

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 31434

PERMIT 21318

Permittee: Donnelly Creek Vineyards LLC
13989 Highway 128
Boonville, CA 95415

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. 2012-0029).

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 31434** filed on **June 2, 2003** 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: <u>(2) Unnamed Stream</u> <u>(1) Anderson Creek</u>	Tributary to: <u>Unnamed Stream thence Donnelly Creek</u> <u>thence Anderson Creek</u> <u>Navarro River</u>
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within the County of **Mendocino**.

2. Location of points 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
(1) North 2,133,216 feet and East 6,173,602 feet	NE ¼ of SE ¼	2	13N	14W	MD
Reservoir 2 (2) North 2,133,705 feet and East 6,175,640 feet	NW ¼ of SW ¼	1			

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
Frost Protection	NW ¼ of SW ¼	1	13N	14W	MD	29.4
	NE ¼ of SE ¼	2				26.7
	SE ¼ of SE ¼					0.7
	NW ¼ of SE ¼					0.1
						Total

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **1 cubic foot per second** to be diverted from March 15 to March 31 of each year. The maximum amount diverted under this permit shall not exceed **50 acre-feet per year**. (000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2027**. (0000009)
7. The State Water Board reserves jurisdiction to impose conditions to conform this permit to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)
8. If the claimed existing prior right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the total quantity of water diverted and/or collected to storage, the rate of diversion, and the amount beneficially used under this permit shall be reduced by the net of the face value specified in this permit less the respective amounts recognized under the quantified existing prior right during the season specified in this permit. No water shall be diverted to the place of use during the season authorized by this permit, whenever the amounts diverted can be covered by the quantified existing prior right.

Permittee shall forfeit the permit if he/she transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Board.

Permittee shall divert water under the claimed existing right only in accordance with the law. (0000021A)
9. 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 permit. (0090031)
10. No water shall be diverted from Point of Diversion 1 under this permit unless the flow in Anderson Creek is at or above 37.17 cubic feet per second, as measured at Point of Diversion 1. (0140060)

11. No water shall be diverted under this permit 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 permit. Permittee shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.
(0000070)
12. 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 Regional Water Quality Control Board, North Coast Region, or by the State Water Board.
(0000100)
13. No water shall be diverted under this permit, and no construction related to such diversion shall commence, unless Permittee obtains all necessary permits or other approvals required by other agencies. Permittee shall transmit copies of all permits or other approvals to the Division of Water Rights.
(0000203)
14. For undeveloped portions of the place of use along and adjacent to Anderson Creek, Permittee shall establish a setback for the protection of the riparian corridor along Anderson Creek. The setback shall be measured from the Watercourse Transition Line as defined in the 2012 California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1.) and shall extend a minimum of 100 feet or to the outer edge of the drip line of the existing riparian trees, whichever is greater. Prior to ground disturbing activities adjacent to setback areas, Permittee shall stake the proposed setback and notify the Department of Fish and Game. Except for the exclusions stated herein, 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. There is excluded from the setback areas established herein all existing vineyards and planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area are allowed. Permittee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this permit.
(0000206)
15. Prior to disturbance of the portion of the place of use named in this permit that does not exist as of the date of this permit, Permittee shall submit an erosion control plan for approval by the Deputy Director for Water Rights. Said plan shall include measures to prevent sediment from leaving the construction area and entering waters of the State before, during, and after construction.
(0000207)
16. Within six months of the date of this permit, an erosion control plan shall be submitted to and approved by the Deputy Director for Water Rights. Said plan shall include measures to prevent sediment from leaving the place of use and entering waters of the State. Permittee shall provide the Division of Water Rights with evidence that substantiates that the erosion control measures contained in the plan are functioning properly every five years after installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.
(0000207)
17. 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.
(0000208)

18. No water shall be diverted under this permit unless Permittee is operating the water diversion facility for Point of Diversion 1 with a fish screen satisfactory to the Deputy Director for Water Rights. The fish screen shall be designed and maintained in accordance with the screening criteria of the National Marine Fisheries Service. Permittee shall provide evidence that demonstrates that the fish screen is in good condition with the annual report and whenever requested by the Division of Water Rights.
(0000213)
19. 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 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)
20. If human remains are encountered, then Permittee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources 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.
(0450500)
21. If proposed project activities are to affect the building identified by Anthropological Studies Center in the report titled "A Cultural Resources Study of the Donnelly Creek Vineyards Property. Boonville, Mendocino County, California" dated January 1999 shall be avoided during project construction, development, and operation. The site shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use). If future project-related activities or developments at the location of the building are unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the staff of the Division of Water Rights shall further evaluate the site and determine if it is recommended for listing on the California Register of Historical Resources. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Permittee shall be responsible for all costs associated with the cultural resource related work.
(0450500)

22. Permittee shall establish a minimum 25 foot setback around the palustrine emergent wetland shown on Figure 8 of the Initial Study/Mitigated Negative Declaration for Applications 30722 and 31434 adopted by the State Water Board on XXXXXX. Prior to ground disturbing activities adjacent to the palustrine emergent wetland, the Permittee shall stake the setback and notify the Department of Fish and Game. Except for activities necessary for the ongoing operation and management of any existing vineyard within the setback area and activities associated with future replanting of any existing vineyard within the setback area, 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. Permittee shall restrict cattle or other domestic stock access to the palustrine emergent wetland. These requirements shall remain in effect as long as water is being diverted under this permit. (0400500)
23. Prior to development of vineyard areas not existing as of the date of this permit, and if said construction activities are to occur between February 1 and September 30, Permittee shall hire a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, to conduct a pre-construction survey for the purpose of identifying nesting bird species. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed construction areas. The survey shall be conducted no more than 14 days prior to the beginning of construction activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the Permittee shall notify the Department of Fish and Game and the United States Fish and Wildlife Service. 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. (0400500)
24. Prior to disturbance of the portion of the place of use named in this permit that does not exist as of the date of this permit, Permittee shall submit an emission control plan for approval by the Deputy Director for Water Rights. Said plan shall include measures to reduce construction-related emissions for the purpose of minimizing air quality impacts during construction. (0400500)
25. No water shall be directly diverted from Point of Diversion 1 under this permit 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 permit 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. (000000R)

26. No water shall be directly diverted from Reservoir 2 under this permit 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 monitoring 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 permit that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

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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. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (0000010)
- 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. (0000011)
- 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.

(0000012)

- 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. (0000013)

- 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: