



State Water Resources Control Board

MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21080(c)
Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: Savoy Highway 128 Water Right Project

APPLICANT: Fields of Gold, Inc.
c/o Michael Holman
1455 First Street, Suite 217
Napa, CA 94559

PROJECT LOCATION:

The project site consists of 53 acres located approximately 1.5 miles northwest of the town of Philo in Mendocino County, California within Sections 12 and 13 of Township 14N, Range 15W, Mount Diablo Baseline and Meridian (M.D.B. & M.) of the "Philo, California" U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle.

PROJECT DESCRIPTION:

Application 29910 seeks to divert to storage up to 55.6 acre-feet per annum (afa), at a rate not to exceed 3 cubic feet per second (cfs), from December 15 to March 31. Stored water would be used for irrigation and frost protection of 44.25 net acres within 52.49 gross acres of existing vineyard. Water would be diverted from a point of diversion (POD) located southwest of the project site, adjacent to the Navarro River, tributary to the Pacific Ocean. At the POD, Navarro River underflow would be diverted by pumping from an existing offset well, and would be transported to an existing offstream 27.8 acre-foot (af) capacity pit-type reservoir.

Application 29911 seeks to directly divert up to 40 afa, at a rate not to exceed 3 cfs, from March 1 to March 31. Water would be diverted from the same POD described in Application 29910 and would be used for frost protection of the same 44.25 net acres of existing vineyard named in Application 29910.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

DETERMINATION:

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less than significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

PERMIT TERMS:

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Board.

Standard Permit Terms:

1. The State Water Board reserves jurisdiction to impose conditions to conform this permit to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.
2. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2021.
3. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under Permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the Permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if Permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Board.

Permittee shall take and use water under the existing right claimed by Permittee only in accordance with law.

4. This permit shall not be construed as conferring upon the Permittee right of access to the point of diversion.
5. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
 - a. A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow;
 - b. A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity;
 - c. A time schedule for the installation of these facilities;

d. A description of the frequency of data collection and the methods for recording bypass flows and storage levels;

e. An operation and maintenance plan that will be used to maintain all facilities in good condition; and,

f. A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan. The monitoring data shall be maintained by the Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request. Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

6. No water shall be used under this permit until Permittee has filed a report of waste discharge with the Regional Water Quality Control Board, North Coast Region, pursuant to Water Code section 13260, and the Regional Water Quality Control Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Water Quality Control Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Water Quality Control Board or the State Water Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- (1) the Regional Water Quality Control Board issues a waiver pursuant to Section 13269;
- or,
- (2) the Regional Water Quality Control Board fails to act within 120 days of the filing of the report.

No Permittee shall be required to file a report of waste discharge pursuant to Water Code section 13260 for percolation to groundwater of water resulting from the irrigation of crops.

7. Permittee shall obtain all necessary federal, 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 Deputy Director for Water Rights.

8. For the protection of fish and wildlife, and other instream and public trust uses, Permittee shall bypass the total streamflow, at all points of diversion under all bases of right, whenever the flow in the Navarro River is less than 594 cubic feet per second as measured at the United States Geological Survey Stream Gage No. 11468000 – Navarro River near Navarro, California.

No diversion shall take place under this permit if the streamflow in the Navarro River is, or would be reduced by the diversion, below the designated rate.

In the event that said gage is no longer available for streamflow measurements, Permittee (or successors-in-interest) is responsible for installing and maintaining an equivalent gage in accordance with a plan, including timelines, satisfactory to the Deputy Director for Water Rights as near as practicable to the present location of United States Geological Survey Stream Gage No. 11468000 – Navarro River near Navarro, California. A plan must be submitted within 15 days of the existing gage becoming non-operable. In the absence of timely installation of such an equivalent gage, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 29910 and 29911.

9. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit. Based on the information contained in the Division of Water Rights files, approximately 20 acre-feet per year of riparian water has been used on 22.75 acres of the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Rights' approval, this information may be updated, and Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that Permittee likely would have used under a claim of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or reject any proposal by Permittee to use water under a claim of riparian right on the place of use authorized by this permit.

