

**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 21315

Application T031949 of

**Mercer-Fraser Company
c/o Charlie Anderson
P.O. Box 1006
Eureka, CA 95502**

filed on **July 23, 2012** 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.

Mercer-Fraser Company (Mercer-Fraser) filed a temporary permit application on July 23, 2012, under Water Code section 1425. Mercer-Fraser is working for the California Department of Transportation (Caltrans) to construct improvements on Highway 299 and requires a temporary water supply for compaction of earth fill, dust control, and fire protection/suppression, if required. The application states that a close water source is necessary for timely construction of the project and convenience to the traveling public.

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).)

The State Water Board has delegated to the Deputy Director for 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 2012-0029, para. 4.2.14.) A public notice of the application for this temporary permit was issued on August 3, 2012.

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. The project is partially complete; however, ongoing work requires the use of water until the project is complete. Timely completion of the project is of importance to public safety. The Applicant is concerned about the potential for a fire at the project site. The temporary permit would allow Mercer-Fraser to have water available near the jobsite location for fire protection. Approval of the temporary permit application will allow Mercer-Fraser 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. Mercer-Fraser's proposed diversion is subject to limits on the instantaneous rate of diversion, and the total quantity of water that may be

diverted. The State Water Board will require Mercer-Fraser to comply with these limitations as conditions of this permit.

Public notice of this application has been issued; however, the objection period will not close until September 3, 2012.

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 scenic, recreational, fishery, or wildlife values of the project area. Caltrans, as lead agency for the project, adopted a Negative Declaration pursuant to the California Environmental Quality Act (CEQA), on July 22, 2010. Caltrans found that the project will not result in significant environmental effects. On November 17, 2011, the Department of Fish and Game (DFG), a responsible agency under CEQA, filed a Notice of Determination (NOD) for a streambed alteration agreement for the highway improvement project. The NOD indicated that the project will not have a significant effect on the environment (as limited to effects within DFG's jurisdiction as a responsible agency). DFG included a list of avoidance and minimization measures to protect fish and wildlife resources in Streambed Alteration Agreement #1600-2010-0270-R1.

Foothill yellow-legged frog (*Rana boylei*) may be present in the project area; therefore, protective conditions have been included in the temporary permit. Fish screens on the intakes are needed and a bypass condition for the diversion from Water Gulch is also applicable. A bypass condition on Willow Creek is not necessary. A condition has been included in the permit for monitoring, if required by the Central Valley Regional Water Quality Control Board, of water quality in Willow Creek. The monitoring will ensure that diversion from source streams will not raise copper and zinc metal concentrations to levels unsuitable for aquatic life in Willow Creek. The required bypass on Water Gulch will also serve to maintain dilution of metals in Willow Creek. These conditions are included in the permit. Division staff consulted with DFG and the Central Valley Regional Water Quality Control Board on August 8, 2012 regarding necessary permit conditions.

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 improvement 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:

| | |
|-------------------------|---------------------------|
| Source | Tributary to |
| <u>(1) Water Gulch</u> | <u>Willow Creek</u> |
| <u>(2) Willow Creek</u> | <u>thence Clear Creek</u> |

within the County of **Shasta**

2. Location of points of diversion

| By California Coordinate System of 1983 in Zone 1 | 40-acre subdivision of public land survey or projection thereof | Section | Township | Range | Base and Meridian |
|---|--|---------|----------|-------|-------------------|
| North 2,127,361, East 6,368,233 feet | SW ¹ / ₄ of SE ¹ / ₄ | 31 | 33N | 7W | MD |
| North 2,127,243 feet, East 6,368,426 feet | SW ¹ / ₄ of SE ¹ / ₄ | 31 | 33N | 7W | MD |

| 3. Purpose of use | 4. Place of use | Section | Township | Range | Base and Meridian | Total acres |
|--|-----------------|---------|----------|-------|-------------------|-------------|
| Industrial Dust Control Fire Protection | | 6 | 32N | 7W | MD | 30 |
| | | 7 | 32N | 7W | 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** for dust control and **70,000 gallons per day** for industrial use. The maximum amount diverted under this permit shall not exceed **34 acre-feet**. (0000005)
6. This permit expires **180 days** from the date of its issuance. (0510700)

7. 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)
8. Permittee shall report to the State Water Board by March 15, 2013, the maximum rate of diversion and total quantity of water diverted under this temporary permit.
(0100500)
9. If foothill yellow-legged frogs (*Rana boylei*) are encountered during construction, Permittee shall cease construction and ground disturbing activities in areas within 250 feet of the location where foothill yellow-legged frogs are present and shall contact the California Department of Fish and Game (DFG). Prior to restarting construction activities, Permittee shall submit to the Deputy Director for Water Rights evidence of DFG approval to continue construction.
(0450500)
10. No water shall be diverted from Water Gulch under this temporary permit when diversion from the source exceeds **10 percent of baseflow** as determined at the point of diversion.
(0140060)
11. Right holder shall measure baseflow weekly on Water Gulch using a flow meter or weir, or by another method acceptable to the Deputy Director for Water Rights, throughout the "dry" period. Once stream flows are increasing in response to rain events, monthly monitoring is acceptable.
(0050500)
12. No water shall be diverted under this temporary permit unless, within two weeks of the date of this temporary permit, right holder is monitoring the bypass flow required by this right in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Right holder shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan.
(0000070)
13. No water shall be diverted under this permit except through a fish screen on the intake to any diversion structure, satisfactory to meet the physical and operational specifications of DFG to protect fisheries resources. Permittee shall inspect and maintain any apparatus each time it is placed in the water.
(0450500)
14. Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
(0000208)
15. In order to control and minimize potential erosion during construction activities, Best Management Practices (BMP) shall be prepared by a licensed civil engineer and submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. BMPs for controlling erosion may include, but are not limited to the following: vegetation removal shall be limited to the minimum amount necessary to accommodate installation of the diversion facility; temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas; and sediment shall be retained on-site by sediment basins, traps, siltation barriers, or other appropriate measures as needed. Implementation of Caltrans' approved BMPs may substitute for this condition, provided that the BMPs are equivalent or better than the BMPs listed herein.

(0120500)

16. Permittee shall consult with the Central Valley Regional Water Quality Control Board (Regional Board) whether a Monitoring Plan (Plan) is necessary to ensure that water quality standards are met in Willow Creek. If needed, the Plan shall ensure that copper and zinc metal concentrations do not substantially increase as stream flow is diverted. A copy of the Plan, once approved by the Regional Board, shall be submitted by email to Division management prior to any diversion under this temporary permit.

17. 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)

18. 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)

19. 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)

20. 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).

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JAMES W KASSEL FOR

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: AUG 15 2012