

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

DIVISION OF WATER RIGHTS

AMENDED PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 17360

APPLICATION 24985 of Edwards Ranch, LLC
 Route 1, Box 234A
 Goleta, CA 93117-9700

The Deputy Director for Water Rights finds that: (a) the change will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; (c) the petition does not constitute the initiation of a new right; and (d) the State Water Resources Control Board (State Water Board) has made the required findings pursuant to the California Environmental Quality Act (CEQA) or the project is exempt from CEQA. The amended permit is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057.)

The Deputy Director for Water Rights also finds that: (a) due diligence has been exercised; (b) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (c) satisfactory progress will be made if an extension is granted.

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346], 658 P.2d 709.)

Therefore, an amended permit on **Application 24985** filed on **January 30, 1976** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

- (1) Unnamed Stream**
- (2) Gato Creek**

Tributary to:

- Gato Canyon**
- Pacific Ocean**

within the County of **Santa Barbara**.

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 5	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) North 2,006,629 feet and East 5,965,786 feet	NE ¼ of NW ¼	25*	5N	30W	SB
(2) North 2,008,829 feet and East 5,967,886 feet	SW ¼ of SE ¼	24*	5N	30W	SB

Location of point of redirection

By California Coordinate System of 1983 in Zone 5	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) North 2,006,629 feet and East 5,965,786 feet	NE ¼ of NW ¼	25*	5N	30W	SB

Location of place of storage

By California Coordinate System of 1983 in Zone 5	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) North 2,006,629 feet and East 5,965,786 feet	NE ¼ of NW ¼	25*	5N	30W	SB

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Fire Protection	At Reservoir	24*, 25*	5N	30W	SB	
Recreation						
Domestic	Within the Edwards and Las Varas Ranches boundaries within Sections 1*, 2*, 3*, 11*, 12*, 23*, 24*, 25*, 26*, 35*, 36*; all within Township 4N, Range 30W, SBB&M, as shown on map.					
Stockwatering						
Irrigation		1*	4N	30W	SB	203.1
		2*	4N	30W	SB	104.5
		12*	4N	30W	SB	14.9
					Total	322.5

The place of use is shown on map filed with the State Water Board.

- The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (a) by direct diversion: (1) **0.1 cubic foot per second** from April 1 to December 31 of each year for irrigation and domestic purposes, (2) **6,000 gallons per day** from April 1 to December 31 of each year for stockwatering purposes; and, (b) by storage: **611 acre-feet per annum** to be collected from October 1 of each year to May 1 of the succeeding year for fire protection, recreation, irrigation, domestic, and stockwatering purposes. The total amount of water to be taken from the source for all uses shall not exceed **672 acre-feet** per water year of October 1 to September 30. (000005G)
- 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)

7. The maximum rate of diversion to offstream storage shall not exceed **4.14 cubic feet per second**.
(0000005J)
8. The capacity of the reservoir covered under this permit shall not exceed **644 acre-feet**.
(0000005N)
9. Construction and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2027**.
(0000009)
10. This permit shall not be construed as conferring upon the Permittee right of access to the point of diversion.
(0000022)
11. Permittee shall comply with the following provisions which are derived from the agreement between Permittee and the Department of Fish and Game executed on October 21, 1997, and filed with the State Water Board:
 - a. The minimum bypass flow requirement at Permittee's diversion point on Gatos Creek shall be as follows:
 - i. During the period May 1 to October 31, Permittee shall bypass 50 gpm (gpm), or the natural flow of Gato Creek, whichever is less.
 - ii. During the period November 1 to April 30, Permittee shall bypass 50 gpm on a monthly average basis, but never less than 25 gpm on an instantaneous basis, or the full natural flow of Gato Creek, whichever is less.
 - b. For the period May 1 to October 31, Permittee shall measure the monthly average bypass flow by use of a V-notch weir of the type and rating approved by the Department of Fish and Game.
 - c. For the period November 1 through April 30, Permittee shall compute the monthly average bypass flow by using the Gato Creek model, which is based on daily stream gage readings from nearby San Jose Creek.
 - d. Permittee shall measure the bypass flow at the Gato Creek diversion weekly, on the same day of the week, during the months of May through October, inclusive, so that any adjustments in releases made from the creek outlet downstream of the dam into the creek can be made.
 - e. Permittee shall measure the quantity of water passing through the dam, which runs into the unnamed tributary to Gato Creek (at the "creek release") on the same day of the release.
 - f. On any measuring date during the months of May through October, inclusive, that the sum of the bypass flow at the Gato Creek diversion plus the flow at the creek release is less than 50 gpm, Permittee shall release into Gato Creek at the creek release the lesser of (a) the amount necessary to bring the total releases and bypasses to 50 gpm or (b) 25 gpm minus the measured flow passing through the dam.
 - g. In no year shall Permittee be required to release more water from the combination of the flows passing through the dam and the release of the creek release than Permittee stored in the reservoir during the immediate past storage season. If, in any year, permittee believes that this provision will control releases, permittee shall notify the Department of Fish and Game of that fact and shall work with the Department of Fish and Game to provide the required releases at such times and flow rates as may best protect riparian conditions below the creek release.

