

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Application 31741  
**South Coast Water District**

**ORDER APPROVING CHANGE IN PLACE OF USE, ANNUAL  
DIVERSION LIMIT AND ISSUANCE OF AMENDED PERMIT**

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SOURCE: Aliso Creek tributary to Pacific Ocean

COUNTY: Orange County

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**WHEREAS:**

1. On December 24, 2008, South Coast Water District (Permittee) filed water right Application 31741 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division).
2. On January 16, 2009, the Division issued a public notice of Application 31741. As described in the notice, the Permittee requested to directly divert 1.23 cubic foot per second (cfs) of water from Aliso Creek, with an annual diversion limit of 890 acre-feet per annum (afa), for irrigation of 30 acres within Permittee's 5,200-acre service area.
3. Pursuant to California Code of Regulations, title 23, section 698 an application for an amount of water clearly in excess of the capacity of the proposed diversion works or in excess of an amount reasonably necessary for the proposed use will not be approved and shall be reduced.
4. By order dated February 24, 2010, the Division issued Permit 21256 pursuant to Application 31741. In the order, the Division found that the annual diversion limit for Permit 21256 should be reduced from 890 afa to 88 afa. The reduction to 88 afa was made to reflect an amount reasonably necessary for irrigation of 30 acres, based on an annual water duty of approximately 3 af per irrigated acre. Permit 21256 authorized the direct diversion of 1.23 cfs, with a maximum annual diversion of 88 afa for irrigation of 30 acres within Permittee's 5,200-acre service area.
5. On March 26, 2010, the State Water Board received a petition for reconsideration from the Permittee. The petition requested reconsideration of the reduction in the annual diversion limit from 890 afa to 88 afa and a correction of Application 31741 to reflect a place of use of 310 acres. Division staff advised Permittee that a petition for change was required as a pre-requisite for consideration of the change in place of use (and related diversion limit) requested in the petition for reconsideration.

6. On July 9, 2010 the Division received a petition for change of place of use that identified a 330 acre place of use within Permittee's 5,200-acre service area. The State Water Board does not ordinarily require that notice be given or published in cases where the proposed change(s) do not have the potential to impair the water supply of other legal users of water or instream beneficial uses, except that in all cases the petitioner shall notify the Department of Fish and Game (DFG) in writing of the proposed change(s). The Permittee notified DFG, and the Division notified all interested parties and protestants to Application 31741 of the proposed change.
7. Order 2010-0033-EXEC, dated December 1, 2010, granted reconsideration of the Division's order issuing Permit 21256 and remanded Permit 21256 to the Division to determine: 1) whether the Division should have reduced the Permittee's annual diversion limit from 890 acre-feet to 88 acre-feet; 2) given its intended use, supplemental documentation, and submission of a change petition, whether the Permittee's designated place of use should be enlarged to 330 acres; and 3) whether the Division erred in requiring a 4.77 cfs bypass rather than a 6.0 cfs bypass to protect Southern California steelhead.
8. As amended by the change petition, Permittee requests to directly divert 1.23 cfs from Aliso Creek, with an annual diversion limit of 890 afa, for irrigation of 330 acres within Permittee's 5,200-acre service area. The proposed diversion of water for irrigation is considered a beneficial use of water. After considering the purpose of use and the place of use, the Division has determined that the maximum annual diversion of 890 afa is an amount reasonably necessary for the proposed beneficial use of irrigation of 330 acres.
9. Pursuant to Order 2010-0033-EXEC, the Division consulted with National Marine Fisheries Service (NMFS) staff to determine whether the Division erred in requiring a 4.77 cfs bypass rather than a 6.0 cfs bypass to protect Southern California steelhead. By email dated December 15, 2010 and again by email dated December 22, 2010, NMFS staff confirmed that a 4.77 cfs minimum bypass flow would afford adequate protection to steelhead in Aliso Creek. In consultation with NMFS staff, Division staff drafted language to clarify the bypass flow requirement for Permit 21256. The permit terms relating to the bypass flow will be amended to include the clarifying language.
10. The State Water Board, as a Responsible Agency under the California Environmental Quality Act (CEQA), has considered the Mitigated Negative Declaration prepared by Permittee and has determined that the proposed project, with mitigation measures, will have a less than significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the Mitigated Negative Declaration and supporting materials. The potential adverse impacts of the project were found to be less than significant and mitigated with the inclusion of specific water right permit terms, in accordance with California Code of Regulations, title 14, section 15040 et seq.

The Division will file a Notice of Determination with the Governor's Office of Planning and Research within five days of issuance of this Order in accordance with California Code of Regulations, title 14, section 15096.

11. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Ca.3d 419 [189 Cal.Rptr. 346].). There is no evidence that approval of the application and petition, with inclusion of mitigation measures to minimize impacts to biological resources, will have any adverse impacts on public trust resources.

**NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD APPROVES THE PETITION FOR CHANGE IN PLACE OF USE. PERMIT 21256 IS AMENDED AS FOLLOWS:**

1. The place of use shall be 330 acres within the District's 5,200 acre service area as identified in the map on file with the Division.

2. Permit Condition 5 shall be amended to read as follows:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1.23 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 890 acre-feet per year.

(0000005A)

3. Permit Condition 7 shall be amended to read as follows:

For the protection of fish and wildlife in Aliso Creek, Permittee shall during the period from January 1 through December 31 bypass a minimum of 4.77 cubic feet per second (cfs). The total streamflow shall be bypassed whenever it is less than the designated amount. The Permittee shall submit a compliance plan within six months of the issuance of this permit, satisfactory to the Deputy Director for Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. The Permittee shall be responsible for all costs associated with developing the compliance plan, and installing and maintaining all flow bypass and monitoring facilities described in the compliance plan.

