

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21209

Mailed February 25, 2008

Application **30454** of

**County of Sacramento and Sacramento County Water Agency
Water Resources Division, County of Sacramento
827 7th Street, Room 301
Sacramento, CA 95814**

filed on **June 13, 1995**, 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 **Sacramento**

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 1,977,736 feet and East 6,702,669 feet	SW¹/₄	35	9N	4E	MD
North 1,934,251 feet and East 6,702,931 feet	NE¹/₄ of SW¹/₄	11	7N	4E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Municipal	Sacramento County Zone 40					

The place of use is shown on maps filed with the State Water Board.

5a. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **132 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 **71,000** 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, 2030.

(0000009)

7. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(000029A)

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 Chief, Division of 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 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.

(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. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Board.

(0000100)

13. The 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 Chief, Division of Water Rights.

(0000203)

14. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the instantaneous rate of diversion in cubic feet per second and cumulative quantity of water diverted under this permit. A record of such measurements shall be maintained by the permittee, and made available to interested parties upon reasonable request. A copy of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee".

(000000R)

15. To minimize potential impacts on sensitive vegetation and wetland resources, permittee shall:

a. Require the contractor to designate any additional work areas outside the currently identified work zone. These designated work areas will include staging areas, equipment and vehicle parking areas, and pipeline trench and construction access corridors. Before construction, additional work areas will be surveyed by a qualified botanist, relocated as necessary to avoid impacts on sensitive resources, approved by the permittee, and demarcated before construction with lath and flagging, temporary orange construction fencing, or chain-link fencing. Construction contractors will require construction equipment and personnel to stay within these designated areas.

b. Designate areas containing sensitive vegetation and wetland resources as "Restricted Areas" and protect them with temporary barriers. The construction contractor will be required to keep construction equipment and personnel out of designated restricted areas.

(0400500)

16. To mitigate for construction impacts, the permittee shall require the construction contractor to restore areas of the construction zone outside the footprint of permanent facilities to preconstruction site conditions. To ensure that impacts on native plant species and other natural communities are not long-term, native topsoil will be stockpiled and immediately replaced, and natural site topography (including necessary amendments to soil structure) reestablished to allow natural colonization of plant species. In areas that require immediate stabilization, non-vegetative techniques that allow native species to reestablish will be used, including use of weed and disease free mulch, erosion blankets, or rolled organic fiber material.

Erosion control seed mixes may be necessary on selected sites. If sites need to be stabilized through seeding, the seed mix will include native or sterile seed varieties that are appropriate for stabilizing local site conditions. Special attention will be given to erosion control near wetland areas such as vernal pools.

Site-specific erosion control measures (non-vegetation or mechanical techniques) will be determined on a site-specific basis by a vegetation specialist and the project engineer.

(0400500)

17. Permittee shall implement Best Management Practices (BMPs) during construction activities to prevent the introduction and spread of noxious weeds into the project site and adjacent natural areas. This includes implementing a worker training program instructing in the identification of, and threats associated with, the most invasive noxious weeds (those rated "A", most invasive, by the California Department of Food and Agriculture); washing trucks and equipment prior to entering any natural vegetation communities, particularly vernal pools and

wetlands, during pipeline construction; and washing trucks and equipment after leaving areas with serious infestations of noxious weeds.

(0400500)