- h. Permittee shall relocate the existing outlet from the delivery pipeline into Gato Creek (the creek release) to the following location: 34° 29.366' north latitude and 119° 58.683' west longitude. Permittee shall install a measuring device at the relocated creek release sufficient to measure the quantity of water released from the delivery pipeline into Gato Creek. Permittee shall consult with the Department of Fish and Game to determine whether a stream or lake alteration agreement will be required for relocation of the creek release.
- i. Permittee shall install and maintain a pressure gauge at the outlet of the reservoir to measure changes in reservoir storage. The gauge shall be read periodically as required to provide information on total storage and water stored during the water year. The gauge shall be read whenever the Gato Creek diversion meter is read, so that diversions from the unnamed tributary can be calculated.
- j. Permittee shall maintain an annual operating report that sets forth all weekly and other measurements made to comply with the terms and conditions of this permit. Permittee shall provide the Department of Fish and Game with a copy of the annual operating report annually. The annual operating report shall be maintained by the Permittee for ten years from the date of collection and made available for inspection by the Deputy Director for Water Rights or the Department of Fish and Game, upon request by either agency.
- k. Upon receipt of reasonable written notice, Permittee shall provide the Department of Fish and Game with access to Gato Creek diversion, the reservoir and outlet, and the creek release for purpose of monitoring compliance with the terms and conditions of this permit.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

- 12. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the rate and quantity of water diverted into the reservoir from Gato Canyon, and water released from or flowing out of the reservoir.

(0060046)

- 13. Permittee shall install devices, satisfactory to the State Water Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained.

(0060062BP)

- 14. Within six months of the issuance of this amended permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for 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;
- c. A time schedule for the installation 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; and,
- f. A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

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. The monitoring data shall be maintained by the Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request. 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)

- 15. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 30289 and Permit 17361 (Application 25165), shall not exceed 704.3 acre-feet per annum.

(0000114A)

- 16. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.

(0000203)

- 17. For the protection of riparian habitat and jurisdictional waters, the owner of this water right shall establish a setback of 100 feet along Gato Creek and around the perimeter of all jurisdictional waters located within the designated place of use. This setback will also apply to any riparian areas or jurisdictional waters that may be discovered or formed on the property subsequent to the issuance of this permit. The stream setback shall be measured from the top of the bank, or the edge of the riparian corridor, whichever is more restrictive, on both sides of the stream or in the case of the jurisdictional waters, from the perimeter of the jurisdictional water. No activity shall occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, and irrigation, with the exception of access roads and the creek release facilities. Permittee shall use best management practices to limit access of cattle or other domestic stock to the riparian area as well as the jurisdictional waters. This requirement shall remain in effect as long as water is being diverted under any permit or license issued pursuant to this water right.

(0000206)

- 18. An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director for Water Rights prior to cultivation of any uncultivated lands within the proposed place of use. Such plan shall be consistent with the requirements of Agricultural Waiver (Number AW1448), or successor waiver, issued to Permittee by the Central Coast Regional Water Quality Control Board. Before diverting water in excess of the quantities diverted on December 31, 1995 under this permit, Permittee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area and vegetation and slopes.

(0000207)

- 19. 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.

(0000208)

- 20. 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.

(0000215)

21. Permittee shall take the following actions to ensure that relocation of the creek release shall not harm California red-legged frog (*Rana aurora draytonii*), and any other sensitive species present at or near the existing and new creek release site:

- a. Hire a qualified biologist, acceptable to the Department of Fish and Game, the U.S. Fish and Wildlife Service and the Division of Water Rights to:
 - i) Conduct a pre-construction biological survey of the construction site and surrounding environs to determine if sensitive species and/or their habitats may be present; and,
 - ii) Conduct a training session for construction field crews to inform them of the possible presence of sensitive species, their appearance and explain actions to be taken if they are encountered during construction of the reservoir.
- b. Stop all project-related construction activities if sensitive species are encountered and refrain from resuming construction activities until the biologist hired under part a) above declares that individual species encountered have either safely left the work area or have been safely removed and relocated by a qualified collection biologist duly certified by the Department of Fish and Game and the U.S. Fish and Wildlife Service.

