



State Water Resources Control Board

PROPOSED
MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21080(c)
Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: WATER RIGHT APPLICATION 30745 – PETER MICHAEL

APPLICANT: Peter Michael
c/o Wagner & Bonsignore, CCE
2151 River Plaza Drive, Suite 100
Sacramento, CA 95833

PROJECT LOCATION:

The project associated with Application 30745 of Peter Michael is approximately 6 miles northwest of the town of Calistoga and approximately 15 miles east of the town of Healdsburg in Sonoma County. The project area is in projected Sections 5 and 8, Township 9N and Range 7W, MDB&M of the "Mount Saint Helena" 7.5-minute U.S. Geological Survey (USGS) topographic quadrangle.

PROJECT DESCRIPTION:

Water Right Application 30745 requests diversion of a total of 85 acre-feet per annum of water to storage from December 15 of each year to March 31 of the succeeding year. Water would be diverted from an Unnamed Stream tributary to Kellogg Creek, thence Redwood Creek, thence Maacama Creek, thence the Russian River, and stored behind an existing onstream dam and in an existing offstream reservoir. Stored water would be used for irrigation of 151 acres of vineyard and recreation at the onstream reservoir. The project involves review of potential impacts resulting from construction of the offstream reservoir, conversion of 39 acres of cleared land to vineyard, and diversion of 85 acre-feet per annum of water. At this time, all components of the project exist.

**DETERMINATION:**

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less than significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

**WATER RIGHT TERMS:**

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permit issued by the State Water Board pursuant to Application 30745:

1. For any future modification of the diversion, storage and conveyance facilities, or of the place of use, for which compliance with the Sonoma County Grading, Drainage, Vineyard and Orchard Site Development Ordinance (Ordinance) is required, Permittee shall submit, prior to licensing, evidence to the Deputy Director for Water Rights verifying that the project was constructed in compliance with the requirements of the Sonoma County Ordinance.
2. For the protection of fish and wildlife, Permittee shall during the period from December 15 through March 31 bypass a minimum of 0.56 cfs. The total streamflow shall be bypassed whenever it is less than 0.56 cfs. Permittee shall bypass the total streamflow from April 1 through December 14.
3. Prior to commencement of construction of the bypass facility, Permittee shall file a Pre-Construction Notification with USACE to comply with Section 404.
4. Prior to commencement of construction of the bypass facility, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California RWQCB, San Francisco Bay Region, or by the State Water Board.
5. The Permittee shall obtain all necessary federal, 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 Chief, Division of Water Rights.
6. The capacity of the reservoir at Point of Diversion 1 shall not exceed 36.5 af.
7. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed a total of 85 afa to be collected from December 15 of each year to March 31 of the succeeding year.
8. 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.
9. Permittee shall report any noncompliance with the terms of the permit to the Deputy Director for Water Rights within 3 days of identification of the violation.
10. The Permittee shall obtain approval of the U.S. Fish and Wildlife and the California Department of Fish and Game prior to any reservoir dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations.
11. No non-native fish species will be introduced into the reservoir.
12. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that 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 USC sections 1531 to 1544). If a take will result from any act authorized under this water right, the Applicant shall obtain authorization for an incidental take prior to construction or operation of the project. Applicant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

13. 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.
14. No work shall commence and no water shall be diverted, stored, or used under this permit until a copy of a Lake and Streambed Alteration Agreement between the California Department of Fish and Game and the Applicant is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Applicant.
15. No water shall be diverted under this right unless the Permittee is operating in accordance with an invasive plant mitigation plan satisfactory to the Deputy Director for Water Rights and DFG. The mitigation plan shall address eradication of non-native plant 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.
16. After the bypass structure construction is complete, the Applicant 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.
17. 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.

18. 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.
19. 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.

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