

Permit file

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21216

Application 30363 of

Tim and Shawna Todd
P. O. Box 779
Redwood Valley, CA 95470

filed on **May 10, 1994**, 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:
Forsythe Creek

Tributary to:
West Fork Russian River

within the County of Mendocino.

- 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
North 2,225,892 feet and East 6,210,258 feet	SW¼ of SW¼	6	16N	12W	MD

3. Purpose of use	4. Place of use	Projected Section	Township	Range	Base and Meridian	Acres
Irrigation	SW¼ of SW¼	6	16N	12W	MD	18
Frost Protection	SE¼ of SW¼	6	16N	12W	MD	7

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 **10** acre-feet per annum to be collected from **December 15** of each year to **March 31** of the succeeding year. (000005C)
6. The maximum rate of diversion to offstream storage shall not exceed **0.5 cubic feet per second**. (000005J)
7. The capacity of the reservoir covered under this permit shall not exceed **10** acre-feet. (000005N)
8. 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)
9. Prior to diversion or use of water under this permit, permittee shall install an in-line flow meter, satisfactory to the Chief of the Division of Water Rights that measures the instantaneous rate and the cumulative amount of water withdrawn from Forsythe Creek. 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 maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these records with annual progress reports, and whenever requested by the Division of Water Rights. (0100900)
10. The State Water Board reserves jurisdiction to impose conditions to conform this permit to the State Water Board's policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)
11. For the protection of fish and wildlife, under all bases of right, permittee shall during the period from December 15 through March 31 bypass a minimum of 64 cubic feet per second (cfs). Under all bases of right permittee shall bypass the total streamflow from April 1 through December 14. The total streamflow shall be bypassed whenever it is less than 64 cfs. (0140060)
12. Prior to the start of construction, or diversion or use of water under this permit, the permittee shall submit a Compliance Plan for approval by the Chief of the Division of 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 stream flow 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.
- f. A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

The 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.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Chief of the Division of Water Rights within 15 days upon request by the State Water Resources Control Board, the Chief of the Division of Water Rights, or other authorized designees of the State Water Resources Control Board.

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)

13. 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.
(0000028)
14. Based on the information contained in the Division of Water Rights files, approximately 10 acre-feet per year of riparian water has been used on the place of use. Diversion of water is not authorized under this permit if in the future the permittee diverts more than 10 acre-feet per year of water under riparian right. With the Chief of Division of Water Rights approval, permittee may use additional water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Chief Division of 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 Chief of the Division 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)
15. Permittee shall report any non-compliance with the terms of the permit to the Chief of the Division of Water Rights within three days of identification of the violation.
(9990999)
16. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the California Department of Fish and Game and the National Marine Fisheries Service to protect Steelhead Trout, Coho Salmon, and Chinook Salmon listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) and the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544)]. Construction, operation, and maintenance costs of the required facility are the responsibility of the permittee.
(0000214)

17. For the protection of riparian habitat, permittee shall establish a setback as shown on Setback Map No. SB-01, dated February 12, 2008 on file with the Division of Water Rights. The setback shall be at least 50 feet wide along Forsythe Creek as measured from the centerline of the creek. 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.

(0400500)
18. For the protection of wetland habitat, permittee shall establish a setback as shown on Setback Map No. SB-02 dated February 12, 2008 on file with the Division of Water Rights. The setback shall extend at least 10 feet from the periphery of the three wetlands depicted on Setback Map No SB-02. 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 reservoir maintenance. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native wetland vegetation within the setback area is allowed. Permittee shall restrict cattle or other domestic stock access to the setback area. An existing road runs along the eastern periphery of the wetland located adjacent to the reservoir. This existing road is located within the 10-foot buffer and may remain in place. These requirements shall remain in effect as long as water is being diverted under this permit.

(0400500)
19. The historic-period debris scatter, identified as the Canebrake Historic Site in the report titled "Cultural Resources Study Canebrake Vineyards Water Rights Project Application 30363" dated July 2007 and prepared by Analytical Environmental Services, shall be avoided by ground-disturbing activities that are beyond the historic layer of disturbance; an exception being ongoing routine maintenance of the vineyard in the location of the site. Routine maintenance shall be limited to the existing disk zone (~25cm below surface), and shall not include deep ground disturbance such as ripping. The site shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage, and distribution facilities, including installation of buried pipelines). Should any other buried previously unidentified archaeological 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 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 Chief of the Division of 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 Chief of the Division of 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 Chief of the Division of Water Rights.

(0000215)
20. 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 Chief of the Division of Water Rights.

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, endangered, or candidate 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 therefor 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

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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

James W. Kassel
for **Victoria A. Whitney**
Division Chief

Dated: **JUN 18 2008**