10. For the protection of riparian habitat, Permittee shall establish a setback as shown on Setback Map No. SB-01, dated July 2, 2008 on file with the Division of Water Rights. The setback shall be at least 25 feet wide along the onsite ephemeral drainage as measured from the top of the bank on both sides of the stream. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of occasional equipment access reasonably necessary for continued operation of the vineyard. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area is allowed. Permittee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Applications 29910 and 29911.

11. 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.

12. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes and flaked stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

13. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e)(1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the Mendocino County Coroner has been notified. If the Coroner determines that the remains are Native American, the Coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.

14. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.

Specific to Application 29910:

15. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 55.6 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year.

16. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purposes.

17. The maximum rate of diversion to offstream storage shall not exceed 3 cubic feet per second.

18. The capacity of the reservoir covered under this permit shall not exceed 27.8 acre-feet.

19. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 29911, shall not exceed 82.9 acre-feet per annum.

20. The maximum simultaneous rate of diversion under this permit, together with that diverted under the permit issued pursuant to Application 29911, shall not exceed 3 cubic feet per second.

21. Permittee shall install and properly maintain a staff gage in the reservoir, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on or about the last day of each month. Such readings shall be supplied to the State Water Board with the next progress report submitted to the Board by Permittee. The State Water Board may require the release of water held in storage that cannot be verified as having been diverted under a valid basis of right.

22. Prior to diversion or use of water under this permit, Permittee shall install and maintain an in-line flow meter satisfactory to the Deputy Director for Water Rights to measure the instantaneous rate and quantity of water diverted into the reservoir from Navarro River, and water released from or flowing out of the reservoir. This in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall maintain a record of the end-of-the-month readings and of the days of actual diversion, and shall submit these records with annual progress reports, and whenever requested by the Division.

Specific to Application 29911:

23. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 3 cubic feet per second to be diverted from March 1 to March 31 of each year. The maximum amount diverted under this permit shall not exceed 40 acre-feet per year.

24. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 29910, shall not exceed 82.9 acre-feet per annum.

25. The maximum simultaneous rate of diversion under this permit, together with that diverted under the permit issued pursuant to Application 29910, shall not exceed 3 cubic feet per second.

Special Permit Terms:

26. Prior to the diversion or use of water under this permit, Permittee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with Division of Water Rights. If a permit from the USACE is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights with a letter from the USACE affirming that a permit is not needed.

27. Prior to the diversion or use of water under this permit, and only if a USACE permit is required, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Board or the North Coast Regional Water Quality Control Board.

Specific to Application 29910:

28. For the protection of habitat for the California red-legged frog along the reservoirs and to allow for the growth of riparian vegetation, Permittee shall:

- a. Establish and maintain, undisturbed, a 50-foot-wide strip [exact width subject to negotiation with United States Fish and Wildlife Service and Department of Fish and Game (DFG)] of natural upland vegetation around each water storage reservoir. During replanting, no vines shall be replanted within a 50-foot-wide strip to establish the natural vegetation buffer;

- b. Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and DFG prior to any reservoir dredging operation. Permittee shall submit to the Deputy Director for Water Rights evidence of agency approval prior to any future reservoir dredging operations;
- c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
- d. Make no introduction of non-native fish species into the reservoir; and;
- e. Consult with the United States Fish and Wildlife Service and DFG should any bullfrogs or non-native fish be discovered at or near the reservoir to develop and implement an acceptable bullfrog eradication program. The eradication program may require periodic draining of the reservoir.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 29910.

Mandatory Permit Terms

- 29. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- 30. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.
- 31. 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.
- 32. 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.

33. 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.

34. 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.

35. 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.

36. 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 DFG 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 DFG.

Contact Person: Matt McCarthy	Telephone: (916) 341-5310 email: mmccarthy@waterboards.ca.gov
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APPROVED:

Original Signed by: JWK for

December 2, 2011

Barbara Evoy, Deputy Director
Division of Water Rights

Date