

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

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

APPLICATION 31373

PERMIT 21293

of:

Flowers Vineyard and Winery  
Walt C. and Joan E. Flowers  
28500 Seaview Road  
Cazadero, CA 95421

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; (e) demonstrated that the requirements of the California Environmental Quality Act have been met or that the project is exempt from the California Environmental Quality Act; and, (f) the requirements of the Policy for Maintaining Instream Flows in Northern California Coastal Streams have been met. The permit is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057.)

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audobon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].)

Therefore, **Application 31373** filed on **July 25, 2002**, has been approved by the 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:

Tributary to:

**South Fork Gualala River**

**Gualala River**

within the County of **Sonoma**.

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
<b>North 1,966,896 feet and East 6,210,105 feet</b>	<b>NW ¼ of NE ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>

Location of places of storage

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
<b>Reservoir 1</b>	<b>NW ¼ of NW ¼ of E ½ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>
	<b>SW ¼ of SW ¼ of E ½ of SW ¼</b>	<b>6</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>
<b>Reservoir 2</b>	<b>S ½ of SE ¼ of E ½ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Irrigation</b>	<b>NE ¼ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>	<b>18</b>
	<b>SE ¼ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>	<b>18</b>
<b>Frost Protection</b>					<b>Total</b>	<b>36</b>
<b>Domestic</b>						
At Reservoirs:						
<b>Fire Protection</b>	<b>NW ¼ of NW ¼ of E ½ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>	
	<b>SW ¼ of SW ¼ of E ½ of SW ¼</b>	<b>6</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>	
	<b>S ½ of SE ¼ of E ½ of NW ¼</b>	<b>7</b>	<b>8N</b>	<b>12W</b>	<b>MDB&amp;M</b>	

The place of use is shown on map 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 a total of **13 acre-feet** per annum to be collected from **December 15** of each year to **March 31** of the succeeding year as follows: 8 acre-feet per annum in Reservoir 1, and 5 acre-feet per annum in Reservoir 2. (000005D)
6. 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 purpose. (000005I)
7. The maximum rate of diversion to offstream storage shall not exceed **2 cubic feet per second**. (000005J)
8. The capacity of Reservoir 1 and 2 covered by this permit (Application 31373) shall not exceed 8 acre-feet and 5 acre-feet, respectively. (000005N)
9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2026**. (000009)

10. Permittee shall install and properly maintain staff gages in the reservoirs, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoirs. 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 State Water Board by Permittee. The State Water Board may require release of water that cannot be verified as having been collected under a valid basis of right.

(0100047)

11. Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights, that measures the instantaneous rate and the cumulative amount of water diverted from the South Fork Gualala River. 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 record end-of-the-month meter readings and of the days and amounts of actual diversion. Such readings shall be supplied to the State Water Board with the next progress report submitted to the State Water Board by Permittee.

(0100900)

12. 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 when the flow in the South Fork Gualala River is equal to or less than 461 cubic feet per second, as measured at the United States Geological Survey Stream Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, California.

No diversion shall take place under this permit if the streamflow in South Fork Gualala 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 the United States Geological Survey Stream Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, 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 31373.

(0000204)

13. 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 streamflow and/or reservoir storage capacity, including any necessary calibration;
  - c) A time schedule for the installation and rating 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.

(0000070)

14. 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.

(0000208)

15. 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 in the Division's files, approximately 8 acre-feet per year of riparian water has been used on 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 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 the basis 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 the basis of riparian right on the place of use authorized by this permit.

(0560300a)

16. Permittee shall compensate for the loss of 8 Douglas fir, 5 California bay, and 3 black oak trees through planting of trees at a replacement ratio of 3:1. Total numbers of trees to be replanted are 24 Douglas fir (3x8), 15 California bay (3x5), and 9 black oaks (3x3).

The tree replacement plantings shall be located west of the 5 acre-foot reservoir and within or adjacent to the existing mixed oak forest and annual grassland habitats as identified in Figure 4 of the Initial Study on file for Application 31373. Trees planted should be contiguous to existing stands to facilitate colonization by the Sonoma Tree Vole (*Arborimus pomio*). Proposed replacement trees shall be planted with 35 feet of separation between trunks. Permittee shall provide a map showing the location of each replacement planting within one year of the date of permit issuance and provide updates to the map with subsequent monitoring reports if changes occur.

