

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0013-DWR

In the Matter of Application 31212
William H. and Janet B. Johns

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Dinner Gulch tributary to Hayfork Creek
COUNTY: Trinity

WHEREAS:

1. Application 31212 was filed with the State Water Resources Control Board (State Water Board) on July 18, 2001.
2. No acceptable protests to approval of the application were filed.
3. The State Water Board has determined that there is unappropriated water available to serve Application 31212, based on a February 23, 2007 staff analysis.
4. The water will be diverted and used without injury to any lawful user of water. Notice of application was provided to persons that had appropriative water rights and Statements of Water Diversion and use on file with the State Water Board within the stream reach potentially impacted by the proposed appropriation. No protests were filed based on potential injury to prior rights and there is unappropriated water available.
5. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. The Applicant provided photographic documentation that there is a waterfall approximately 15 feet high located at the mouth of Dinner Gulch. The Applicant asserts that the waterfall serves as a barrier to fish migration.

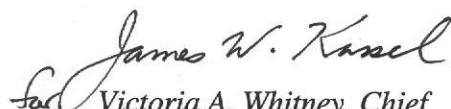
The Department of Fish and Game did not comment on the application. The National Marine Fisheries Service (NMFS) submitted a late protest of the application, stating that it was concerned with the diversion if either of the following are true: (a) If there are, or historically have been, coho salmon present in the tributary where the diversion would occur; or (b) the diversion results in a cumulative reduction of the stream flow greater than 10 percent, in any reach, including those under riparian rights. Regarding item (a), the waterfall impedes fish passage. Regarding item (b), Application 31212 is the only water right listing for Dinner Gulch and tributaries to Dinner Gulch. The requested diversion quantity of 4 acre-feet (af) represents a 1.1 percent reduction in stream flow. Consequently, it appears that the NMFS concerns have been addressed.

6. The intended use is beneficial. The applicant requests a right to continue directly diverting 675 gallons per day (gpd), not to exceed 1 acre-foot per year (afa), to be diverted throughout the year for domestic use and 16,000 gpd, not to exceed 3 afa, to be diverted from March 1 through September 30 of each year for irrigation use. The maximum amount diverted shall not exceed 4 afa. These purposes of use are beneficial.

7. Environmental review began on July 18, 2001. Approval of this project will not result in construction or expansion in the facilities or water use beyond that existing on the date environmental review began. Pursuant to the provisions of the California Environmental Quality Act, the State Water Board issued a Notice of Exemption (NOE) based on an Existing Facilities Exemption, pursuant to Title 14, California Code of Regulations, section 15301, Class 1.
 - (1) The project will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts.
 - (2) There are no environmental protests.
 - (3) The Department of Fish and Game did not identify any public trust impacts associated with diversion from Hayfork Creek.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31212, subject to the conditions of the enclosed permit.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

FEB 15 2008

Dated:

Enclosure

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21213

Application 31212 of **William H. and Janet B. Johns**
8836 Bold Ruler Way
Fair Oaks, CA 95828

filed on **July 18, 2001**, has been approved by the State Water Resources Control Board (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:

Dinner Gulch

Tributary to:

Hayfork Creek thence

South Fork Trinity River thence

Trinity River

within the County of **Trinity**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
North 2,112,913 feet and East 6,199,473 feet	NE¼ of SW¼	20	3N	8E	MD

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
Domestic	NE¼ of SW¼	20	3N	8E	MD	
Irrigation	NE¼ of SW¼	20	3N	8E	MD	1.5

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 675 gallons per day (not to exceed 1 acre-foot per year) to be diverted from January 1 to December 31 of each year for domestic use and 16,000 gallons per day (not to exceed 3 acre-feet per year) to be diverted from March 1 through September 30 of each year for irrigation use. The maximum amount diverted under this permit shall not exceed 4 acre-feet per year. (000005B)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2018. (0000009)
7. During the season specified in this permit, the total quantity and rate of water diverted 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 and use 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 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 Resources Control Board.
- Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021B)
8. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)
9. No water shall be used under this permit until permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, North Coast Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control 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 Board or State 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 Board or the State Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- (1) the Regional Board issues a waiver pursuant to Section 13269, or
- (2) the Regional 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 Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL 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 Resources Control Board (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 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 the 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 stream or lake 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 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 the State Department of Fish and Game. (0000063)

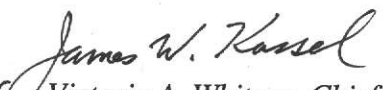
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

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 
Victoria A. Whitney, Chief
Division of Water Rights

Dated: **FEB 15 2008**