



State Water Resources Control Board

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: Application 31021 of David Martinelli to appropriate water by permit

APPLICANT: David, Gary, and Alice Martinelli
c/o Lee Erickson
Erickson Engineering Inc.
P.O. Box 446
Valley Ford, CA 94972-0446

PROJECT LOCATION:

The proposed project area is located at 1150 Stage Gulch Road, Petaluma CA in Sonoma County, on the Petaluma River 7.5-minute U.S. Geological Survey topographic quadrangle sections 33, 34, and 4 within Township 5N and Range 6W, Mt. Diablo Base and Meridian.

PROJECT DESCRIPTION:

The proposed project intends to divert 45 acre-feet per year of water from one point of diversion (POD) to offstream storage. The POD is located on an Unnamed stream tributary to Champlin Creek, thence Rodgers Creek, thence Fowler Creek, thence Sonoma Creek, thence San Pablo Bay. The proposed project would involve construction of a sump and pump system that will deliver water to the proposed offstream reservoir, and construction of an earthen impoundment. Water would be diverted from December 15 through March 31. The purpose of use is for drip irrigation and recreational purposes. The place of use is for 342.2 acres of vineyard irrigation.

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, license or orders issued by the State Water Board pursuant to Application 31021:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 45 acre-feet per year by storage to be collected from December 15 of each year to March 31 of the succeeding year.
2. The capacity of the reservoir covered by this water right shall not exceed 45 acre-feet.
3. Based on the information in the Division of Water Right 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.
4. No water shall be diverted under this right unless the flow in the Unnamed Stream is at or above 0.13 cubic foot per second, as determined at point of compliance as specified on map dated April 14, 2012 on file with the Division of Water Rights.
5. No water shall be diverted under this right unless permittee is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how permittee will comply with the terms and conditions of this right. Permittee shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.
6. 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 methods 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.

7. 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 Board.

8. 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.
9. 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.
10. 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.
11. For the protection of potential habitat for California red-legged frog (*Rana aurora draytoni*) and western pond turtle (*Actinemys marmorata*) at the proposed reservoir, permittee shall:
 - a. Establish and maintain, undisturbed, a strip of natural upland vegetation around the proposed reservoir that is at least 40 feet wide, except that a single, graveled path no greater than 10 feet wide may be maintained within this strip to allow access to associated facilities by a vehicle for normal operation and maintenance purposes. Permittee may request authorization from United States Fish and Wildlife Service and California Department of Fish and Game for a reduced width for specific locations where a 40-foot width is unattainable. Permittee shall submit copies of written authorization from the United States Fish and Wildlife Service and California Department of Fish and Game to the Division of Water Rights prior to implementing a reduced width;
 - b. 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 Deputy Director for Water Rights evidence of agency approval prior to any future reservoir dredging operations;
 - c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
 - d. Make no introduction of non-native fish species into the reservoir; and
 - e. Permittee will manage the reservoir in such a way as to prevent occupation by non-native bullfrogs. Prior to construction, an invasive species management plan shall be developed in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game.

These requirements shall remain in effect as long as water is being diverted by permittee (or successor-in-interest) under any license pursuant to Permit 21321.

12. Prior to the start of construction, or diversion or use of water under this permit a qualified biologist shall conduct a nesting season survey and a wintering season survey for active Western burrowing owl (*Athene cunicularia hypugea*) burrows according to the California Department of Fish and Game guidelines during the season immediately preceding construction. If no burrowing owls are detected, no further mitigation is required and a copy of the negative survey shall be submitted to the Deputy Director for Water Rights. If active burrowing owl burrows are detected, permittee shall consult with the California Department of Fish and Game to implement acceptable avoidance or relocation practices. A copy of the agreed upon practices shall be submitted to the Deputy Director for Water Rights.
13. For the preservation of the seasonal wetlands and pond habitats within the place of use, buffer zones shall be staked and flagged by a biologist whose qualifications are acceptable to the Deputy Director for Water Rights, before construction or grading activities in the vicinity of the wetlands or ponds. This buffer zone will include the immediate watershed/drainage basin surrounding the wetlands and ponds. A 25-foot buffer zone shall be established for the smallest seasonal wetland (Wetland Number 3); a 28.1-acre buffer zone shall be established for the entire watershed draining to Wetland Numbers 1 and 2; and a 40-foot buffer zone shall be established around the proposed offstream reservoir.

