. A number of perennial (e.g., McCoy Creek, Indian Creek, and Milk Ranch Creek) and intermittent streams contribute flow throughout the 13-mile reach. The East Branch South Fork Eel River contributes the following mean monthly flows in cfs (period of record 1967 through 1972, as measured at USGS gage 11475940):

January	February	March	April	May	June
1,030	586	472	197	59	20

July	August	September	October	November	December
9.8	6.4	5.2	11	191	762

The quantity of water that may be diverted under senior water rights in the 13-mile reach of the South Fork Eel River above the confluence with the East Branch South Fork Eel River is 0.733 cfs (Statement of Diversion and Use 10051; licensed Applications 5317 and 23691; and permitted Application 29329). Downstream of the confluence, the quantity of water that may be diverted by other water right holders to serve Garberville, Miranda and vicinity is less than three cfs (licensed Applications 9686, 11876, 18766 and 22018; and permitted Applications 19923, 23017 and 29981). The total amount that may be diverted throughout the stream reach between CalTrans' points of diversion and Miranda is less than four cfs. CalTrans' diversion will not cause flows to drop below 14 cfs, which is adequate to meet the demands of senior water right holders.

The Water May Be Diverted and Used without Unreasonable Effects upon Fish, Wildlife, or other Instream Beneficial Uses
The diversion and use of water under the permit will not unreasonably affect fish, wildlife, or other instream beneficial uses, or impair the extraordinary scenic, recreational, fishery, or wildlife values of the South Fork Eel River. CalTrans has proposed a number of design and operational constraints on its diversions, including bypass flows and instantaneous diversion limits, which will minimize or avoid potential impacts on instream beneficial uses. In a letter sent to CalTrans in April of 2006, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) concurred that CalTrans' diversions as proposed would have an insignificant impact on salmonids. The California Department of Fish and Game (CDFG) first issued CalTrans a 1602 Agreement allowing water drafting in April 2006. An amended 1602 Agreement extending the water drafting work window was issued March 5, 2008. The State Board will require CalTrans to comply with the limitations on diversions that it has proposed as conditions of this permit.

The Proposed Diversion and Use Is in the Public Interest
The proposed diversion and use is in the public interest because it furthers the roadway restoration project.

In light of the findings set forth above, this proposed temporary permit is approved, subject to the following conditions:

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

1. Source of water

Source	Tributary to
South Fork Eel River	**Eel River**
	thence Pacific Ocean

within the County of **Mendocino**

2. Location of point of diversion and rediversion

By California Coordinate System of 1927 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 751,823 feet, East 1,849,062 feet	**SW¼ of SE¼**	**17**	**24N**	**17W**	**MD**
North 751,826 feet, East 1,849,098 feet	**SW¼ of SE¼**	**17**	**24N**	**17W**	**MD**

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Industrial	**NE ¼ of NW ¼**	**17**	**24N**	**17W**	**MD**	
	W ½ of NE ¼	**17**	**24N**	**17W**	**MD**	
	SE ¼ of NE ¼	**17**	**24N**	**17W**	**MD**	
	N ½ of SE ¼	**17**	**24N**	**17W**	**MD**	
	SW ¼ of SE ¼	**17**	**24N**	**17W**	**MD**	
	SW ¼ of SW ¼	**17**	**24N**	**17W**	**MD**	
	NE ¼ of NW ¼	**20**	**24N**	**17W**	**MD**	
	NW ¼ of NE ¼	**20**	**24N**	**17W**	**MD**	

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 14,000 gallons per day to be diverted from the date of permit issuance through November 12, 2008. The maximum amount diverted under this permit shall not exceed 7.73 acre-feet per year.

(0000005)

6. This permit expires 180 days from the date of its issuance or November 12, 2008, whichever comes first.

(0510700)

7. Permittee shall fit all pump intake apparatuses with a screen that meets screening criteria developed by NOAA Fisheries or the California Department of Fish and Game. CalTrans shall inspect and maintain the apparatus each time it is placed in the water.

(0140500)

8. To prevent adverse impacts to the fishery resource, Permittee shall:

- Not divert from the South Fork Eel River whenever the stream flow is 14 cubic feet per second or less at the U.S. Geological Survey (USGS) stream flow gage at Leggett (USGS Gage 11475800).

(0140500)

- Limit the maximum rate of pumping to 250 gallons per minute.

- Ensure pool volume is not reduced more than 10-percent.

(0400500)

9. Permittee shall install and maintain a measuring device, satisfactory to the State Water Board, which is capable of (1) measuring the instantaneous rate of diversion and (2) total quantities of water diverted.

(0100500)

10. Permittee shall report to the State Water Board by February 1, 2009 the maximum rate of diversion and total quantity of water diverted under this temporary permit.

(0100500)

11. 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)

12. The State Water Board 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 State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this temporary permit.

(0480600)

13. 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 State Water Board.

(0510800)

14. 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 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 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)

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 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).

Steven Herman for Jim Kassel

Victoria A. Whitney
Division Chief

Dated: MAY 27 2008