(0600500)

22. For the protection of habitat for the California red-legged frog (*Rana aurora draytonii*), and other sensitive species occurring at or near the reservoir site, the Permittee shall:

- a. Establish and maintain, undisturbed, a 100-foot wide strip of natural upland vegetation around the reservoir, except at the dam spillway and the existing unimproved access roads (+15 feet wide). The existing roads may be maintained as necessary to allow access to the dam site by a vehicle for normal operation and maintenance purposes. Any vehicle/mower following the path shall not exceed a speed limit of 2 miles per hour, and personnel shall be posted at all times in front of the moving vehicle/mower to ensure that any frogs encountered on the path will not be harmed;
- b. With the exception of clearing vegetation from the spillway as directed by the State Water Board and the Department of Water Resources Division of Safety of Dams, Permittee shall consult with the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, and the Department of Fish and Game prior to commencing any reservoir dredging operations;
- c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations; and,
- d. Consult with the Department of Fish and Game, and/or the U.S. Fish and Wildlife Service, should any bullfrogs (*Rana catesbeiana*) be discovered at or near the reservoir, to develop and implement an acceptable bullfrog eradication program.

(0600500)

23. For the protection of the white-tailed Kite, Permittee shall establish a construction setback of 500 feet from any riparian areas; unless a nesting bird survey has been conducted by a qualified biologist. The survey shall indicate that no white-tailed Kites are using the riparian habitat for nesting during the time of construction, and shall be approved by the Department of Fish and Game, Division of Water Rights and the U.S. Fish and Wildlife Service. If, during the course of construction within the 500-foot setback, a white-tailed Kite is observed using the riparian habitat for nesting, all construction activities shall cease immediately until consultation with a qualified biologist and either the Department of Fish and Game or the U.S. Fish and Wildlife Service determine that it is safe to begin construction again. (0600500)
24. If human remains are encountered in the course of project development, including agricultural maintenance activities such as planting orchards, re-installing and/or relocating irrigation lines, etc., then the Permittee shall comply with section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources Code section 7050.5. All project-related ground disturbances 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 Public Resources Code section 15064.5 (e) has been completed and evidence has been submitted to the Deputy Director for Water Rights. (0380500)
25. The prehistoric site identified as CA-SBA-1564 by staff at Stone Archaeological Consulting in the report titled Phase 1 Archaeological Resources Preliminary Report For Proposed Waterlines at Las Varas Ranch Goleta, California, shall not be impacted by any developments related to the water diversion, storage, and distribution facilities associated with any orders, permits or licenses issued pursuant to this water right. The orchard may continue to be cultivated with general maintenance activities. No ripping or grading shall be allowed on the area identified as an archaeological site. Techniques for removal of the orchard shall be restricted to minimal disturbance in the area of the site and shall be monitored by a qualified archeologist, while the trees are removed. Due to the significance of CA-SBA-1564, a 100-foot buffer will be designated around this site prohibiting the installation of irrigation lines or infrastructure. Any future activities associated with the water diversion, storage, and distribution facilities (i.e., irrigation system changes) at the location of CA-SBA-1564 may be permitted only if a qualified archeologist is retained by the landowner to design and undertake an appropriate mitigation plan, which must be approved by the Deputy Director for Water Rights prior to activities related to the new developments. Project related activities shall not resume within 100 feet of the cultural resource until all mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights. (0380500)
26. The prehistoric site identified as CA-SBA-139 by staff at Macfarlane Archaeological Consultants in the report titled Phase 1 Cultural Resource Survey of a Portion of Las Varas Ranch Route 1, Box 234-A Santa Barbara, California, will not be impacted by the proposed project. No ripping or grading shall be allowed at CA-SBA-139 without a standard Phase 2 site evaluation and subsurface testing program first being performed to determine the importance of the site. Any proposed mitigation measures deemed necessary shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the resource until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights. (0380500)
27. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation. (9990999)
28. Permittee shall maintain the existing outlet pipe for Edwards Reservoir in proper working order. (000000S)

THIS PERMIT IS ALSO 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 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 the 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 the 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 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, 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 new work shall commence and no additional water beyond the quantity diverted on December 31, 1995 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)

DRAFT

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 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

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: