

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31436
Reclamation District No. 108

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Sacramento River tributary to Suisun Bay

COUNTIES: Colusa and Yolo

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

WHEREAS:

1. Application 31436 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on May 13, 2003, by Reclamation District No. 108 (Applicant).
2. The Applicant requested the right to divert 240 cubic feet per second of water with a maximum annual diversion of 36,000 acre-feet. Water would be used for irrigation of alfalfa and orchard crops, rice straw decomposition on 18,000 acres, and recreational and wildlife enhancement uses for water fowl and wildlife viewing and hunting. The proposed water uses are beneficial.
3. The Division issued a public notice of Application 31436 on April 2, 2004. The California Department of Fish and Game (DFG) protested based on environmental concerns. The protest was resolved on August 19, 2010 by inclusion of a permit condition. The protest is hereby dismissed.
4. The Applicant's consultant submitted an August 23, 2005 Water Availability Analysis (WAA). The WAA concluded that with inclusion of standard permit term 91 into any permit issued pursuant to Application 31436, water is available to serve this application without injury to prior rights. The State Water Board has determined that there is unappropriated water available to serve Application 31436.
5. On May 11, 2007, the Applicant submitted a change petition to add the Emery Poundstone Pumping Plant as a point of diversion to Application 31436. A public notice of the petition was issued on August 23, 2007. No protests were received. The Emery Poundstone Pumping Plant was completed in October 2008.
6. The State Water Board has determined that the petition for change to add the Emery Poundstone Pumping Plant as a point of diversion to Application 31436 does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water. The State Water Board has also determined that good cause for such change has been shown.

7. The Wilkins Slough Pumping Plant and Emery Poundstone Pumping Plant are fish-screened facilities. No new construction of pumps, diversion structures or conveyance systems will occur and the lands to be flooded are currently irrigated.
8. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses with inclusion of the DFG protest dismissal conditions.
9. Pursuant to the provisions of the California Environmental Quality Act (CEQA), on March 8, 2006, the Applicant adopted a Negative Declaration for Application 31436. (California Code of Regulations, title 14, section 15074) The Negative Declaration (SCH # 2006012086) concluded that the project as proposed by Application 31436 will not have a significant effect on the environment. The Applicant filed a Notice of Determination (NOD) with the Governor's Office of Planning and Research (OPR) for the project on March 13, 2006.
10. Pursuant to the provisions of the CEQA, on January 11, 2006, the Applicant adopted a Mitigated Negative Declaration for the construction of the Emery Poundstone Pumping Plant. The Negative Declaration (SCH # 2005122012) concluded that the project as proposed by the 2007 petition for change will not have a significant effect on the environment. The Applicant filed an NOD with the OPR for the project on January 18, 2006.
11. The State Water Board will file a Notice of Determination for Application 31436 and the 2007 petition for change with OPR within five days from the issuance of this order, in accordance with California Code of Regulations, title 14, section 15096.
12. The authority to issue this permit has been delegated to the Deputy Director for Water Rights pursuant to State Water Resources Control Board Resolution No. 2007-0057, section 4.2.14.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31436, subject to the conditions of the enclosed permit.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy
Deputy Director for Water Rights

Dated: OCT 18 2010

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21274

Application 31436 of Reclamation District No. 108
P.O. Box 50
Grimes, CA 95950

filed on **May 13, 2003**, 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:
Sacramento River

Tributary to:
Suisun Bay

within the County of Colusa

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Wilkins Slough Pumping Plant North 2,130,572 feet and East 6,610,675 feet	SW ¼ of SE ¼	35	14N	1E	MD
Emery Poundstone Pumping Plant North 2,105,148 feet and East 6,608,242 feet	SW ¼ of SW ¼	26	13N	1E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation, Recreational, Fish and Wildlife Enhancement, and Rice Straw Decomposition	Within the boundaries of the irrigation service area of Reclamation District No. 108		11N through 14N	2E through 1W	MD	Net of 18,000 within gross area of 47,057

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 **240** cubic feet per second to be diverted from November 1 through February 1 of each year. The maximum amount diverted under this permit shall not exceed **36,000** acre-feet per year. (000005A)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2020. (0000009)

7. Prior to making a request for license or before license action will be considered by the State Water Resources Control Board, permittee shall consult with the Division of Water Rights and perform an irrigation system evaluation. A report on the evaluation shall be prepared by a person trained or experienced in irrigation system design and management and shall be submitted to the Board for approval.

