

Appendix B3

State Water Resources Control Board,
documents regarding
Water Rights Permit 10659
(U.S. Bureau of Reclamation)



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

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 12716

PERMIT 10659

Right Holder:

U.S. Bureau of Reclamation
 Mid Pacific Region MP 460
 2800 Cottage Way
 Sacramento, CA 95825-1898

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 **September 27, 1948**. This right supercedes any previously issued right on **Application 12716**.

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

1. Source of water: **Putah Creek**

Tributary to: **Yolo By-Pass**

Within the Counties of **Solano and Yolo**

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
Putah Diversion Dam North 1,940,989 feet and East 6,559,557 feet	SE¼ of SE¼	31	8N	1W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Domestic, Municipal, Industrial, Irrigation, Frost Protection, Recreational	428,300 acres in Yolo and Solano Counties within T2N to T8N, R5W to R4E, MDB&M.					
Fish and Wildlife Enhancement	29-miles of Putah Creek stream channel between Monticello Dam and the Sacramento River Deep Water Ship Toe Drain within T8N, R2W to R2E, MDB&M					
Recreational	Lake Berryessa within T7N to T10N, R2W to R5W, MDB&M					

The place of use is shown on map 413-208-1484A dated February 9, 2009, 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 **116 cubic feet per second** to be diverted from **November 16 of each year to January 31 of the succeeding year**. The maximum amount diverted under this permit shall not exceed **17,717 acre-feet per year**.
(000005A)
6. The total amount taken from the source (collection to storage plus direct diversion) under this permit and the water rights pursuant to Applications 11199 and 12578 shall not exceed **999,031 acre-feet per annum**.
(000005Q)
7. The maximum amount placed to beneficial use (withdrawal from storage plus direct diversion) under Permit 10659, the license issued pursuant to Application 11199, and the license issued pursuant to Application 12578 shall not exceed **401,286 acre-feet per annum**.
(0000114)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2032**.
(0000009)
9. The total quantity of water delivered for consumptive use under Permit 10659, together with that delivered under the license issued pursuant to Application 11199 and the license issued pursuant to Application 12578 shall not exceed 250,000 acre-feet in any one year.
(0000114)
10. The Solano County Water Agency, et al. (SCWA) holds the senior rights for the Solano Project (rights under Applications 11199 and 12578). Upon licensing, SCWA will also hold the water right on Application 12716.

Under the water rights on Applications 11199 and 12578, SCWA is required to operate the Solano Project to comply with the release and instream flow requirements specified in Exhibits E-1, E-2, and E-3 (attached). Nothing herein authorizes diversions, except those diversions in compliance with the release and instream flow requirements specified in Exhibits E-1, E-2 and E-3. These requirements are the same as the release and instream-flow requirements specified in the Second Amended Judgments in the Putah Creek Water Cases, Judicial Council Coordination Proceeding No. 2565, Sacramento County Superior Court.

Notwithstanding the above permit requirement, the State Water Board shall not pursue an action or proceeding for enforcement of violation of this condition based on a violation or violations of one or more of the minimum mean daily flow requirements established in Exhibit E-1 section A.(2), B.(2), C.(1), C.(2), C.(3), C.(4), and D.(3), or one or more of the minimum instantaneous flow requirements established in Exhibit E-1 sections A.(2), B.(2), C.(1), C.(2), C.(3) and C.(4), provided that:

1. The Solano Project was being operated to comply with the release and instream flow requirements in Exhibits E-1, E-2, and E-3; and
2. The violation of the minimum mean daily flow requirement in Exhibit E-1, section A.(2), B.(2), C.(1), C.(2), C.(3), C.(4) or D.(3), or the minimum instantaneous flow requirement in Exhibit E-1, section A.(2), B.(2), C.(1), C.(2), C.(3) or C.(4) was solely the result of an unanticipated and unforeseeable increase in a diversion or diversions from, or reduction in an inflow or inflows into, Putah Creek downstream of the Putah Diversion Dam, by some

person or entity besides U.S. Bureau of Reclamation, the Solano County Water Agency or the Solano Irrigation District, and the increase or reduction occurred so rapidly that the Solano Project could not reasonably maintain compliance by increasing the releases from the Putah Diversion Dam in Lower Putah Creek; and

3. The 4-day running mean flow at the relevant compliance point equaled or exceeded the applicable minimum mean daily flow; and
4. The instantaneous flow at the relevant compliance point was not more than 5 cubic feet per second less than the applicable minimum mean daily flow if the violation occurred during the period from January through July, and was not more than 3 cubic feet per second less than the applicable minimum mean daily flow if the violation occurred during the period from August through December.

