



State Water Resources Control Board

PROPOSED
MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21092

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: Petition for Change of Place of Use for Water Right Permit 20295
(Application 27758) of Anderson Vineyards

PETITIONER: Anderson Vineyards
c/o Robert Gibson
P.O. Box 67
Philo, CA 95466

PROJECT LOCATION:

The project is located in Anderson Valley, approximately five miles northeast of the community of Philo in Mendocino County, California. This location can be found within Township 14 and 15 North, Range 15 West, of the "Cold Spring, California" and the "Philo, California" U.S. Geological Survey (USGS) 7.5-minute topographic quadrangles.

PROJECT DESCRIPTION:

Permit 20295 (Application 27758) was issued December 29, 1988, by the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). Permit 20295 allows for the diversion of 75 acre-feet (af) of water from an Unnamed Stream tributary to Mill Creek thence the Navarro River to storage in an existing off-stream reservoir for the purposes of irrigation, frost protection, and heat control of 210 acres. The pending Petition for Change for Permit 20295 would add 36 acres to the POU, for a total of 246 acres. A portion of the proposed POU is located on a parcel adjacent to the property which the Petitioner is leasing. The entire 246-acre POU is currently developed in vineyard and includes vineyard avenues and turnspaces. No additional development would occur with the petition. No changes to the water diversion or purposes of use authorized by Permit 20295 are proposed.

DETERMINATION: The Division has determined that the above-proposed project will have a less-than-significant effect on the environment for the reasons specified in the attached Initial Study.

PERMIT CONDITIONS:

Source: Water to be appropriated from Unnamed Stream tributary to Mill Creek thence Navarro River in Mendocino County.

Point of Diversion: Water will continue to be diverted from an offset well, located North 2171895 and East 6134508 feet by the California Coordinate System of 1983, Zone 2, being within the NE ¼ of SW ¼ of Section 34, T15N, R15W, MDB &M.

Amount and Season: Water will be diverted during the period of November 1 to June 1 of each year. The total amount diverted annually shall not exceed 75 afa.

Purpose of Use: The purpose of use is irrigation, frost protection, and heat control.

Place of Use: The place of use will be as follows:

EXISTING AND PROPOSED PLACE OF USE

Use Within	Section	Township	Range	B & M	Acres
NE ¼ of SW ¼	34	15N	15W	MD	14
SE ¼ of SW ¼	34	15N	15W	MD	26
NW ¼ of SE ¼	34	15N	15W	MD	22
NE ¼ of SE ¼	34	15N	15W	MD	24
SW ¼ of SE ¼	34	15N	15W	MD	38
SE ¼ of SE ¼	34	15N	15W	MD	36
SE ¼ of NE ¼	34	15N	15W	MD	10
NW ¼ of SW ¼	35	15N	15W	MD	27
NE ¼ of SW ¼	35	15N	15W	MD	9
NW ¼ of NE ¼	3	14N	15W	MD	22
NE ¼ of NE ¼	3	14N	15W	MD	18
				Total:	246

PERMIT TERMS:

STANDARD TERMS

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 75 acre-feet per annum to be collected from November 1 of each year to June 1 of the succeeding year.

(0000005)

2. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2010.

(0000008)

3. 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)
4. The maximum rate of diversion to offstream storage shall not exceed 1 cubic foot per second.
(000005J)
5. Based on the information contained in the Division of Water Rights (Division) files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee diverts water under riparian right. With the Deputy Director for Water Rights' approval, Permittee may use water under basis of riparian right on valid lands within 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.
(0560300B)
6. 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 and the Potter Valley Tribe 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)
7. If human remains are encountered, then the Applicant 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 disturbance 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.
(0380500)

8. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be properly maintained.
(0060062)
9. Permittee shall install and maintain a device satisfactory to the State Water Board to measure water diverted into the reservoir from the unnamed stream.
(0060046)
10. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.
(0000022)

SPECIAL TERMS

11. For the protection of fish and wildlife, permittee shall during the period from November 1 through June 1 bypass a minimum of 0.04 cubic foot per second. The total stream flow shall be bypassed whenever it is less than the designated amount.
(0140060)
12. Permittee shall maintain a record of end-of-month meter readings of the amounts diverted from the unnamed stream into the reservoir and shall submit an annual record of monthly diversions with the Annual Progress Report by Permittee, or whenever requested by the Division of Water Rights.
(0000013)
13. The State Water Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.
(0000020)
14. Permittee shall compensate for the loss of 33 mature trees through planting of trees at a replacement ratio of 3:1.

The tree replacement plantings shall be located within or adjacent to the existing mixed evergreen forest as identified in Figure 6 of the Initial Study on file for Application 27758. Trees planted should be contiguous to existing stands to facilitate colonization by birds and arboreal mammals. 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 Mendocino 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%. 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.

15. Direct impacts to native oak trees shall be mitigated through the implementation of an oak tree replacement program, which shall include the planting, irrigation, monitoring, and maintenance of replacement native oak trees at a 3:1 ratio (planted:impacted) in areas not

included in the proposed place of use. Planted trees shall be placed adjacent to existing stands to provide cover for young trees and shall be planted approximately 35 feet apart. Replacement tree plantings shall be propagated from local stocks. Failed plantings shall be replaced to achieve net success criteria of 75 percent tree survival after five years. Trees surviving five years shall be maintained in perpetuity.

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, and 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 percent 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), and 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.

(0400500)

16. For the protection of riparian habitat, Permittee shall maintain the existing setbacks as shown on the Habitat Map, dated June 18, 2010, on file with Division. The setbacks shall range from a minimum of 25 to 50 feet wide along the intermittent and ephemeral drainages adjacent to the expanded place of use 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 this permit.

(0000206)

MANDATORY TERMS

17. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
18. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued. (0000010)
19. Permittee shall allow representatives of the State Water Resource Control Board and other parties as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011M)
20. Pursuant to 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 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)

21. 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 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)

22. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, 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)

23. 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)

24. 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 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 Department of Fish and Game.

(0000063)

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