For the preservation of potential wildlife movement corridors, permittee shall maintain a minimum of 50 feet of open space between the vineyard plantings and the edges of the property boundaries as identified in the Figure 2 project area map prepared by ICF Jones & Stokes and on file with the Division of Water Rights.

14. 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:

- a) 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
- b) 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 Deputy Director for Water Rights verifying that the Sonoma County agricultural commissioner has authorized the vineyard planting or replanting to proceed.

Prior to the start of construction or diversion or use of water under this permit, permittee shall obtain any required grading permits from Sonoma County and submit copies to the Deputy Director for Water Rights.

Prior to licensing of this permit, permittee shall submit evidence to the Deputy Director for 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.

15. For the protection of riparian habitat, the permittee will establish a setback along the Unnamed Stream tributary to Champlin Creek and the two other ephemeral drainages as shown on the Figure 2 map prepared by ICF Jones & Stokes and on file with the Division of Water Rights of 25 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. No activity will occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, access roads, and irrigation. These requirements will remain in effect as long as water is being diverted under any permit or license issued pursuant to this application.
16. Prior to the start of construction permittee shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Permittee shall also submit a copy of the plan to the San Francisco Bay Area Air Quality Management District. The Emission Control and Mitigation Plan shall be consistent with the San Francisco Bay Area Air Quality Management District's Air Quality Guidelines and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. Permittee shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Permittee shall also provide a copy of the evidence to the San Francisco Bay Area Air Quality Management District upon request. Evidence may consist of, but is not limited to, photographs and construction records.
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; 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.
18. If human remains are encountered, then the permittee shall comply with section 15064.5 (e) (1) of the California Environmental Quality Act 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 within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most likely descendants from the deceased Native American. The most likely descendent may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. 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.

19. 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 of Water Rights 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 of Water Rights.
20. Prior to construction activities, permittee shall provide personnel whose qualifications are acceptable to the Deputy Director for Water Rights, to conduct a cultural awareness training session for the individuals causing, directing or responsible for earth disturbing activities. The training shall include artifact recognition and protocol for inadvertent discovery of archaeological materials. The training session shall take place within one to two weeks of the commencement of ground disturbing activities associated with the reservoir construction or any areas of vineyard installation. A local Native American designated by Federated Indians of Graton Rancheria will be given the opportunity to attend the training session to explain the tribe's concerns. Permittee shall provide a 30 day advance notice to the Deputy Director for Water Rights and Federated Indians of Graton Rancheria prior to conducting the training session. A roster will be taken confirming individuals who attend the session.
21. Permittee shall retain a Native American monitor to be designated by the Federated Indians of Graton Rancheria to monitor deep ripping of 19 acres delineated on Figure 5 map prepared by ICF Jones & Stokes and on file with the Division of Water Rights prior to ground preparation of the vineyard in the southwestern portion of the project area. Permittee shall submit evidence satisfactory to the Deputy Director for Water Rights documenting the monitor has been retained at least 30 days before commencement of activities associated with ground preparation for vineyard development. Permittee shall also submit evidence satisfactory to the Deputy Director for Water Rights documenting that monitoring has occurred prior to planting the 19 acre vineyard area. This evidence shall include copies of the daily monitoring report or an invoice provided to the Applicant/Permittee by a Federated Indians of Graton Rancheria representative.
22. 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.

23. No water shall be diverted under this permit, and no construction related to such diversion shall commence, until Permittee obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized development schedule, until Permittee complies with the requirements of this term.

Within 90 days of the issuance of this permit or any subsequent amendment, Permittee shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, Permittee shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Game (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002.); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344.); or, (5) local grading permits.

Permittee shall, within 30 days of issuance of all permits, approvals or waivers, transmit copies to the Division of Water Rights.

24. 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.

Contact Person: Antonio Barrales	Telephone: (916) 341-5398 email: abarrales@waterboards.ca.gov
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APPROVED:

ORIGINAL SIGNED BY:
PHILLIP CRADER FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: DEC 26 2012