

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

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 21311**

APPLICATION 31771 of

BH Farming, LLC  
P.O. Box 38  
Tehama, CA 96090

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; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA. 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 31771** filed on May 18, 2009, 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:	Tributary to:
(1) <b>Unnamed Stream (aka No-Name Creek)</b>	<b>Burch Creek thence Sacramento River</b>
(2) <b>Burch Creek</b>	<b>Sacramento River</b>

within the County of **Tehama**.

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) <b>North 1,841,040 feet and East 6,469,713 feet</b>	<b>SE<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub></b>	<b>5</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>
(2) <b>North 1,839,681 feet and East 6,468,843 feet</b>	<b>NE<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub></b>	<b>5</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>

Location of place of storage

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<b>North 1,841,040 feet and East 6,469,713 feet</b>	<b>N½</b>	<b>5</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>

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
<b>Irrigation Frost Protection</b>		<b>5</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	<b>307</b>
	<b>NW¼</b>	<b>8</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	<b>43</b>
	<b>NE¼, NE¼ of SE¼</b>	<b>7*</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	<b>116</b>
	<b>NW¼, NW¼ of NE¼, NW¼ of SW¼</b>	<b>4</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	<b>114</b>
	<b>E½</b>	<b>6*</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	<b>219</b>
	<b>N½, SW¼, SW¼ of SE¼</b>	<b>32*</b>	<b>24N</b>	<b>4W</b>	<b>MD</b>	<b>153</b>
	<b>SE¼</b>	<b>31</b>	<b>24N</b>	<b>4W</b>	<b>MD</b>	<b>50</b>
	<b>S½, NE¼</b>	<b>33*</b>	<b>24N</b>	<b>4W</b>	<b>MD</b>	<b>176</b>
	<b>NW¼</b>	<b>34*</b>	<b>24N</b>	<b>4W</b>	<b>MD</b>	<b>116</b>
					<b>Total</b>	<b>1,294</b>
<b>Wildlife Enhancement</b>	<b>Reservoir in: N½</b>	<b>5</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	
<b>Stockwatering</b>	<b>S½ of SE¼</b>	<b>32</b>	<b>24N</b>	<b>4W</b>	<b>MD</b>	
<b>Recreational</b>	<b>NE¼</b>	<b>6</b>	<b>23N</b>	<b>4W</b>	<b>MD</b>	

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

- The water appropriated from No-Name Creek and Burch Creek shall be limited to the quantity which can be beneficially used and shall not exceed a combined total of **2,000 acre-feet** to be collected from **November 1** of each year to **April 30** of the succeeding year. (0000005C)
- This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (0000005I)
- The maximum rate of diversion to offstream storage from Burch Creek shall not exceed **40 cubic feet per second**. (0000005J)

8. The capacity of the reservoir covered under this permit shall not exceed **2,000 acre-feet.** (000005N)
9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2022.** (0000009)
10. Prior to making a request for license or before license action will be considered by the State Water Board, permittee shall consult with the Division of Water Rights and perform an irrigation system evaluation. A report on the evaluation shall be prepared by a person trained or experienced in irrigation system design and management and shall be submitted to the Board for approval. All cost-effective water conservation measures identified in the irrigation system evaluation report shall be implemented prior to issuance of a license. (000029C)
11. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director of Water Rights. (0000030)
12. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Deputy Director of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043A)
13. Before storing water in the reservoir, permittee shall install and properly maintain a staff gage in the reservoir, satisfactory to the State Water Board, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings monthly from November 1 until April 30 of every year. Such readings shall be supplied to the State Water Board with each progress report submitted to the Board by permittee. (0100047)
14. 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. (0360048A)
15. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation, which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050A)
16. For the protection of fish and wildlife, permittee shall bypass a minimum of one (1) cubic foot per second (cfs) at the point of diversion on Burch Creek. The total streamflow shall be bypassed whenever it is less than 1 cfs. Prior to diversion, the permittee shall submit a compliance plan, satisfactory to the Deputy

Director for Water Rights, which describes how the bypass flow required by the conditions of this permit will be measured and maintained.

(0140060)

17. No water shall be diverted under this permit until the permittee has installed a structure in Burch Creek, satisfactory to the State Water Board, which is capable of bypassing the flow required by the conditions of this permit. Permittee shall submit plans and specifications of the bypass structure to the Deputy Director for Water Rights, within one year of the date the permit is issued or further extension as approved by the Deputy Director. The plans for the bypass structure shall be reviewed and must be satisfactory to the Deputy Director for Water Rights, before any construction is undertaken. If the bypass structure is rendered inoperative for any reason, all diversions shall cease until such time as it is restored to service. Said bypass structure shall be properly calibrated, operated, and maintained by the permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 31771.

(0550400)

18. Permittee shall install and maintain a device satisfactory to the State Water Board to measure the rate and quantity of water diverted into the reservoir from Burch Creek. Prior to diversion, permittee shall also develop a method for measuring the diversions from the Unnamed Stream (aka No-Name Creek). The measuring methodology shall be subject to review and approval of the Deputy Director for Water Rights. All in-line flow meters or other measuring devices must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall also install and maintain devices satisfactory to the State Water Board to measure the rate and quantity of water released from or flowing out of the reservoir.

(0060900)

19. 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 Deputy Director for 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.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Deputy Director for Water Rights within 15 days upon request by the State Water Board.

(0100400)

20. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

21. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in

demands and hydrologic conditions in the Sacramento River basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

22. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.
- a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
  - b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Board shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The State Water Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

23. 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, Region, or by the State Water Board.
24. Permittee shall obtain all necessary 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 Deputy Director for Water Rights.
25. 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.

(0000100)

(0000203)

(0000208)

26. No water shall be diverted under this permit until permittee has constructed a fish screen or has proposed and constructed an alternative. Any alternative must comply with the Department of Fish and Game criteria and receive their written approval. Permittee shall submit a copy of the Department of Fish and Game's written approval of the plans and design calculations to the Division of Water Rights within 30 days from the date of the approval. Construction, operation, and maintenance of any required facility are the responsibility of the permittee. If the fish screen(s) or any alternative(s) is (are) rendered inoperative for any reason, the permittee shall notify the Deputy Director for Water Rights immediately and shall restore the equipment to service as soon as possible.

(0000213)

27. Permittee shall implement the Best Management Practices listed on pages 52-54 of the Mitigated Negative Declaration for Application 31771 dated January 2012 during construction of the project.

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

ORIGINAL SIGNED BY:  
JAMES W. KASSEL FOR

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: OCT 29 2012