

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

DIVISION OF WATER RIGHTS

In the Matter of License 12360 (Application A026470)

Guinness McFadden & The McFadden Revocable Trust

ORDER PARTIALLY REVOKING LICENSE

SOURCE: Powerhouse Canal tributary to East Fork Russian River

COUNTY: Mendocino

WHEREAS:

1. License 12360 was issued to Eugene J. M. McFadden (Guinness McFadden) on August 16, 1988 pursuant to Application A026470 and was recorded with the County Recorder of Mendocino County on August 19, 1988 in Book 1704, Page 24.
2. License 12360 authorizes Mr. McFadden's maximum diversion amount of 133,200 acre-feet annually for power use.
3. Mr. McFadden requested on October 01, 2019, that the License 12360 be partially revoked by the State Water Resources Control Board, Division of Water Rights as follows:
A reduction in the limits of the license to reduce the amount owed in the water rights fees each year.
4. Division of Water Right staff inspected the property and determined the data provided by Mr. McFadden is evidence that overall flows have been permanently reduced in Powerhouse Canal after the license was issued.
5. The Division of Water Rights interprets Mr. McFadden's request for partial revocation as a waiver of the notice and hearing requirements set forth in Water Code section 1675(b).
6. The State Water Resources Control Board has delegated the authority to revoke water rights to the Deputy Director for the Division of Water Rights, pursuant to Resolution No. 2012-0029. The Deputy Director for the Division of Water Rights has redelegated this authority to the Assistant Deputy Directors, Program Managers, and Unit Seniors, pursuant to redelegation Order dated October 19, 2017.

Therefore, it is ordered that, in accordance with California Water Code section 1675(b), License 12360 be partially revoked and amended by the State Water Board as follows:

Paragraph 1 of this license be amended to read as follows:

The maximum amount diverted under this license shall not exceed 50,000 acre-feet per year.

The partial revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Resources Control Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

Robert Cervantes  Digitally signed by Robert Cervantes
Date: 2020.07.17 19:50:17 -07'00' for
Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: July 20, 2020



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

License for Diversion and Use of Water

APPLICATION 26470
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PERMIT 18530

LICENSE 12360

THIS IS TO CERTIFY, That Eugene J. M. McFadden
16000 Powerhouse Road
Potter Valley, California 95469

has made proof as of April 27, 1987 (the date of inspection)
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
Powerhouse Canal in Mendocino County

tributary to East Fork Russian River thence Russian River

for the purpose of Power use

under Permit 18530 of the Board and that the right to the use of this water has been perfected
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the
priority of this right dates from July 25, 1980 and that the amount of water to which
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated
purposes and shall not exceed (a) three hundred fifteen (315) cubic feet per
second to be diverted from September 15 of each year to May 15 of the
succeeding year and (b) eighty (80) cubic feet per second to be diverted from
May 16 to September 14 of each year. The maximum amount diverted under this
license shall not exceed 133,200 acre-feet per year.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

South 2,100 feet and East 900 feet from NW corner of Section 6, T17N, R11W,
MDB&M, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 6.

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

At powerhouse within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M as shown on map
filed with State Water Resources Control Board.

Water diverted under this license will be restricted to that released by
upstream appropriators in Potter Valley and does not constitute an additional
appropriation of Eel River water.

(0000084)

Water diverted under this license is for nonconsumptive use and is to be
released to Powerhouse Canal within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W,
MDB&M.

(0000111)

For the protection of fish and wildlife, licensee shall maintain a minimum flow of one cubic foot per second at all times between the penstock and the downstream fall. (10140500)

This license is issued subject to all future upstream appropriations for consumptive use within the East Fork Russian River watershed. (0420800)

No water shall be diverted under this license unless licensee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this license. Said measuring device shall be properly maintained. (0060062)

This license is conditioned upon full compliance with Sections 1601, 1603, and/or Section 6100 of the Fish and Game Code. (0000063)

Licensee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, 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 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.

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.

This 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 requirements 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, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

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

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 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 Board.

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 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, 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, 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, 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: AUGUST 16 1988

STATE WATER RESOURCES CONTROL BOARD

Walter M. Smith
Chief, Division of Water Rights