

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 31770

PERMIT 21299

of:

Oakdale Irrigation District
South San Joaquin Irrigation District
P.O. Box 1158
Pinecrest, CA 95364-0158

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2007-0057.)

Additionally, the State Water Board has complied with its 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 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Therefore, **Application 31770** filed on **April 30, 2009**, has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittees are hereby authorized to divert and use water as follows:

1. Source of water

Source:
Stanislaus River

Tributary to:
San Joaquin River thence
Sacramento-San Joaquin Bay Delta

within the Counties of Calaveras and Tuolumne

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,141,466 feet and East 6,531,372 feet	NW ¼ of SW ¼	1	1S	12E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Hydropower Generation	NW¼ of SW¼	1	1S	12E	MD	n/a

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 **700 cubic feet per second** to be diverted from **January 1 to December 31** of each year. The annual diversion from October 1 of each year to September 30 of the succeeding year shall not exceed 506,000 acre-feet. (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, 2021. (0000009)
7. The equivalent of the authorized continuous flow allowance for any 14-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed. (0000027)
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, permittees shall, at their 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. Permittees shall, prior to construction, file a Report of Waste Discharge pursuant to Water Code Section 13260 with the California Regional Water Quality Control Board, Central Valley Region (Regional Board), and shall comply with all Waste Discharge Requirements issued by the Regional Board. If the Regional Board waives issuance of Waste Discharge Requirements, permittees shall comply with Parts I and II of the "Guidelines for Protection of Water Quality During Construction and Operation of Small Hydro Projects" (Guidelines) as contained in the Water Quality Control Plans of the Central Valley Basin.

Specific requirements set forth in this permit shall prevail over any specific or general requirements in the referenced Guidelines in the event of conflict.

When complying with the Guidelines, pursuant to this condition, permittees shall not commence construction until the Erosion Control Plan and any baseline data required by the Guidelines have been submitted to and approved in writing by the Regional Board; and before commencing sluicing operations, permittees shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan. (0000102)
10. Water diverted under this permit is for nonconsumptive use and is to be released to the Stanislaus River within the NW¼ of SW¼ of Section 1, T1S, R12E, MDB&M. (0000111)

11. The Permittees 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. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges under this permit may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Sections 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittees or licensees of an application for any such future upstream appropriation and the opportunity to be heard; provided that a hearing, if requested, may be consolidated with the hearing on such applications.
(000000I)
13. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements.
(000000J)
14. Permittees shall comply with the agreement between permittees and Tuolumne Utilities District executed on December 15, 2009, and filed with the State Water Board. This permit is predicated on relying on releases from Tulloch Reservoir, as scheduled by the U.S. Bureau of Reclamation to generate power via the planned third generating unit and the permittees have neither the intention nor the ability to alter the operations of Tulloch Reservoir, Beardsley Reservoir or Donnell's Conduit or any other facility for the purpose of generating more power at the third generating unit at Tulloch Dam.
(0000024)

THIS PERMIT IS ALSO 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 permittees when requested by the State Water Board until a license is issued.
(0000010)
- C. Permittees 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, except to the extent (if any) such authority is preempted by federal law, 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.

Except to the extent (if any) such authority is preempted by federal law, 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 permittees without unreasonable draft on the source. Permittees may be required to implement a water

conservation plan, features of which may include but not necessarily be limited to (1) suppressing evaporation losses from water surfaces; (2) controlling phreatophytic growth; and (3) 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.

Except to the extent (if any) such authority is preempted by federal law, 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 permittees 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. Except to the extent (if any) such authority is preempted by federal law, 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 permittees 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 candidate 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) except to the extent (if any) that the Act is preempted by federal law, 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 permittees shall obtain authorization for an incidental take prior to construction or operation of the project. Permittees shall be responsible for meeting all requirements of the state and federal Endangered Species Acts for the project authorized under this permit.

(0000014)

- G. Permittees 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. Except to the extent (if any) such authority is preempted by federal law, 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 permittees is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittees. If a stream or lake agreement is not necessary for this permitted project, the permittees 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 permittees take 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: JWK for

Barbara Evoy
Deputy Director for Water Rights

Dated: April 25, 2012