18. To minimize potential impacts on native trees and riparian woodland, permittee shall:

- a. Prior to ground-disturbing construction activities, identify protected trees outside designated construction area with flagging or temporary construction fencing and post the protected area with restricted signs. Fencing will encompass the tree dripline and a buffer to be determined in consultation with the local planning departments. Construction specifications will require construction equipment and personnel to stay out of designated restricted areas. Construction activities that could affect tree health, such as trenching and placement of fill, will be prohibited within posted restricted areas.
- b. Prior to removal of any locally protected trees, permittee shall obtain county and city tree removal permits. Permittee shall implement required tree replacement and conduct appropriate monitoring to verify the successful replacement of lost trees.
- c. Identify appropriate protection buffers around woody riparian communities for each drainage in the project area that could be affected by construction activities. Buffers will be established in the field based on site-specific conditions, seasonal restrictions for wildlife, local planning department specifications, resource agency requirements, and will extend from the outer edge of the riparian vegetation. Established riparian protection buffers will be demarcated at the outer edge using flagging or temporary orange mesh construction fencing.
- d. Compensate for unavoidable riparian woodland losses with a combination of restoration and enhancement of degraded sites. Restoration will occur as close as possible to the area affected, preferably along the same drainage that will sustain the impacts.

Compensation for riparian community losses will encompass the goal of "no net loss" of riparian habitat acres or values. Impacts on riparian communities will be compensated for at a minimum ratio of 2:1 (2 acres treated for every 1 acre affected). The ratio of trees and shrubs planted for each tree or shrub eliminated will be determined on a site-by-site basis to ensure long-term replacement of habitat functions and values. A re-vegetation plan will be prepared by a qualified restoration ecologist and reviewed by the appropriate agencies. The re-vegetation plan will specify the planting stock appropriate for each region and site, employing the most successful techniques available at the time of planting. Success criteria will be established as part of the plan. Plantings will be monitored for 5 years to ensure they have established successfully. The riparian community mitigation will be considered successful when sapling trees are established, no longer require active management, and are arranged in groups that, when mature, replicate the area, natural structure, and species composition of similar riparian habitats in the region.

(0400500)

19. To avoid and minimize impacts on jurisdictional waters of the United States, permittee shall:

- a. Install protective barriers and implement Best Management Practices (BMPs). Where avoidance is infeasible, the size of construction work areas will be minimized in and around wetland plant communities and contained within designated areas. In order to expedite site restoration, permittee shall require construction contractors to separate and stockpile native topsoil and plant material at waterway crossings, immediately replace soil and plant materials after construction is complete, and restore trenched areas to original contours. Vernal pool and swale topsoil will be retained for use in off-site habitat creation.
- b. Obtain and comply with state and federal wetland permits and requirements pertaining to impacts. To obtain necessary permits, the permittee shall coordinate with the U.S. Army Corps of Engineers (Corps), the Department of Fish and Game (DFG), and the Central Valley Regional Water Quality Control Board.
- c. To compensate for unavoidable impacts, the permittee will be required by the Corps to implement a wetland mitigation and monitoring plan as a condition of permit issuance. A restoration specialist will be

retained to prepare and implement a wetland mitigation and monitoring plan. The mitigation plan will specify the form and size of mitigation sites based on the region and site. Wetland mitigation may occur on- or off-site and will employ the most successful techniques available at the time of planting. To ensure the success of the restoration effort, a monitoring plan of no less than 5 years will be implemented.

In order to implement compensatory vernal pool habitat or acquire and maintain land containing natural vernal pools, permittee shall coordinate with U.S. Fish and Wildlife Service (USFWS) and DFG. Long-term maintenance and monitoring programs will be developed and implemented to verify the establishment of biological variability in the constructed pools and to ensure the continued viability of the project pools.

(0000210)

20. In order to prevent impacts to special status plant species, the permittee shall:

a. Retain a qualified botanist to conduct preconstruction surveys in areas not previously inventoried.

b. Demarcate special-status plant populations with temporary orange construction fencing and restricted area postings. If avoidance is infeasible, the permittee will focus on minimizing the width of construction work areas in and around special-status plant populations. Populations of special-status species in close proximity to construction work areas will be monitored to ensure inadvertent impacts are avoided.

c. Compensate for unavoidable impacts on special-status plant populations in coordination with USFWS and DFG to determine the appropriate mitigation strategies. If affected plants are listed under the federal ESA, the appropriate take permits will be obtained from USFWS. Currently accepted mitigation of impacts on special-status plants includes acquisition and preservation of nearby occupied habitat, or habitat creation at a ratio determined by the regulatory agency. Transplantation of affected population is not considered a viable mitigation option. Creation of habitats with high levels of endemism, such as vernal pools, is effective only with stringent management guidelines in place. The permittee shall coordinate with USFWS to develop an effective mitigation and monitoring plan for specific vernal pool plants in conjunction with the construction of compensatory vernal pool habitat. Alternatively, the permittee could acquire and preserve nearby high-quality occupied habitat.

