

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

DIVISION OF WATER RIGHTS

In the Matter of Application 30717

David Jenks

**ORDER APPROVING MITIGATION, MONITORING AND
REPORTING PLAN AND ISSUANCE OF PERMIT**

SOURCE: Unnamed Stream tributary to Unnamed Stream thence Floodgate Creek thence Navarro River

COUNTY: Mendocino County

WHEREAS:

1. David Jenks filed application 30717 with the State Water Resources Control Board, Division of Water Rights on June 19, 1998.
2. Application 30717 requests to divert 3.81 acre-feet (af) per annum to storage in a 3.81 af reservoir for irrigation and frost protection of 1.5 acres of vineyard and 18.5 acres of landscape vegetation and recreation, fire protection, and wildlife and fish preservation and enhancement purposes. Water will be collected from December 15 of each year to March 31 of the following year.
3. The Division of Water Rights issued a public notice of Application 30717 on December 17, 1999. California Sportfishing Protection Alliance, Friends of the Navarro Watershed, Sierra Club Mendocino Group, Navarro Watershed Protection Association, Daniel Myers, and the Department of Fish and Game (DFG) filed protests on the basis of potential impact to the environment. On April 20, 2000, the protest filed by DFG was rejected pursuant to California Water Code § 749. On May 22, 2009, protests filed by California Sportfishing Protection Association, Friends of the Navarro Watershed, Sierra Club Mendocino Group, Navarro Watershed Protection Association, and Daniel Myers were dismissed pursuant to Water Code § 1335 (d).
4. The State Water Resources Control Board has determined that there is unappropriated water available to serve Application 30717. The consulting firm, O'Connor Environmental, prepared and submitted a water availability analysis on July 10, 2006, documenting the availability of water. Division of Water Rights staff conditionally accepted the water availability analysis on July 11, 2006.
5. The water will be diverted and used without injury to any lawful user of water. The water availability analysis completed for this project demonstrates that water is available to serve this application without injury to prior rights. No protests to approval of the application on the basis of injury to prior rights were filed with the Division of Water Rights.
6. The Division of Water Rights prepared an Initial Study (IS) for this project pursuant to the California Environmental Quality Act (CEQA) (California Code of Regulations (CCR), tit. 14, § 15063.) The IS identified potential environmental impacts to biological resources and hydrology and water quality.

The Division of Water Rights 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. limitations on the timing and magnitude of diversion;
- b. streamflow bypass for the protection of aquatic life; and
- c. measures to prevent deterioration of water quality.

7. As conditioned, the water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. National Marine Fisheries Service (NMFS) and DFG developed Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams, dated June 17, 2002 (Draft Guidelines). The Draft Guidelines were recommended for use by permitting agencies, 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.

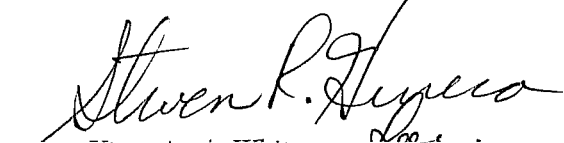
Division of Water Rights staff performed a site-specific evaluation and consulted with staff from DFG and found the project conforms to the recommendations in the Draft Guidelines. The project also conforms to recommendations for a dual bypass flow described in the November 12, 2003 letter from the NMFS and DFG. Permit conditions have been included in the permit to address potential impacts to fish, wildlife or other instream beneficial uses. All protests to approval of the application have been resolved by inclusion of permit conditions and by dismissal pursuant to Water Code § 1335, subdivision (d).

8. On June 18, 2008, the Division of Water Rights circulated the IS, a Notice of Proposed Mitigated Negative Declaration (MND), and the Proposed MND (SCH No. 2008112002) pursuant to the CCR, Title 14, § 15072 and § 15073. Public review of the document began on June 18, 2008 and ended on July 17, 2008.
9. The MND determined that the proposed project 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 IS. The potential adverse impacts of the project were found to be less than significant with the inclusion of mitigation measures specified as permit terms.
10. The Division of Water Rights received a comment letter from DFG on August 1, 2008, which included recommendations to protect potential California red-legged frog (*Rana aurora draytonii*) habitat by controlling bullfrogs at the Jenks property. In response to DFG's comments and in an effort to protect public trust resources, the Division of Water Rights staff recommended an additional term be included in any permit or license issued pursuant to the above-referenced application.
11. The Division of Water Rights prepared a Mitigation, Monitoring and Reporting Plan (MMRP) in accordance with CEQA (Public Resources Code (PRC) § 21081.6). The MMRP lists mitigation measures recommended in the IS/MND for the proposed project and specifies implementation and monitoring responsibilities. Pursuant to PRC § 21081.6(b), each of the mitigation measures identified in the MMRP will be included as enforceable permit terms in any permit authorizing construction, diversion, or use of water pursuant to Application 30717.

12. The MND reflects the State Water Resources Control Board's independent judgment and analysis. After considering the document, the State Water Resources Control Board has determined that the 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 IS. 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 of Water Rights. The State Water Resources Control Board will file a Notice of Determination for this project with the Governor's Office of Planning and Research within five days from the issuance of this order in accordance with the CCR, title 14, § 15075.

NOW, THEREFORE, IT IS ORDERED THAT the Mitigation, Monitoring and Reporting Plan is adopted, and a permit is issued for Application 30717, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **DEC 22 2009**

Attachment: Permit 21253