

March 28, 2016

**BY HAND DELIVERY
IMMEDIATE ACTION REQUESTED**

Barbara Evoy
Deputy Director, Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

STATE WATER RESOURCES
CONTROL BOARD
2016 MAR 29 PM 2:57
DIV OF WATER RIGHTS
SACRAMENTO

Re: Application for a Temporary Permit to Appropriate Water
Harlan Creek, San Benito County

Dear Ms. Evoy:

Enclosed please find the following documents:

- (1) An application for a temporary permit to appropriate water from Mr. J. E. Jensen, pursuant to Chapter 6.5 of the California Water Code (“Temporary Permit Application”);
- (2) Supplemental responses to satisfy the information requested in the Temporary Permit Application (Attachment No. 1);
- (3) A map depicting the source of water and location of water use (Attachment No. 2);
- (4) Color photographs of vegetation at the location (Attachment No. 3);
- (5) A copy of Permit No. 19572 (Attachment No. 4);
- (6) A copy of WR Order 93-8 (Attachment No. 5);
- (7) A copy of WR Order 94-2 (Attachment No. 6);
- (8) A copy of WR Order 2000-17 (Attachment No. 7);
- (9) A copy of Temporary Permit 21283 (Attachment No. 8);

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CHECK # 270771 - \$2,000.00
CHECK # 270773 - \$850.00

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- (10) A copy of Temporary Permit 21263 (Attachment No. 9);
- (11) A copy of Temporary Permit 21186 (Attachment No. 10);
- (11) A check payable to the Division of Water Rights in the amount of \$2,000.00 to cover the filing fees for the Temporary Permit Application; and
- (12) A check payable to the Department of Fish and Game in the amount of \$850.00.

1. Background.

As the Temporary Permit Application explains, Mr. Jensen is the holder of Permit No. 19572, which authorizes the diversion of water from Harlan Creek from October 1 to March 31 each year for storage in a 10 acre-foot capacity reservoir. Due to recent drought conditions, Mr. Jensen has been unable to divert any water into the reservoir and, thus, the reservoir is practically empty. This year, however, the Central Region experienced rainfall in March 2016 that resulted in water flowing down Harlan Creek. Therefore, Mr. Jensen seeks a temporary permit to divert and store excess water from Harlan Creek for a period of 30 days following the issuance of the requested Temporary Permit to Appropriate Water.

The current conditions at Harlan Creek are similar to conditions that existed in previous years. In 2006, Mr. Jensen's reservoir was approximately 35% full on March 31, but late winter rains resulted in excess water in Harlan Creek after March 31, 2006. Thus, Mr. Jensen filed an application to divert the excess flows pursuant to the terms of Permit No. 19572. The Division issued Temporary Permit 21186 on April 11, 2006, granting Mr. Jensen's request. Similarly, in 2010, Mr. Jensen's reservoir was dry on March 31, but late winter rains resulted in excess water in Harlan Creek after March 31, 2010. Thus, Mr. Jensen filed an application to divert the excess flows pursuant to the terms of Permit No. 19572. The Division issued Temporary Permit 21263 on April 30, 2010, granting Mr. Jensen's Request. Lastly, in 2011, Mr. Jensen was only able to divert 3.4 acre-feet of water by March 31. However, late March rainfalls led to excess flows in Harlan Creek and Mr. Jensen filed an application to divert those excess flows pursuant to the terms of Permit No. 19572. The Division granted the request on April 6, 2011. Mr. Jensen requests that the Division likewise grant his current Temporary Permit Application, especially given that, this year, the reservoir is nearly empty.

2. An Urgent Need Exists.

The Temporary Permit Application would grant Mr. Jensen the opportunity to extend the period of diversion under the terms and conditions of Permit No. 19572 for an additional thirty days to capture the excess water in Harlan Creek. Mr. Jensen would divert no more water than is necessary to fill the reservoir, which would not exceed 10 acre feet under any circumstances. Indeed, Mr. Jensen recognizes that the amount of water that available for diversion might be significantly less than 10 acre feet, but any amount of available surface water would improve Mr. Jensen's ability to irrigate his vineyards.

The temporary diversion would satisfy the urgent need requirement set forth in Section 1425 of the Water Code because it would further the state constitutional policy of putting water resources to beneficial use and preventing waste. Unless captured and put to beneficial use, the water that is currently in Harlan Creek will flow to the Pacific Ocean.

In addition, the temporary diversion would alleviate some of the harm that Mr. Jensen's winery operations have experienced in recent years. As explained above, drought conditions were such that, from 2007 through 2009, there was no water in Harlan Creek. In each of these years, Mr. Jensen was forced to rely on what little groundwater he could pump to irrigate his vineyards. This reduction in water supplies resulted in dramatically lower crop production. By way of comparison, the vineyards produced only about ½ a ton of grapes per acre in 2008, whereas the vineyards produced approximately 4 tons per acre in 2006 and the statewide average is approximately 12 tons per acre. If Mr. Jensen is unable to access the excess surface water in Harlan Creek this year, his winery operations will face yet another year of low production. On the other hand, if the Division grants the requested Temporary Permit Application, Mr. Jensen will have the opportunity to divert available surface water supplies, which would greatly reduce the strain on Mr. Jensen's crops and winery operations.