The dedication of water to instream flow is not intended to affect any obligation imposed pursuant to the existing water rights for the Solano Project to provide protection to downstream prior rights and to provide percolation from the stream channel of Putah Creek to the extent that would occur in the absence of the Solano Project. Water required pursuant to the flow regime set forth in Attachment E-1 over and above the amounts of water required to meet existing obligations for percolation and downstream prior rights is dedicated to instream flows pursuant to Water Code section 1707. Water dedicated to the environment pursuant to Water Code section 1707 is not available for appropriation.

The Permittee shall electronically report to the State Water Board: (a) daily records of diversions to Putah South Canal, (b) daily records of flows past the Putah Diversion Dam, (c) daily records of the quantity dedicated to the environment, pursuant to the 1707 petition, and (d) records of depth to groundwater in the spring of each year for the area influenced by Putah Creek between mile 4.0 and mile 11.0. The requirement to record depth to groundwater may be discontinued upon a showing, to the satisfaction of the Deputy Director for Water Rights, that further groundwater elevation monitoring is not needed.

No credit shall be given for the 1707 petition flows unless the required documentation under (c) is timely submitted.

Permittee shall allow authorized representatives of the State Water Board reasonable access to the project works and properties for the purpose of gathering information and data.

(0140499)

11. Permittee shall release water into Putah Creek channel from Monticello Reservoir and past the Putah Diversion Dam in such amounts at such times and rates as will be sufficient, together with inflow from downstream tributary sources, to supply downstream diversions of the surface flow under vested prior rights to the extent water would have been available for such diversions from unregulated flow, and sufficient to maintain percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that operation of the project shall not reduce natural recharge of groundwater from Putah Creek.

The State Water Board reserves continuing authority over the permit to: (1) determine if the schedule of releases required herein provides adequate protection to downstream prior rights and provides percolation from the stream channel of Putah Creek to the extent that would occur in the absence of the Solano Project, (2) make further orders that may be necessary concerning proper releases of water, and (3) impose conditions providing for additional measurements or studies that may be necessary for a final determination to be made.

(0500300)

12. All releases of water past the Putah Diversion Dam shall be made in such a manner as to maintain a permanent live stream at all times as far below the diversion dam as possible, consistent with the purpose of the project and the requirements of downstream users. (0540499)
 13. This permit is subject to post-October 29, 1945 appropriative water rights in the Putah Creek watershed above Monticello Dam which (1) are licensed for the use of water perfected as of December 31, 1995, pursuant to the March 10, 1995, Condition 12 Settlement Agreement, or (2) are perfected after December 31, 1995, provided the holders of such rights have subscribed, subscribe, or are otherwise subject to the provisions of the March 10, 1995, Condition 12 Settlement Agreement. (0540899)
 14. 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)
 15. The right to divert and store water, and apply said water to beneficial use as provided in this permit is granted to the United States as Trustee for the benefit of the public agencies of the State together with the owners of land and water users within such public agencies as shall be supplied with the water appropriated under this permit. (0540699)
 16. Subject to compliance by the public agencies concerned with any and all present and future valid contractual obligations with the United States, such public agencies, on behalf of their landowners and other water users, shall, consistent with other terms of this permit, have the permanent right to the use of all water appropriated and beneficially used hereunder, which right, except where water is distributed to the general public by a private agency in charge of a public use, shall be appurtenant to the land to which said water shall be applied, subject to continued beneficial use and the right to change the point of diversion, place of use, and purpose of use, as provided in Chapter 10 of Part 1 of Division 2 of the Water Code of the State of California, and further subject to the right to dispose of temporary surplus. (0540699)
 17. Upon completion of the appropriation and beneficial use of water under this permit, any license or licenses which may be issued pursuant to Chapter 9 of Part 2 of Division 2 of the California Water Code shall be issued to the public agencies of the State within which the water shall have been found by inspection by the Board to have been applied to beneficial use. (0540699)
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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 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.

(000013)

- 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 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, 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.

(000014)

- 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.

(000015)

- 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 & G. 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 right is issued and right holder takes it subject to the following provisions of the 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

for James W. Kassel
Barbara Evoy, Deputy Director
Division of Water Rights

Dated: **MAY 28 2013**