



# State Water Resources Control Board



## Division of Water Rights

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**Linda S. Adams**  
*Secretary for  
Environmental Protection*

**Arnold Schwarzenegger**  
*Governor*

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

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To: Office of Planning & Research      From: State Water Resources Control Board  
State Clearinghouse                      Division of Water Rights  
P.O. Box 3044                                P.O. Box 2000  
Sacramento, CA 95812-3044          Sacramento, CA 95812-2000  
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**PROJECT TITLE:** Estate of Frank Teixeira, Application 30978 to Appropriate Water.

**APPLICANT/PETITIONER:** Estate of Frank Teixeira  
c/o Paula Whealen  
Wagner & Bonsignore  
444 North Third Street, Suite 325  
Sacramento, CA 95811-0238

**PROJECT DESCRIPTION:**

The project is located approximately six miles east of Petaluma in Sonoma County, California. Application 30978 seeks to appropriate a total of 164 acre-feet (af) of water per year under Application 30978 and existing Licenses 7228 (A018476) and 8283 (A021284) for storage in Pinheiro Reservoir. Water collected to storage would be used for stockwatering up to 1,000 head of dairy cattle and, depending on economic conditions, for irrigation and frost protection of up to 300 acres of proposed vineyard. The vineyard has not been developed. Point of Diversion 1 is located at the dam of the existing Pinheiro Reservoir, which is located on an Unnamed Stream (locally known as Ellis Creek) tributary to the Petaluma River thence San Pablo Bay. Under any water right permit or license issued pursuant to Application 30978, water would be diverted to storage from December 15 of each year to March 31 of the following year and the February median flow, 0.33 cubic feet per second, would be bypassed.

The Applicant proposes to increase the storage capacity of Pinheiro Reservoir from its current capacity of 84 af to 164 af by modifying the spillway with a four-foot flashboard dam. The development of the proposed 300-acre vineyard would involve the clearing of grassland and limited grading for the installation of a drip irrigation system.

**DETERMINATION:**

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

**PERMIT CONDITIONS:**

Source: Water is to be appropriated from Unnamed Stream (locally known as Ellis Creek) tributary to Petaluma River thence San Pablo Bay, Sonoma County.

Point of Diversion: Point of Diversion by Collection to Storage in Pinheiro Reservoir, Located North 208,200 and East 1,847,500, California Coordinate System, Zone 2. Being within the SW $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of projected Section 33, Township 5N, Range 6W, MDB&M.

Amount and Season: Water will be diverted to storage in a 164 acre-foot reservoir from December 15 of each year to March 31 of the following year.

Total Annual Use: Not to exceed 164 acre-feet per annum.

Purpose of Use: Stockwatering of up to 1,000 head of dairy cattle and irrigation and frost protection of up to 300 acres of proposed vineyard.

Place of Use:

Use is Within	Section	Township	Range	B. & M.	Acres	Previously Cultivated
SE $\frac{1}{4}$ of NW $\frac{1}{4}$	32	5N	6W	M.D.	5	No
NE $\frac{1}{4}$ of NE $\frac{1}{4}$	32	5N	6W	M.D.	35	No
NW $\frac{1}{4}$ of NE $\frac{1}{4}$	32	5N	6W	M.D.	14	No
SW $\frac{1}{4}$ of NE $\frac{1}{4}$	32	5N	6W	M.D.	36	No
SE $\frac{1}{4}$ of NE $\frac{1}{4}$	32	5N	6W	M.D.	30	No
NE $\frac{1}{4}$ of SE $\frac{1}{4}$	32	5N	6W	M.D.	35	No
NW $\frac{1}{4}$ of SE $\frac{1}{4}$	32	5N	6W	M.D.	20	No
SE $\frac{1}{4}$ of SE $\frac{1}{4}$	32	5N	6W	M.D.	8	No
NE $\frac{1}{4}$ of NW $\frac{1}{4}$	33	5N	6W	M.D.	4	No
NW $\frac{1}{4}$ of NW $\frac{1}{4}$	33	5N	6W	M.D.	30	No
SW $\frac{1}{4}$ of NW $\frac{1}{4}$	33	5N	6W	M.D.	15	No
SE $\frac{1}{4}$ of NW $\frac{1}{4}$	33	5N	6W	M.D.	20	No
NE $\frac{1}{4}$ of SW $\frac{1}{4}$	33	5N	6W	M.D.	3	No
NW $\frac{1}{4}$ of SW $\frac{1}{4}$	33	5N	6W	M.D.	35	No
SW $\frac{1}{4}$ of SW $\frac{1}{4}$	33	5N	6W	M.D.	10	No
				TOTAL	300 Acres	