Replacement tree plantings for the mitigation area shall be obtained from a combination of nursery stock grown on site, direct planting in proposed mitigation area from acorns and seeds collected on site, and/or trees obtained from a local native plant nursery or supplier. Plantings will consist of propagules derived from locally collected stock (native of Sonoma County) having a similar genetic origin to indigenous species on site. Permittee shall provide a written statement within one year of permit issuance disclosing the origin of each of the replacement plantings and updates to the written statement with subsequent monitoring reports if failed plantings are replaced or relocated.

Permittee shall provide photographic evidence to document the tree replacement plantings within one year of the date of permit issuance and update photographs with subsequent reports if failed plantings are replaced or relocated.

Any diversion of water pursuant to this permit is unauthorized if survival of any of the replacement tree species falls below 75% (18 Douglas fir, 12 California bay, and 7 black oaks, respectively). Permittee

shall maintain replacement plantings such that survival rate of each species is not less than the identified thresholds. Survival rate shall be documented and submitted by Permittee annually.

Annual monitoring reports shall be prepared by a biologist or certified arborist whose qualifications are acceptable to the Deputy Director for Water Rights. The initial monitoring report shall be submitted to the Deputy Director for Water Rights within one year of the date of permit issuance.

The initial monitoring report shall include documentation of:

- planting locations (map)
- species of each planting
- size of each tree at planting (height and diameter at breast height if applicable)
- statement identifying the origin of each replacement tree
- photographic evidence documenting planted replacement trees

Subsequent annual reports shall be submitted annually to the Deputy Director for Water Rights and shall include documentation of:

- size of each tree (height and diameter at breast height if applicable)
- age of each tree
- health status of each tree
- photographic evidence documenting progress of replacement trees
- locations (updated map), initial size measurement (height and diameter and breast height), photographic evidence and statement of origin for new plantings, if necessary to replace failed plantings.

These reports shall be filed annually for a minimum of five years until at least 75% of each species has survived five years. At this time a final report shall be filed that provides written and photographic documentation of the following:

- location of each tree
- size of each tree (height and diameter at breast height)
- age of each tree

Permittee shall refrain from any activities which may impact the replacement plantings including but not limited to development and timber harvesting in the replanting area.

(0000210A)

17. The prehistoric resources identified as CA-SON-1792/H and CA-SON-1973 by Analytical Environmental Services in the report titled Cultural Resources Study, Flowers Vineyards Water Right Project (Application 31373) dated August, 2008 and the January 5, 2009 Supplemental Letter Report, Flowers Water Right Project shall be avoided by all ground-disturbing activities that are beyond the historic layer of disturbance (i.e., the plow or disc zone). Routine vineyard maintenance shall be limited to the existing disc zone (~25cm below surface), and not include deep ground disturbance such as ripping, as recommended by the previous site investigator. If vines are to be removed for replanting or changing to another crop, then techniques for removal of vines in areas of the sites shall be restricted to using mechanical non-invasive techniques (i.e., pulling the vines with a chain attached to a backhoe, rather than excavation of vines. Vines shall be pulled when the soils are not muddy, but while the soil is moist down to six inches, and vines shall be replanted in the same location as the vines which were removed to avoid excessive disturbance that can be caused using heavy equipment. Any future project-related activities or developments at the locations of either of the above listed sites may be allowed only if an archaeologist that has been approved by the California Historical Information System to work in the area, and that is acceptable to the Deputy Director for Water Rights is retained to determine the significance of the sites. If mitigation is determined to be necessary, then the archeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy

Director for Water Rights prior to activities in the area of the site. Permittee shall be responsible for all costs associated with the cultural resource related work.

(0380501)

18. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped 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.

(0000215)

19. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act 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 Sonoma 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.

(0380500)

20. 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.

(9990999)

**ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE 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 Permittee when requested by the State Water Board until a license is issued.

(0000010)

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.

(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 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 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 Lake and Streambed 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 Lake and Streambed Alteration 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)

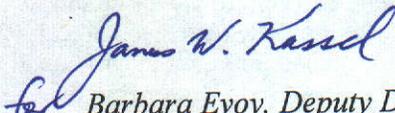
***This permit is issued and Permittee takes it subject to the following provisions of the Water Code:***

*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 therefore 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 Barbara Evoy, Deputy Director  
Division of Water Rights

Dated: **NOV 17 2011**