(0000209)

21. Prior to construction the permittee shall, in coordination with USFWS, have a qualified biologist conduct protocol-level surveys and develop a mitigation plan for vernal pool fairy shrimp, vernal pool tadpole shrimp, and other special-status crustacean species that may be present in the construction corridor or water treatment plant construction footprint. If a listed species is found, compliance with the Endangered Species Act (ESA) and consultation with the USFWS is required if occupied habitat cannot be avoided and will be adversely affected.

a. Compliance with the ESA will require development of a compensation plan that includes preservation of existing habitat and creation or enhancement of compensatory habitat.

b. If the midvalley fairy shrimp is found, impacts on occupied habitat will be minimized and removal of occupied habitat mitigated for vernal pool fairy shrimp and vernal pool tadpole shrimp. Authorization by the USFWS pursuant to the ESA will not be required if the midvalley fairy shrimp is the only species affected. Impacts will be minimized for habitat occupied by California linderiella, but no further mitigation for this species will be required provided no listed plant or animal species occupy the sites.

c. If the permittee assumes that all habitat identified as "vernal pools and swales" is occupied by vernal pool fairy shrimp or vernal pool tadpole shrimp and develops a mitigation plan based on that assumption, protocol-level surveys will not be required, but consultation with the USFWS and the development of a compensation plan will be required to ensure that the project will not jeopardize these species.

(040500)

22. In order to avoid, minimize, and compensate for impacts to aquatic and terrestrial wildlife, the permittee shall:

a. Provide specific protection for giant garter snakes and western pond turtles. Preconstruction surveys by a qualified biologist will be conducted prior to excavation and construction in aquatic habitats. If temporary dams are to be installed and construction areas dewatered before excavation, a qualified biologist with authorization from the USFWS and DFG will be present to survey for these species during the dewatering operation. If any giant garter snakes or western pond turtles are found, work will cease in that area and authorization will be obtained from the USFWS and DFG to relocate the animals to safe areas before resuming work. Compliance with the ESA and CESA will be required for affected giant garter snakes and additional habitat compensation or species protection measures may be developed in consultation with the USFWS and DFG.

b. Have a qualified biologist conduct preconstruction surveys for California tiger salamander and western spadefoot in vernal pool and seasonal wetland habitats as well as grassland habitats within 0.6 mile of potential breeding pools. Aquatic surveys will be conducted from March 15 to May 15 for larvae of these species; nocturnal surveys for adult and juvenile California tiger salamander will be conducted in terrestrial habitats during winter rains from November through March. The DFG guidelines for California tiger salamander surveys combined with a winter nocturnal survey consisting of five visits to demonstrate absence of this species. Alternatively, the permittee may assume these species are present in the affected areas and not perform surveys.

If these species are found or assumed to be present, and impacts on their habitat is unavoidable, the permittee shall coordinate with USFWS and DFG to determine the appropriate mitigation strategy to compensate for loss of habitat. Habitat loss could be compensated for by the implementation of mitigation measures for vernal pool and other seasonal wetland habitats. Specific management measures may be developed as part of the compensation plan in coordination with USFWS and DFG for California tiger salamander and western spadefoot.