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 permits, licenses, or orders issued by the State Water Resources Control Board.

The following permit terms will be included in any permits or licenses issued pursuant to Application 30978:

- Prior to the start of construction or diversion or use of water under this permit, Permittee shall file a notice of vineyard planting or replanting with the Sonoma County agricultural commissioner. The notice shall conform to applicable provisions of the Sonoma County Vineyard Erosion and Sediment Control Ordinance (Ord. No. 5216 § 2, 2000). The notice shall include: 1) maps, plans, drawings, calculations, photographs, and other information as may be necessary or required by the agricultural commissioner to verify that the vineyard planting qualifies as a Level II or III authorized vineyard planting, or that the vineyard replanting qualifies as a Level II authorized vineyard replanting; and (2) an erosion and sediment control plan, certified pursuant to Section 30-74 of the Sonoma County Vineyard Erosion and Sediment Control Ordinance, for the vineyard planting or replanting. Prior to the start of construction or diversion or use of water under this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights verifying that the Sonoma County agricultural commissioner has authorized the vineyard planting or replanting to proceed.
- Prior to licensing of this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights verifying that the project was constructed in compliance with the requirements of the certified erosion and sediment control plan and the Sonoma County Vineyard Erosion and Sediment Control Ordinance.
- Prior to construction, diversion, or use of water under this permit, Permittee shall obtain any required grading permits from Sonoma County.
- Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the San Francisco Bay Air Quality Management District. Prior to the start of construction or diversion or use of water under this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights showing that San Francisco Bay Air Quality Management District has approved the Permittee's Dust Control and Mitigation Plan
- Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
- Construction activities within 100 feet of any drainage shall only occur between May 15 and October 31 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources
- In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

- If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until the Department has approved the plans and specifications for the dam.
- Before storing water under this permit, Permittee shall install a staff gage in the reservoir, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. The Permittee must maintain the staff gage in operating condition as long as water is being diverted or used under this permit.
- Permittee shall record the staff gage readings on the last day of each month. Permittee shall record the maximum and minimum water surface elevations and the dates that these water levels occur, each water-year between October 1 and September 30. Permittee shall maintain a record of all staff gage readings and shall submit these records with all required Reports of Permittee, Reports of Licensee or whenever requested by the staff of the Division of Water Rights.
- Prior to diversion or use of water under this permit, Permittee shall install in-line flow meters, satisfactory to the Chief of the Division of Water Rights that measure the instantaneous rate and the cumulative amount of water withdrawn from the reservoir at Point of Diversion.
- The in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these records with all required Reports of Permittee, Reports of Licensee, or whenever requested by the staff of the Division of Water Rights.
- For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from December 15 of each year through March 31 of each succeeding year bypass a minimum of 0.33 cubic foot per second (cfs) at Point of Diversion (POD). Under all bases of right Permittee shall bypass the total streamflow at POD from April 1 through December 14 of each year. The total streamflow at POD shall be bypassed whenever it is less than 0.33 cfs.
- Prior to the start of construction, or diversion or use of water under this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of 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, including any necessary calibration.
  - c. A time schedule for the installation and rating 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.
- f. A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

The 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.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Chief of the Division of Water Rights within 15 days upon request by the State Water Resources Control Board, Chief of the Division of Water Rights, or other authorized designees of the State Water Resources Control Board.

