

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21312

APPLICATION 30745 of:

**Peter Michael - Home Ranch Property
12400 Ida Clayton Road
Calistoga, CA 94515**

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA; and (f) demonstrated that the requirements of the Policy for Maintaining Instream Flows in Northern California Coastal Streams have been met. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2007-0057.)

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, **Application 30745** filed on **March 23, 1998** has been approved by the 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:
Unnamed Stream

Tributary to:
Kellogg Creek thence

Redwood Creek thence

Maacama Creek thence

Russian River

within the County of Sonoma.

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
Lower Reservoir: North 1,997,892 feet and East 6,373,157 feet	SE ¼ of NW ¼	8*	9N	7W	MD

Location of place of storage

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
Upper Reservoir: North 2,003,273 feet and East 6,371,683 feet	NW ¼ of NW ¼	5*	9N	7W	MD

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
Irrigation	NW ¼ of NW ¼	5*	9N	7W	MD	4.6
	NE ¼ of NW ¼	5*	9N	7W	MD	12.0
	SW ¼ of NW ¼	5*	9N	7W	MD	9.8
	SE ¼ of NW ¼	5*	9N	7W	MD	28.5
	NE ¼ of SW ¼	5*	9N	7W	MD	13.2
	SE ¼ of SW ¼	5*	9N	7W	MD	0.3
	NW ¼ of SE ¼	5*	9N	7W	MD	9.2
	NE ¼ of SE ¼	5*	9N	7W	MD	0.6
	SW ¼ of SE ¼	5*	9N	7W	MD	29.7
	SE ¼ of SE ¼	5*	9N	7W	MD	15.0
	NE ¼ of NW ¼	8*	9N	7W	MD	0.3
	NW ¼ of NE ¼	8*	9N	7W	MD	22.3
	NE ¼ of NE ¼	8*	9N	7W	MD	5.5
					Total	151.0
Recreation (at Lower Reservoir)	NW ¼ of NW ¼	8*	9N	7W	MD	

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

- The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **85 acre-feet** per annum to be collected from **December 15** of each year to **March 31** of the succeeding year as follows: 36.5 acre-feet per annum in Lower Reservoir, and 48.5 acre-feet per annum in Upper Reservoir.

(000005D)

6. 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 **0.5 cubic feet per second**. (000005J)
8. The capacity of the Upper and Lower Reservoir covered by this permit (Application 30745) shall not exceed 48.5 acre-feet and 36.5 acre-feet, respectively. (000005N)
9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2027. (000009)
10. No water shall be diverted under this right unless permittee is monitoring and reporting water levels in the Lower Reservoir. This monitoring shall be conducted using a device and method satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring water surface levels from the maximum high water line to the minimum water line known to exist for the reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed and the reading corresponding to the high water line of the Lower Reservoir with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of maximum and minimum water surface levels for each month and the dates these levels were reached. If water is used for frost protection or other authorized refill, permittee shall also maintain a record of water surface levels before withdrawal for frost protection and after each reservoir refill. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage. (0100047)
11. No water shall be diverted under this right unless the permittee is monitoring the bypass flow required by this right in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. The permittee shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan. (0000070)
12. No water shall be diverted under this right unless permittee is monitoring and reporting the withdrawal of water for beneficial use and the release of water from the Lower Reservoir. This monitoring shall be conducted using a device and method satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water withdrawn for beneficial use or released to the stream channel from the Lower Reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years

after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of all withdrawals of water for beneficial use or releases of water to the stream channel under this right that includes the date, time, rate of withdrawal or release at time intervals of one hour or less, and the amount of water withdrawn or released. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0100052)

13. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the Lower Reservoir, Permittee shall furnish evidence which substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

14. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Resources Control Board, made after notice to interested parties and opportunity for hearing.

(0000090A)

15. No water shall be diverted under this right unless the flow in Tributary 3 is at or above **0.56** cubic feet per second, as measured at the Bypass Facility.

