



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: Application 31095 of Barry Hoffner to Appropriate Water by Permit

APPLICANT: Barry Hoffner
c/o Paula Whealen
Wagner & Bonsignore
2151 River Plaza Drive, Suite 100
Sacramento, CA 95833

PROJECT LOCATION:

The proposed project area is situated in the Russian River watershed in the northern portion of Sonoma County, in Sections 34 and 35, Township 12 North and Range 10 West, MDB&M, and is on the Asti 7.5-minute U.S. Geological Survey (USGS) topographic quadrangle.

PROJECT DESCRIPTION:

On August 3, 2000, Barry Hoffner filed water right Application 31095 with the State Water Resources Control Board (State Water Board), Division of Water Rights. The proposed project would include the seasonal diversion of up to 24 acre-feet per year to storage from an Unnamed Stream associated with point of diversion 1 (onstream reservoir) and a second Unnamed Stream (locally referred to as Sulphur Creek) associated with point of diversion 2 (diversion to offstream storage), both of which are tributary to Big Sulphur Creek thence the Russian River. Water would be diverted from December 15 to March 31 of each year.

The place of use consists of 17 gross acres of vineyard, and the onstream reservoir at point of diversion 1. Proposed water uses include irrigation of the vineyard, recreation, heat control, and fire protection. Vineyard irrigation is accomplished using drip systems and sprinklers.

DETERMINATION:

The 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.

WATER RIGHT 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 permit issued by the State Water Board pursuant to Application 31095:

1. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
2. Construction activities within 100 feet of any drainage shall only occur between May 15 and October 31 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources.
3. No water shall be diverted at point of diversion 2 under this right unless the flow in the Unnamed Stream (Sulphur Creek) is at or above 0.5 cubic feet per second, as determined at point of diversion 2.
4. The capacity of the reservoir covered by this water right shall not exceed 24 acre-feet.
5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 24 acre-feet per year by storage to be collected from December 15 of each year to March 31 of the succeeding year.
6. No water shall be diverted under this right unless the permittee is monitoring and reporting the water surface elevation in the reservoir. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring water surface elevations from the maximum water line to the minimum water line known to exist for the reservoir, and shall be properly maintained.

The Permittee shall provide the Division of Water Rights with evidence that the device has been installed and the mark or reading corresponding to the maximum water line of the reservoir with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall measure and record water surface elevations on or about the last day of each month and on December 15. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

7. Based on the information in the Division of Water Right's files, water has not been used under a claimed existing right on the place of use. If permittee exercises a claimed existing right on the place of use authorized by this right without prior approval from the State Water Board, permittee shall forfeit this water right.
8. Any non-compliance with the terms of the permit shall be reported by the permittee to the Deputy Director for Water Rights within three days of identification of the violation.
9. For the protection of the foothill yellow-legged frog (*Rana boylei*), permittee shall:
 - a. Forty-eight hours prior to construction activities in the Unnamed Stream (aka Sulphur Creek) and the adjacent riparian habitat, a preconstruction survey for

foothill yellow-legged frogs will be conducted by a qualified biologist. The biologist will be familiar with the foothill yellow-legged frog life cycle and will conduct appropriate surveys for the applicable life stage (eggs, larvae, adults). This survey will occur during daytime hours and will involve walking upstream along the channel edge at a starting point 25 feet downstream of point of diversion 2. The total length of survey will be 50 feet. The surveyor will visually scan upstream areas of the channel and banks with binoculars looking for basking adults and then proceed upstream looking down into the channel for larvae and eggs (depending on the time of year). All observed amphibians will be identified and recorded to species and, where possible, photographs taken. The biological monitor will possess a current Letter of Permission from the California Department of Fish and Wildlife that authorizes the biologist for the capture and release of amphibians in case a foothill yellow-legged frog is observed in the work area. Survey results will be documented in a letter report and submitted to the Deputy Director of Water Rights.

- b. During work in Sulphur Creek and associated riparian habitat, a qualified biological monitor will be on site to ensure that no foothill yellow-legged frogs are harmed during the construction of the bypass structure. The biological monitor will possess a Letter of Permission from the California Department of Fish and Wildlife that authorizes the biologist for the capture and release of amphibians in case a foothill yellow-legged frog is observed in the work area.
10. To allow for the continued growth of wetland vegetation and for the protection of potential habitat of the western pond turtle (*Emys marmorata*), permittee shall:
- a. Maintain existing setback around the reservoir authorized under this permit to encompass the interior of the upper embankment and the fringe of wetland vegetation surrounding the reservoir. No new ground disturbing activities shall occur within the setback area. Equipment access within the setback area shall be limited to activities necessary for the ongoing operation of the reservoir and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native vegetation within the setback area is allowed;
 - b. Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Wildlife prior to any future reservoir dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' 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 California Department of Fish and Wildlife should any bullfrogs or non-native fish be discovered at or near the reservoir to develop and implement an acceptable bullfrog eradication program.
11. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, North Coast Region, or by the State Water Resources Control Board.
12. 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.

- 13. If vertebrate fossils are discovered during project activities, all work shall cease within 100 feet of the find until a qualified professional paleontologist as defined by the Society of Vertebrate Paleontology's Conformable Impact Mitigation Guidelines Committee (2011) can assess the nature and importance of the find and recommend appropriate treatment. The Division will also be notified of the discovery and the qualified professional paleontologist's opinion within 48 hours of the initial finding. Treatment may include preparation and recovery of fossil materials, so that they can be housed in an appropriate museum or university collection, and also may include preparation of a report for publication describing the finds. Project activities shall not resume until after the qualified professional paleontologist has given clearance and evidence of such clearance has been submitted to the Deputy Director for Water Rights.
- 14. 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 disturbance within 100 feet of the find shall be halted until the 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.

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APPROVED:

*ORIGINAL SIGNED BY:
JAMES W. KASSEL FOR*

Barbara Evoy, Deputy Director
Division of Water Rights

Date: January 25, 2013