

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2008-0044-DWR**

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In the Matter of Application 31183  
**Rustic Retirement LLC**

**ORDER APPROVING ISSUANCE OF PERMIT**

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SOURCE: Unnamed Stream tributary to Sulphur Creek thence the Russian River  
COUNTY: Mendocino County

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**WHEREAS:**

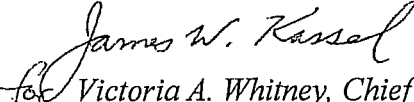
1. Rustic Retirement LLC filed Application 31183 with the State Water Resources Control Board (State Water Board) on May 10, 2001.
2. The State Water Board has determined that there is unappropriated water available to serve Application 31183. O'Connor Environmental Inc. prepared and submitted a water availability analysis on October 28, 2005, documenting the availability of water. The water availability analysis was reviewed and accepted as sufficient by Division of Water Rights (Division) staff on June 5, 2006. Division staff concluded that unappropriated water is available and that approval of the application, as conditioned, would not result in potentially significant impacts to instream aquatic resources or injury to prior water rights.
3. The water will be diverted and used without injury to any lawful user of water. The Division issued a public notice of Application 31183 on July 6, 2001. Based on the water availability analysis, water is available to serve this application without injury to prior rights. All protests to approval of the application on the basis of injury to prior rights have been resolved by inclusion of a permit term recognizing protestant's prior rights.
4. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In 2002, National Marine Fisheries Service (NMFS) and California Department of Fish and Game (DFG) developed Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Draft Guidelines), dated June 17, 2002. The Draft Guidelines were recommended for use by permitting agencies (including the State Water Board), 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, Mendocino, and Marin Counties, and portions of Napa, and 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. The proposed project is not entirely consistent with the Draft Guidelines; however, permit conditions were included in the permit to address potential impacts to fish, wildlife or other instream beneficial uses. Additionally, a DFG 1603 Streambed Alteration Agreement has been obtained for this project through an arbitration order that

addressed fish and wildlife concerns and included mitigation measures. The proposed permit terms are consistent with those in the 1603 Streambed Alteration Agreement. All protests to approval of the application on the basis of potential impact to the environment and public trust have been cancelled pursuant to Water Code section 1335(d).

5. The intended uses are irrigation, frost protection, heat protection, domestic, fish and wildlife enhancement, and recreation. The applicant requested to divert 49.5 acre-feet per annum (afa) to storage in a 26 acre-foot reservoir. The applicant requested to divert 20 afa for irrigation, 20 afa for frost protection, and 7 afa for heat protection of a 20-acre vineyard, 2 afa for domestic use, and 0.5 afa for recreation use. The proposed water use is beneficial.
6. Pursuant to the provisions of the California Environmental Quality Act, the State Water Board adopted a Mitigated Negative Declaration (MND) pursuant to the California Code of Regulations, Title 14, section 15074. 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 Initial Study. The State Water Board found that the potential adverse impacts of the project were less than significant and were mitigated with the inclusion of specific permit terms. The State Water Board will file a Notice of Determination within 5 days of the date of this Order.

**NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31183, subject to the conditions of the attached permit.**

STATE WATER RESOURCES CONTROL BOARD

  
for Victoria A. Whitney, Chief  
Division of Water Rights

Dated:

Attachment **DEC 01 2008**