c. Have a qualified biologist conduct monthly surveys during the spring and early summer (March-July) over construction sites and along the construction corridor before the start of each phase of construction for nesting raptors and tricolored blackbirds. If an active raptor or tricolored blackbird nest is located within 500 feet of a construction area, the nest tree or nesting colony will be avoided with a 500-foot buffer during the nesting season (March 1-June 15) until the young have fledged. If a nest tree or marsh nesting area cannot be avoided, removal of the nesting tree or disturbance of the marsh will occur outside of the nesting season. Nest trees will not be removed unless there is no feasible way of avoiding it. If it is determined that a nest tree must be removed, the permittee shall consult with DFG to obtain appropriate DFG approvals and to determine appropriate mitigation measures such as habitat replacement, habitat preservation, or other measures determined appropriate by the permittee and DFG.

d. If Swainson's hawks are present, consult with DFG for mitigation guidelines to avoid disturbance of nesting Swainson's hawks and/or the removal of nesting trees. Preconstruction and construction surveys will be conducted to determine if an active Swainson's hawk nest exists within 0.5 mile of project facilities. DFG mitigation guidelines for Swainson's hawk recommend a 0.5-mile radius of no disturbance around active nests between March 1 and completion of the fledging period, which is approximately August 15. If a nest tree must be removed, DFG shall be consulted to obtain appropriate DFG approvals and tree removal will be done outside of the nesting and fledging season. Through consultation with DFG, appropriate mitigation measures will be determined such as habitat replacement, habitat preservation, or other measures determined appropriate by the permittee and DFG.

e. Compensate for loss of foraging habitat, if agricultural habitat is removed within 10 miles of a known active Swainson's hawk or white-tailed kite nest. DFG will be consulted to determine appropriate compensation to replace lost foraging habitat. Habitat compensation ratios will depend on the distance of the affected habitat from known, active nests, as specified in DFG and Sacramento County mitigation guidelines for Swainson's hawks and/or White-tailed kite.

f. Follow the Burrowing owl mitigation guidelines as specified by DFG. DFG will be consulted if an active burrowing owl burrow is found during the raptor surveys or is reported to exist within 500 feet of the construction corridor. A 160-foot no-disturbance buffer area will be established around occupied burrows

during the non-breeding season (September 1-January 31) and 250 feet during the breeding season (February 1-August 31). If an active burrowing owl burrow cannot be avoided during construction, the permittee shall consult DFG regarding the appropriate mitigation measures. For each burrow destroyed, DFG guidelines recommend a replacement ratio of 2:1 for artificial burrows. After installation of the artificial burrows, the owls will be moved away from the affected area approximately two weeks before construction by passive relocation, as described in the mitigation guidelines.

(0400500)

23. Permittee shall implement one of the following options to mitigate for the loss of agricultural land:

a. For each acre of land being developed by this project, the permittee shall preserve 1.0 acre of agricultural land within the project area, through the purchase of conservation easements or similar instruments that assure the long term protection of that land from urban encroachment; or

b. For each acre of land being developed by this project, the permittee shall contribute an amount to be agreed upon between the project proponents and the County Board of Supervisors into a fund to be used to purchase conservation easements or similar instruments within the same geographical area as the project, and to provide for the ongoing monitoring and administration of the program; or

c. Should the County Board of Supervisors adopt a permanent program to preserve agricultural land in the same geographical area as the project, in lieu of measures (a) or (b), the permittee shall be subject to the permanent program measures.

(0400500)

24. Permittee is not authorized to divert water pursuant to this permit until all construction related permit conditions are complied with, with the exception of long-term monitoring requirements. Permittee shall submit documentation with the Progress Report by Permittee of compliance with permit requirements. Said documentation shall include a description of the mitigation measures employed for each permit condition, date of compliance with the mitigation measures, and shall identify the start and end dates for any long-term monitoring requirements. Permittee is not required to continue submitting construction compliance reports once full compliance with all construction related permit conditions is achieved.

(0360500)

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.

(000006)

B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.

(000010)

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.

(000011)

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: JW Kassel for:

Victoria A. Whitney
Division Chief

Dated: February 15, 2008