All cost-effective water conservation measures identified in the irrigation system evaluation report shall be implemented prior to issuance of a license. (000029C)

8. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights. (0000030)

9. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water 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)

10. 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 by order of the State Water Board, made after notice to interested parties and opportunity for hearing. (0000090)

11. 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 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)

12. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning protection of beneficial uses of water in San Francisco Bay and Suisun Marsh. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000094c)

13. For the protection of fisheries in the Sacramento River, diversion under this permit shall be subject to maintenance of minimum instream flows in the Sacramento River below Wilkins Slough. No water shall be diverted under this permit at times when the flow in the Sacramento River below Wilkins Slough is less than, or diversions under this permit would cause the flow to be less than, either a or b, whichever is greater:

- a. 4,000 cfs during the month of November and 3,500 cfs during the months of December and January, or
- b. the minimum flow identified in the Biological Opinion and Conference Opinion of the Long-Term Operations of the Central Valley Project and State Water Project prepared by the National Marine Fisheries Service or any revisions thereof.

For the purposes of this term, the flow in the Sacramento River below Wilkins Slough is the three-day average of the mean daily flow posted by the Department of Water Resources on its California Data Exchange Center website for the Sacramento River below Wilkins Slough, Station ID WLK. To ensure compliance with this condition, by **March 31** of each year Permittee shall file a report with the Deputy Director for Water Rights, containing the following information:

- a. Dates during the previous period of November 1 to February 1 of the succeeding year when water was diverted under this permit; and
- b. Flows measured in the Sacramento River below Wilkins Slough under this permit during the same period.

The Permittee and the Department of Fish and Game (DFG) will meet five years after the issuance of this permit to review new information being collected by DFG and to discuss potential adjustments to the minimum flows identified in this permit term.

(0140400)

14. In the event that the gage at Sacramento River below Wilkins Slough (Station ID WLK) is no longer available for streamflow measurements, Permittee (or successors-in-interest) is responsible for installing and maintaining an equivalent gage, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of Station WLK. 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 31436.

(0000204m)

15. The State Water Board reserves jurisdiction over this permit to modify, delete, or add minimum flow requirements or related criteria for the protection of fish and wildlife should additional fishery studies be conducted in the Sacramento River or Sacramento-San Joaquin River Delta. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.

(0140600)

16. Within one year of permit issuance, Permittee shall develop and submit to the Division a Water Diversion and Use Monitoring Plan (Plan), subject to approval by the Deputy Director of Water Rights, that includes:
- a. a methodology (including assumptions) for determining water diverted and consumptively used and non-consumptively used under this permit;
 - b. the locations of water measurement sites, if any.

If the Deputy Director for Water Rights determines the submitted Plan is not acceptable, the Permittee shall correct the deficiencies within 120 days of notification, or as otherwise directed by the Division. Modifications to the Plan may be made only upon written approval by the Deputy Director for Water Rights.

(0060900)

17. The Permittee shall report annually in the Progress Report by Permittee, as determined pursuant to the approved Water Diversion and Use Monitoring Plan the following:

- a. the quantity of water diverted and consumptively used that is applied to (i) rice straw decomposition;
- b. the quantity of water diverted and consumptively used that is applied to (ii) irrigation;
- c. the quantity of water diverted and non-consumptively used that is applied to (iii) rice straw decomposition;
- d. the quantity of water diverted and non-consumptively used that is applied to (iv) fish and wildlife enhancement and recreation.

(0090900)

18. 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 California Department of Fish and Game and the National Marine Fisheries Service to protect Winter-run Chinook salmon, Spring-run Chinook salmon, and Central Valley Steelhead, listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) and the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544)]. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.

(0000214)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL 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 that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 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 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).

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy
Deputy Director for Water Rights

Dated: OCT 18 2010