(0140060)

16. After the bypass structure construction is complete, the permittee will establish a setback along Tributary 3 of 50 feet or the distance specified in Sonoma County Code, Chapter 30, Article V. Section 26-66-030, whichever is greater. The stream setback will be measured from the top of the bank on both sides of the stream. Except for activities required for operation, maintenance, and replacement of the bypass facility, no disturbance shall occur in the setback area. These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 30745.

(0000206)

17. No water shall be diverted to offstream storage under this right unless permittee is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and method satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of all diversions under this right that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

18. No water shall be diverted under this right, and no construction related to such diversion shall be commenced, unless the permittee obtains all necessary permits or other approvals required by other agencies. The permittee shall transmit copies of all permits or other approvals, or evidence that such permits or other approvals are not required, to the Division of Water Rights.

(0000203)
19. No water shall be diverted under this right, and no construction related to such diversion shall commence, unless permittee complies with the requirements of the Clean Water Act. In order to demonstrate such compliance, permittee shall obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, or evidence that such a permit is not required, and provide such permit or evidence to the Division of Water Rights. If it is determined that a Clean Water Act section 404 permit is required, permittee shall further demonstrate compliance by obtaining a Clean Water Act section 401 certification from the State Water Board.

(0000103)
20. The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this right.

(0090031)
21. 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; 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)
22. If vertebrate fossils are discovered during project activities, all work shall cease within 100 feet of the find until a qualified professional paleontologist as defined by the Society of Vertebrate Paleontology's Conformable Impact Mitigation Guidelines Committee (2011) can assess the nature and importance of the find and recommend appropriate treatment. The Division will also be notified of the discovery and the qualified professional paleontologist's opinion within 48 hours of the initial finding. Treatment may include preparation and recovery of fossil materials, so that they can be housed in an appropriate museum or university collection, and also may include preparation of a report for publication describing the finds. Project activities shall not resume until after the qualified

professional paleontologist has given clearance and evidence of such clearance has been submitted to the Division.

(0380502)

23. If human remains are encountered, the permittee shall comply with Section 15064.5 (e) (1) of the State 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 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)
24. Based on the information in the Division's files, water has not been used under a claimed existing right on the place of use. If permittee exercises a claimed existing right on the place of use authorized by this right without prior approval from the State Water Board, permittee shall forfeit this water right.
- (000021C)
25. 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)
26. No water shall be diverted under this right unless the permittee is operating in accordance with a mitigation plan satisfactory to the Deputy Director for Water Rights and DFG. The mitigation plan shall address eradication of non-native species. The permittee shall submit a report on mitigation plan activities in accordance with the time schedule contained in the mitigation plan, and whenever requested by the Division of Water Rights. The Deputy Director for Water Rights may require modification of the mitigation plan upon a determination that the plan is ineffective or unsuccessful, or provide relief from this term upon a determination that the mitigation plan is no longer required.
- (0400053)
27. The permittee shall obtain approval of the U.S. Fish and Wildlife and the California Department of Fish and Game prior to any future dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations.
- (0400500B)
28. No non-native fish species will be introduced into the reservoir.
- (0400500C)
29. Surveys for amphibians and benthic macroinvertebrates (and fish in Tributary 4) will be conducted in Tributaries 4 and 5 in accordance with a survey plan satisfactory to DFG. Prior to the construction of the bypass facility on Tributary 3, Permittee shall submit a copy of the survey plan, evidence that the plan is satisfactory to DFG, and a copy of the initial baseline conditions report completed in accordance with the survey plan to the Deputy Director for Water Rights. Subsequent reports shall be submitted to the Deputy Director for Water Rights in accordance with the time schedule contained in the survey plan.
- (0400500D)

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. (000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (000010)
- 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. (000011)
- 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.

(000012)

- 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.

(000013)

- 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 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)

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: