

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31076
Nan Tucker McEvoy

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream tributary to San Antonio Creek thence Petaluma River
COUNTY: Marin

WHEREAS:

1. Application 31076 was filed with the State Water Resources Control Board (State Water Board) on June 20, 2000.
2. Applicant requested to divert 3.4 acre-feet per annum (afa) to storage in an existing 13 acre-feet (af) reservoir for irrigation, recreation and fire protection. The initial 9.6 af of water is authorized to be diverted to storage under Amended Permit 20550, and the Applicant seeks to authorize the remaining 3.4 af of storage under Application 31076. The 3.4 af of water will be used in combination with water authorized for diversion under Amended Permits 20549, 20550, 20551, 20812, and newly issued Permit 21224 for irrigation of 153 acres of olive orchard. The proposed water uses under Application 31076 are beneficial.
3. The Division of Water Rights (Division) issued a public notice of Application 31076 on September 27, 2000. No protests were received on the basis of injury to prior rights. A protest was received from the National Marine Fisheries Service (NMFS) on the basis of potential impact to the environment. Although the Department of Fish and Game staff provided input on this project, they did not file a formal protest. Permit condition(s) were included in the permit to mitigate for potential impacts to the environment.
4. The State Water Board has determined that there is unappropriated water available to serve Application 31076. The consulting firm Entrix, Inc., prepared a water availability analysis (WAA) on January 10, 2005, documenting the availability of water. Division staff accepted the WAA on May 19, 2005. No protests based on the injury to lawful users of water were received. Based on the WAA, Division staff concluded that water will be diverted and used without injury to any lawful user of water. Division staff also concluded that unappropriated water is available and that approval of the application, as conditioned, would not result in potentially significant impacts to anadromous fish or aquatic resources.
5. Based on information contained in the WAA, NMFS determined that the project would not pose a threat to steelhead, and they withdrew their protest on March 14, 2008.

6. In 2002, NMFS and California Department of Fish and Game (DFG) developed *Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams* (Draft Guidelines), dated June 17, 2002. The Draft Guidelines are recommended for use by permitting agencies (including the State Water Board), planning agencies and water resources development interests when evaluating proposals to divert and use water from northern California coastal streams. The Draft Guidelines apply to projects located in the geographic area of Sonoma, Napa, Mendocino, and Marin Counties, and portions of Humboldt County. The Draft Guidelines recommend that terms and conditions be included in new water right permits for small diversions to protect fishery resources in the absence of site-specific biologic and hydrologic assessments. Approval of Application 31076 is consistent with the recommendations in the Draft Guidelines.
7. The State Water Board, Division of Water Rights, as Lead Agency, prepared an Initial Study for this project pursuant to the California Environmental Quality Act. (Cal. Code Regs., tit. 14, § 15063.) The Initial Study identified potentially significant impacts to biological resources, cultural resources, geology and soil, and hydrology and water quality. The Division proposed the following mitigation measures to mitigate for the potential environmental impacts that could occur from issuance of this permit, and Permittee agreed to incorporate these measures into the permit:
 - a. cultivation of the place of use in accordance with recommendations in the geotechnical investigation;
 - b. measures to prevent deterioration of water quality;
 - c. streamflow bypass for the protection of aquatic life;
 - d. limitations on existing rights under this permit in combination with riparian rights; and
 - e. cultural resource contingency actions in the event that sensitive resources are unearthed during project construction or operation.

Conditions should be included in the permit requiring implementation of these mitigation measures.

8. On March 21, 2008, the Division, acting as lead agency, circulated the Initial Study, a Notice of Intent to Adopt a Mitigated Negative Declaration (MND), and the Mitigated Negative Declaration (SCH No. 2008032080) pursuant to the California Code of Regulations, Title 14, sections 15072 and 15074.
9. All protests to approval of the application have been resolved by inclusion of permit conditions.
10. The MND reflects the State Water Board's independent judgment and analysis. No substantive comments identifying new or unmitigated environmental impacts were received during the public review process for the proposed MND. After considering the document, the State Water Board has determined that the above-proposed project, with mitigation measures, will have a less than significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the Initial Study. The potential adverse impacts of the project were found to be less than significant and mitigated for with the inclusion of specific permit terms. The documents or other material that constitute the record are located in the files held by the Division. The Division filed a Notice of Determination on March 26, 2009 in accordance with the California Code of Regulations, title 14, section 15075.

NOW, THEREFORE, IT IS ORDERED THAT a permit is issued for Application 31076, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

James W. Kussel
for *Victoria A. Whitney, Chief*
Division of Water Rights

Dated: **MAY 21 2009**

Attachment: Permit 21223