



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 15425B

PERMIT 9727

LICENSE 7041B

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THIS IS TO CERTIFY, That

Joseph B. Zicherman
c/o Paula Whealen
Wagner and Bonsignor
Consulting Civil Engineers
444 North Third Street, Suite 401
Sacramento, CA 95814

Have the right to use waters of Anderson Creek in Mendocino County tributary to Navarro Creek thence Pacific Ocean

for the following purpose: Irrigation use

Amended License 7041B supersedes the license originally issued on November 5, 1964, which was perfected in accordance with the laws of California, the regulations of the State Water Resources Control Board (SWRCB) or its predecessor, and the terms of Permit 9727. The priority of this right dates from July 23, 1953. Proof of maximum beneficial use of water pursuant to Application 7041B was made as of August 23, 1963.

The amount of water that may be used under this license is limited to the amount actually beneficially used for the stated purposes and shall not exceed thirteen hundredths (0.13) cubic foot per second to be diverted from May 1 to November 1 of each year. The maximum amount diverted under this license shall not exceed 30 acre-feet per year.

Unless a change is approved by the SWRCB, water used under this license may be diverted, and used only as specified below:

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with other vested rights.

THE POINT OF DIVERSION IS LOCATED:

By California Coordinates of 1927, Zone 2, North 505,212 feet and East 1,597,942 feet, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T14N, R14W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

2.5 acres within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T14N, R14W, MDB&M
2.0 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T14N, R14W, MDB&M
10.5 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T14N, R14W, MDB&M
5.0 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T14N, R14W, MDB&M
20.0 acres total as shown on map dated April 24, 1999 and identified as Assessor's Parcel No. 046-120-20 on file with the SWRCB.

Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB 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 SWRCB 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.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB 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 SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB 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 SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB 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.

This license 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 licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license 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 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

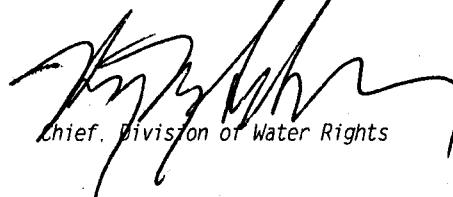
Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the 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 licensee 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 licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: **FEB - 5 2001**

STATE WATER RESOURCES CONTROL BOARD



Chief, Division of Water Rights

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

In the Matter of License 7041 (Application 15425)

Bryant Whittaker and Penny Whittaker

And

Joseph B. Zicherman

ORDER ADDING POINT OF DIVERSION, DIRECTING ISSUANCE
OF SEPARATE LICENSES AND
REVOCATION OF ORIGINAL LICENSE

SOURCE: Anderson Creek

COUNTY: Mendocino

WHEREAS:

1. License 7041 was issued to Richard L. French and Joan W. French on November 5, 1964 pursuant to Application 15425 and was recorded with the County Recorder of Mendocino County on November 5, 1964.
2. License 7041 was subsequently assigned to Bryant Whittaker and Penny Whittaker for (APN 046-120-19) on November 15, 1999 and Joseph B. Zicherman for (APN 046-120-20) on June 3, 1999.
3. A field inspection was conducted of the project area by the State Water Resources Control Board (SWRCB) staff on March 19, 1999. Staff determined that the place of use (POU) is held under separate ownerships and an additional point of diversion was providing water to the POU. Staff recommended a petition for change to add a new point of diversion (POD) within the Whittaker's POU. A Petition for Change to add the new POD was received by the SWRCB on November 18, 1999. The SWRCB determined that the petition for change to add the POD does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water. Public notice of the change was issued on February 2000. Two protests were received and subsequently were resolved.

4. A request for issuance of separate licenses to cover licensee's respective use was filed with the SWRCB staff on November 18, 1999 and the SWRCB has determined that good cause for such change has been shown.
5. The license term relating to the continuing authority and water quality objectives of the SWRCB should be updated to conform to Section 780(a) & (b), Title 23 of the California Code of Regulations.
6. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the license making the licensee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT LICENSE 7041 BE AMENDED TO READ AS FOLLOWS:

1. The condition of the license regarding the point of diversion be amended to read:

By California Coordinate System of 1927, Zone 2, N 504,584 and E 1,598,642 being within NW¼ of SW¼ of Section 28, T14N, R14W, MDB&M; and, by California Coordinate System of 1927, Zone 2, N 505,212 and E 1,597,942 being within SW¼ of NW¼ of Section 28, T14N, R14W, MDB&M.