3. *A Temporary Diversion is in the Public Interest.*

This temporary diversion would result in no new construction or physical changes to the diversion location because the excess water would be stored in existing facilities. Moreover, by incorporating the terms and conditions of Permit No. 19572, the temporary diversion would be limited to the naturally occurring surface flow in Harlan Creek and could only occur when there is visible flow over the CSY Grant Line Weir and the Harlan Creek Falls Weir. (Condition 5, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17.)

Based on these circumstances, a temporary diversion of excess water is in the public interest, would not result in harm to any other lawful water users, and would not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

4. *Immediate Action is Necessary to Satisfy the Conditions in Permit No. 19572.*

The Temporary Permit Application identifies the period of diversion as April 1 through April 30, 2016. Mr. Jensen recognizes that the diversion dates may need to be modified depending on how long it takes to process the Temporary Permit Application. However, it is expected that the flow in Harlan Creek will only be visible over the CSY Grant Line Weir and Harlan Creek Falls Weir for a short period of time. Once the flow recedes below that point, the conditions set forth in Permit No. 19572 will no longer be satisfied and this opportunity to divert excess water will be lost. Thus, Mr. Jensen respectfully requests that the Division take prompt action on his Temporary Permit Application.

5. *Notifications.*

Mr. Jensen notified the watermaster for Harlan Creek, Mr. Pat Wirz, on April 24, 2016 of his intent to submit this Temporary Permit Application. After visiting the reservoir site, Mr. Wirz informed Mr. Jensen that he has no objections to the application or to the diversion. Mr. Wirz can be contacted at (831) 637-9400 or 135 Grass Valley Road, Hollister, California 95023.

Mr. Jensen also discussed the Temporary Permit Application with his immediate downstream neighbor, Ann-Marie Sayers, and Rob Levy, the vineyard manager of Gimelli Vineyards while they visited the reservoir site. Ms. Sayers and Mr. Levy informed Mr. Jensen that they have no objections to the Temporary Permit Application.

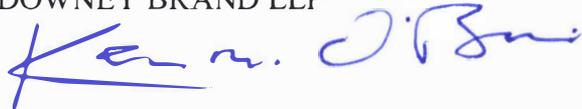
Mr. Jensen has notified Michael Krausie, Associate Planner, and Byron Turner of the San Benito County Planning Department of the Temporary Permit Application on March 23, 2016. Mr. Krausie and Mr. Turner did not voice any objections.

Lastly, Mr. Jensen contacted Annette Teneboe of the California Department of Fish and Wildlife of this Temporary Permit Application on March 22, 2016 and received no objections.

Thank you in advance for your attention to this matter. Please feel free to contact me if you have any questions.

Very truly yours,

DOWNEY BRAND LLP



Kevin M. O'Brien

3. PROJECT DESCRIPTION

J.E. Jensen (hereinafter "Applicant") is the President of the Calera Wine Company, which operates a vineyard in San Benito County. Applicant holds Permit No. 19572 (hereinafter "Permit"), which authorizes the diversion and storage of water from Harlan Creek for irrigation. Applicant may collect water in an onstream reservoir from October 1 through March 31 of each year. This application is for a Temporary Permit to appropriate water after March 31.

The Permit authorizes the diversion of water as follows:

The water appropriated shall be limited to naturally occurring surface flow and to the quantity which can be beneficially used, and shall not exceed a total of 20 acre-feet per annum (afa) to be collected to storage from October 1 of each year to March 31 of the succeeding year. Up to 10 afa may be diverted from Harlan Creek to storage in Reservoir 1 on Harlan Creek. . . Water May be collected to storage in Reservoir 1 only during times when there is visible flow over the CSY Grant Line Weir and the Harlan Creek Falls Weir.

(Condition 5, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17). Permit No. 19572, WR Order 93-8, WR Order 94-2, and WR Order 2000-17 are incorporated herein and attached hereto as Attachment Nos. 5-8, respectively.

Pursuant to the terms of the Permit, Applicant diverts and stores 10 acre-feet of water in an onstream reservoir (hereinafter "Reservoir 1") for the purpose of irrigating adjacent vineyards. Applicant may only divert and store water when there is visible flow at CSY Grant Line Weir and the Harlan Creek Falls Weir. Visible flow has been interpreted to mean a discernible stream of surface water. Applicant completed construction of and first used Reservoir 1 in 1992. Reservoir 1 is an earthen storage facility with a 4-inch outlet pipe.

Due to recent drought conditions, there has been little to no visible flow in Harlan Creek during most of the 2015-2016 diversion season. As a result, Reservoir 1 will be practically empty at the end of the diversion period, March 31, 2016. However, much of California, including the Central Region, has experienced unusual late winter and early spring rainfall, particularly during the recent El Niño storms in March. After those storms, Applicant observed visible flow at the weirs, and this visible flow will continue to flow down Harlan Creek after March 31, 2016. Thus, Applicant seeks a temporary permit to divert and store excess water from Harlan Creek from April 1 to April 30, 2016, inclusive.

