



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

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 31859

PERMIT 21302

Right Holder: Ron Bingaman
Sandra Gay Bingaman
25855 Sweet Road
Grass Valley, CA 95949

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **October 20, 2010**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

The Deputy Director for Water Rights finds that the State Water Board and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved protests 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 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].)

Right holder is hereby granted a right to divert and use water as follows:

1. Source of water: **Wolf Hannaman Random Ditch (aka unnamed stream)**
tributary to: **Wolf Hannaman Canal thence Bear River thence Feather River thence Sacramento River**
within the County of **Nevada**

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
North 2,146,486 feet and East 6,804,559 feet	SE ¼ of NW ¼	24	14N	7E	MD

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Hydropower Generation	SE ¼ of NW ¼	24	14N	7E	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 **three (3) 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 **2,172 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, 2023. (000009)
7. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue. (000025)
8. 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. (000027)
9. This permit is subject to any future agreement between the permittee and Nevada Irrigation District to the extent the agreement covers matters within the State Water Board's jurisdiction.
10. 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. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing. (000080)
11. 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 Basin 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. (000090)
12. No diversion is authorized by this permit when satisfaction of in-basin 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)

- 13. Permittee 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, permittee 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, permittee 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, permittee shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan.

(0000102)

- 14. No water shall be diverted under this right, and no construction related to such diversion shall commence, unless right holder complies with the requirements of the Clean Water Act. In order to demonstrate such compliance, right holder shall obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, or evidence that such a permit is not required, and provide such permit or evidence to the Division of Water Rights. If it is determined that a Clean Water Act section 404 permit is required, right holder shall further demonstrate compliance by obtaining a Clean Water Act section 401 certification from the State Water Board.

(0000103)

- 15. Water diverted under this permit is for nonconsumptive use and is to be released to the Wolf Hannaman Random Ditch within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24, T14N, R7E, MDB&M.

(0000111)

- 16. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

- 17. 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 permittee or licensee 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)

18. No water shall be directly diverted under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device(s) and methods satisfactory to the Deputy Director for Water Rights. The device(s) shall be capable of monitoring the rate and quantity of water diverted, and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the device(s) has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device(s) is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(000000R)

19. No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.

(0000070)

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 right holder when requested by the State Water Board until a license is issued. (0000010)
- C. Right holder 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 right. (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 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 right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder 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 right holder 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 right holder 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 right holder 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 right 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 Wildlife 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, right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(0000014)

G. Right holder 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 water shall be diverted under this right, and no construction related to such diversion shall commence, until right holder obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized development schedule, until right holder complies with the requirements of this term.

Within 90 days of the issuance of this permit or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & W. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002.); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344.); or, (5) local grading permits.

Right holder shall, within 30 days of issuance of all permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING:

Water Code 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:
PHILLIP CRADER FOR**

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: FEB 22 2013