(0140200)

4. Permit Condition 10 shall be amended to read as follows:

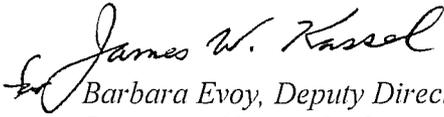
No water shall be diverted under this permit if there is a lack of streamflow continuity from the point of diversion to the Pacific Ocean. Permittee shall conduct an instream survey within Aliso Creek, after January 1 of each year, when streamflow below the point of diversion is at the minimum bypass flow prescribed by Term 7, to verify that diversion under this Permit does not contribute to a loss of streamflow continuity between the point of diversion and the Pacific Ocean, result in isolated pools, or otherwise impede fish migration.

If a survey shows that diversion under this Permit contributes to a loss of streamflow continuity below the point of diversion, results in isolated pools, or otherwise impedes fish migration, then the Permittee shall notify the Deputy Director for Water Rights within one (1) business day, and shall raise the minimum bypass flow prescribed by Term 7 of this Permit in consultation with the Deputy Director for Water Rights until the condition has been remedied. Permittee shall report, on the annual Progress Report by Permittee, the results of all surveys conducted in accordance with this term.

(0000206)

5. All other terms and conditions specified in Permit 21256, dated February 24, 2010, shall remain in the permit and are not affected by this Order.

STATE WATER RESOURCES CONTROL BOARD

  
*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: **MAR 18 2011**

Attachment: Amended Permit 21256

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 21256**

Application 31741 of **South Coast Water District**  
**PO Box 30205**  
**Laguna Niguel, CA 92607-0205**

filed on **December 24, 2008**, has been approved by the State Water Resources Control Board (State Water 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: <b>Aliso Creek</b>	Tributary to: <b>Pacific Ocean</b>
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within the County of **Orange**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 6	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<b>North 2,134,829 feet and East 6,108,132 feet</b>	<b>NE ¼ of SW ¼</b>	<b>32</b>	<b>7S</b>	<b>8W</b>	<b>SB</b>

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Irrigation</b>	<b>330 acres within the District's 5,200 acre service area</b>					

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 **1.23 cubic feet per second** to be diverted from **January 1** to **December 31** of each year. The maximum amount diverted under this permit shall not exceed **890** acre-feet per year. (0000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2019. (0000009)

7. For the protection of fish and wildlife in Aliso Creek, Permittee shall during the period from January 1 through December 31 bypass a minimum of 4.77 cubic feet per second (cfs). The total streamflow shall be bypassed whenever it is less than the designated amount. The Permittee shall submit a compliance plan within six months of the issuance of this permit, satisfactory to the Deputy Director for Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. The Permittee shall be responsible for all costs associated with developing the compliance plan, and installing and maintaining all flow bypass and monitoring facilities described in the compliance plan.
- (0140200)
8. Permittee shall install a stream-gaging system satisfactory to the State Water Board, which is capable of measuring the bypass flows required by the conditions of this permit and develop a rating curve at the diversion point that conforms to the standards for accuracy of the U.S. Geological Survey for methods of measuring surface discharge in streams. The gaging system and rating curve will be used in combination to continuously monitor the rate of surface flow in Aliso Creek at the point of diversion. If a stream gage has been installed by another agency, the Permittee may utilize the existing gage and rating curve to meet this requirement. In the event that said gage is no longer available for streamflow measurements, Permittee (or successors-in-interest) is responsible for installing as soon as possible and maintaining an equivalent gage, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the current gage. In the absence of such an equivalent gage, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 31741.
- (0000204)
9. 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 (Regional Board), San Diego Region, pursuant to Water Code Section 13260, and the Regional Board or State Water 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 point source 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.
- (0290101)
10. No water shall be diverted under this permit if there is a lack of streamflow continuity from the point of diversion to the Pacific Ocean. Permittee shall conduct an instream survey within Aliso Creek, after January 1 of each year, when streamflow below the point of diversion is at the minimum bypass flow prescribed by Term 7, to verify that diversion under this Permit does not contribute to a loss of streamflow continuity between the point of diversion and the Pacific Ocean, result in isolated pools, or otherwise impede fish migration.
- If a survey shows that diversion under this Permit contributes to a loss of streamflow continuity below the point of diversion, results in isolated pools, or otherwise impedes fish migration, then the Permittee shall notify the Deputy Director for Water Rights within one (1) business day, and shall raise the minimum bypass flow prescribed by Term 7 of this Permit in consultation with the Deputy Director for Water Rights until the condition has been remedied. Permittee shall report, on the annual Progress Report by Permittee, the results of all surveys conducted in accordance with this term.

(0000206)

11. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.  
(0000203)
12. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the National Marine Fisheries Service (NMFS) to protect migratory fish, listed as endangered under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) and under the Federal Endangered Species Act (16 U.S.C.A sections 1531 to 1544). If the fish screen is rendered inoperative for any reason, Permittee shall notify the Deputy Director for Water Rights immediately and shall restore the equipment to service as soon as possible. Permittee shall deploy a pump-intake screen that meets NMFS' criteria for juvenile fish screens including: (1) fish screen approach velocity, (2) depth, (3) dimension, and (4) screen mesh size as included in the Initial Study/Mitigated Negative Declaration. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.  
(0000213)

**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 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)

- 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 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, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by the 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 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).*

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
for *Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: **MAR 18 2011**