2. Separate licenses be issued as follows:

License 7041 is hereby replaced and superseded upon issuance of License 70431A issued to Bryant Whittaker and Penny Whittaker, and License 7041B issued to Joseph B. Zicherman.

4. Separate Licenses be issued as followed:

A.	License:	7041A (Application 15425A)
	Owner:	Bryant Whittaker and Penny Whittaker P.O. Box 305 Boonville, CA 95415
	Source:	Anderson Creek tributary to Navarro River thence Pacific Ocean
	Use:	Irrigation
	Direct Diversion:	0.07 cubic foot second
	Maximum	
	Amount:	22 acre-feet per second per year
	Season:	May 1 to November 1

Point of
Diversion: California Coordinate System,
Zone 2, North 504,584 and
East 1,598,642 being within the
NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 28, T14N,
R14W, MDB&M.

Place of Use: 9.5 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$
1.5 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ all within
Section 28, T14N, R14W, MDB&M.
11.0 acres total, as shown on map dated April 24, 1999
with the SWRCB, and identified by County Assessor's
Parcel No. 046-120-19.

B. License: 7041B (Application 15425B)

Owner: Joseph B. Zicherman
c/o Paula Whealen
Wagner and Bonsignor
Consulting Engineers
444 Third Street, Suite 401
Sacramento, CA 95814

Source: Anderson Creek tributary to
Navarro River thence Pacific Ocean
Irrigation

Use:
Direct

Diversion: 0.13 cubic foot per second

Maximum
Amount: 30 acre-feet per second

Season: May 1 to November 1

Point of
Diversion: California Coordinate System,
Zone 2, N 505,212 and E 1,597,942
being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28,
T14N, R14W, MDB&M.

Place of Use: 2.5 acres within NW $\frac{1}{4}$ of NW $\frac{1}{4}$
2.0 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$
10.5 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$
5.0 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$
all within Section 28, T14N, R14W,
MDB&M.
20 acres total as shown on map dated April 24, 1999
with the SWRCB, and identified by County Assessor's
Parcel No. 046-120-20.

4. License 7041 A and 7041B shall contain all other terms and conditions presently in License 7041 or updated terms to reflect for compliance with the SWRCB's policy.
5. The following condition shall be added to the License:7041A.
 - (1) In accordance with Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and water shall be diverted under this license has implemented measures to protect fishlife. Such measures shall include fish screens, or other suitable methods for the prevention of entrapment or impingement of fish, which meet National Marine Fisheries Service and the California Department of Fish and Game criteria. License shall provide certification that its proposed screening methods meet these criteria. Certification shall be made by Service or Department personnel, a Licensed Civil Engineer, or other suitable professional. Construction, operation, and maintenance of any required facility are the responsibility of the licensee. If the fish entrapment prevention device(s) is (are) rendered inoperative for any reason all diversion shall ceased until such time as the device(s) is (are) restored to service.
 - (2) In accordance with Section 1601 and/or Section 1603 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this license until licensee has entered into a stream or lake alteration with the California Department of Fish and Game. Licensee shall submit a copy of the agreement to the Division of Water Rights within 30 days from the date of the agreement's issuance. Construction, operation, and maintenance necessary to meet the terms of the agreement are the responsibility of the licensee.
6. The following conditions shall be added to Licenses 7014A and 2041B:
 - (1) The continuing authority condition, shall be updated to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the 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 Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the 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 Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the 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)

- (2) The water quality objectives condition, shall be updated to read as follows:

The quantity of water diverted under this license is subject to modification by the Board if, after notice to the licensee and an opportunity for hearing, the 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 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)

- (3) The licenses shall be amended to include the following Endangered Species condition:

This license 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 licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

(0000014)

Dated:

FEB - 5 2001

STATE WATER RESOURCES CONTROL BOARD

Chief, Division of Water Rights