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.

- For the protection of habitat for the western pond turtle (*Clemmys marmorata*) and to allow for the continued growth of riparian vegetation, the Permittee shall:
  1. Maintain a 50-foot-wide setback around the reservoir as shown on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. No new ground disturbing activities shall occur within the setback area, with the exception of livestock access and occasional equipment access necessary for continued operation of the reservoir. Equipment access within the setback area shall be limited to only activities necessary for the ongoing operation of the reservoir and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native riparian vegetation within the setback area is allowed.
  2. Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Game prior to any future reservoir dredging operations. Permittee shall submit to the Chief of the Division of Water Rights evidence of agencies approval prior to any future reservoir dredging operations.
  3. Refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation.
- For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall establish a setback as shown on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. The setback shall be at least 50 feet wide along the unnamed intermittent stream within the Place of Use as measured from the top of the bank on both sides of the stream and at least 25 feet wide along the ephemeral streams within the Place of Use as measured from the top of the bank on both sides of the streams. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of livestock access and occasional equipment access reasonably necessary for continued operation of the

vineyard and management of the setback area. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting of native riparian vegetation within the setback area is allowed. These requirements shall remain in effect as long as water is being diverted under this permit.

- For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall implement a riparian enhancement plan. Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a riparian enhancement plan for review and approval of the Chief of the Division of Water Rights. The riparian enhancement plan shall specify: (1) the location of area to be planted; (2) the number and species of plants to be planted; (3) planting methods; (4) success criteria and monitoring methods; and (5) a description of the actions that will be taken if success criteria are not met. The riparian enhancement plan shall require at least five years of monitoring of the vigor and abundance of riparian plantings. The riparian enhancement area specified in the plan shall encompass at least 500 linear feet and 50,000 square feet of the setback identified on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. Prior to beginning construction or diversion or use of water under this permit, the 50,000 square foot enhancement area shall be fenced to exclude livestock access. The riparian enhancement plan shall be implemented within two years of approval of the plan.
- Permittee shall not conduct construction activities within 50 feet of drainages from October 16 of each year to April 30 of the succeeding year to reduce the likelihood of the presence of western pond turtles in construction areas. If a western pond turtle is encountered during construction, Permittee shall cease construction and ground-disturbing activities in areas within 250 feet of the location where the western pond turtle is present and shall contact the California Department of Fish and Game. Prior to restarting construction activities, Permittee shall submit to the Chief of the Division of Water Rights evidence of California Department of Fish and Game approval to continue construction.
- 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 & Game Code, §§ 205 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 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.
- Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a western pond turtle habitat enhancement plan for review and approval of the Chief of the Division of Water Rights. The enhancement plan shall include the actions necessary to provide sufficient underwater refugia and basking habitat (e.g., submerged logs, downed trees and large rocks) for western pond turtles. Permittee

shall develop the enhancement plan in consultation with California Department of Fish and Game. The approved western pond turtle enhancement plan shall be implemented within one year of enlargement of the reservoir.

- In accordance with the requirements of Water Code section 1393, Permittee shall clear the area covered by the proposed reservoir enlargement of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.
- If tree removal activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to Division of Water Rights staff, shall conduct a pre-construction survey for the purpose of identifying nesting bird species prior to tree removal. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed tree removal activities. The survey shall be conducted no more than 14 days prior to the beginning of tree removal activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the Permittee shall notify the California Department of Fish and Game. If an active raptor nest is found during the pre-construction survey, a 500-foot no-disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.
- Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with Division of Water Rights. If a permit from the USACE is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights with a letter from the USACE affirming that a permit is not needed.
- If the project requires a permit from U.S. Army Corps of Engineers, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Resources Control Board prior to the start of construction, or diversion or use of water under this permit, .
- 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 California 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 alteration 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 California Department of Fish and Game.
- Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological 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





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Steven Herrera, Chief                      Date  
Water Rights Permitting Section

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APPROVED:

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Victoria A. Whitney, Chief                  Date  
Division of Water Rights