Applicant has an urgent need for a temporary permit to appropriate water because, at this time, Reservoir 1 is practically empty. The 10 acre-feet of water that the Permit entitles Applicant to collect and store is crucial for the irrigation of Applicant's vineyards. Therefore, without an opportunity to collect the excess water available due to late rainfall, Applicant's ability to irrigate this year will be greatly compromised. Indeed, Applicant recognizes that the amount of water

that available for diversion might be significantly less than 10 acre feet, but any amount of available surface water would improve Applicant's ability to irrigate his vineyards.

Applicant requests approval to divert up to 10 acre-feet over a 30 day period pursuant to the terms and conditions of Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17. Water would be diverted and stored in the existing Reservoir 1, and would therefore require no new construction or physical changes. Moreover, by incorporating the terms and conditions of Permit 19572, the temporary diversion would be limited to the naturally occurring surface flow in Harlan Creek and could only occur while there is visible flow at CSY Grant Line Weir and the Harlan Creek Falls Weir. (Condition 5, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17.)

5. SOURCES AND POINTS OF DIVERSION/REDIVERSION

(b) State Planar and Public Land Survey Coordinate Description

Applicant proposes to use the same point of diversion as identified in Permit No. 19572 for Reservoir 1, which is listed in the table below.

Location of Point of Diversion	40-acre subdivision of Public Land Survey or Projection Thereof	Section	Township	Range	Base and Meridian
(1) South 77 feet and East 1,750 feet from center of Section 23 (Reservoir #1)	NE ¼ of SE ¼	23	148	SE	MD

6. WATER AVAILABILITY

During normal hydrological years, Applicant diverts water under the terms of Permit No. 19572, which authorizes Applicant to collect water for storage in Reservoir 1 from October 1 through March 31, inclusive. This season brought late rains, however. The timing of the rains has resulted in two important conditions. First, Reservoir 1 is practically empty as of the date of this application and will remain only partially full by March 31, 2016. Second, excess water from the late rains will continue to flow through Harlan Creek after March 31, and will waste into the Pacific Ocean unless it is captured and put to beneficial use. Therefore, this application seeks the opportunity to appropriate the excess water for storage in Reservoir 1 from April 1 through April 30, 2016, inclusive.

10. DIVERSION AND DISTRIBUTION METHOD

The Permit authorizes Applicant to collect and store up to 10 acre-feet of water in Reservoir 1. Reservoir 1 is an onstream reservoir that diverts and stores "naturally occurring surface flow" as

set forth in the conditions of the Permit. (Condition 5, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17.) Applicant regulates the storage in Reservoir 1 through use of a valve system. A drainpipe at the bottom of Reservoir 1 allows water to pass through and out of the reservoir when open. (See 10.d Storage reservoirs, 10.e Outlet pipe.) Stored water is pumped out of Reservoir 1 for use in irrigation. (See 10.b.)

11. CONSERVATION AND MONITORING

(a) What methods will you use to conserve water?

Applicant shall ensure that only as much water as is necessary is subject to diversion by ceasing to divert water either when Reservoir 1 is filled to capacity (10 acre-feet) or at the end of April 30, 2016, whichever occurs first. The amount of the diversion would not exceed 10 acre-feet under any circumstances.

(b) How will you monitor your diversion to be sure you are within your water right and you are not wasting water?

Under the terms of Permit No. 19572, the storage in Reservoir 1 is monitored by a continuous stage recorder. In addition, Permit No. 19572 requires all natural surface flows and diversions to be metered. (Condition 16, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17.) Applicant shall only collect water for storage in Reservoir 1 “during times when there is flow over the CSY Grant Line Weir and the Harlan Creek Falls Weir.” (Condition 5, Permit No. 19572, as modified by WR Order 93-8, WR Order 94-2, and WR Order 2000-17.)

13. EXISTING WATER RIGHTS AND RELATED FILLINGS

Right Claimed	Source	Year of First Use	Purpose	Season	Location of Diversion Point
Riparian	Harlan Creek	1980	Irrigation	April – September	Same diversion points as identified for water diverted under Permit No. 19572.

16. ENVIRONMENTAL INFORMATION

Harlan Creek is under the jurisdiction of a watermaster. Applicant notified the watermaster, Mr. Pat Wirz, on March 24, 2016, of his intent to apply for a temporary urgency permit for appropriation. After observing the reservoir site, Mr. Wirz informed Mr. Jensen that he has no objection to the application or to Mr. Jensen’s diversion. Mr. Wirz’s contact information is below:

Pat Wirz (831) 637-9400
 135 Grass Valley Rd.
 Hollister, California 95023

For copies of any additional attachments not included here, please contact Mark Matranga at mark.matranga@waterboards.ca.gov or (916) 327-3112.