

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application A031887

Samuele Bilbro Trust

ORDER APPROVING MINOR CHANGE TO APPLICATION

SOURCE: Unnamed Streams tributary to Dry Creek thence the Russian River

COUNTY: Mendocino

WHEREAS:

1. Water right application A031887 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on May 4, 2011, to divert water from the Russian River stream systems in Mendocino County.
2. The application was publicly noticed on February 21, 2017. Protests were received from California Department of Fish and Wildlife (CDFW), Richard Morat, and Sonoma County Water Agency.
3. On November 8, 2022, the applicant initiated a minor change to modify Application A031887 as follows:
 - a. Remove unnamed stream tributary to Ingram Creek as a source of water.
 - b. Remove Point of Diversion (POD) 2 located at North 2,092,915 feet and East 6,231,978 feet by California Coordinate System, Zone 2, North American Datum 1983, within the Northeast quarter of the Southeast quarter of Section 11, Township 12 North, Range 12 West, Mount Diablo Base and Meridian.
 - c. Remove Reservoir A (9 acre-feet) as a place of storage.
 - d. Reduce the storage amount from 59 acre-feet per year to 50 acre-feet per year stored in two onstream reservoirs (49 acre-feet and 1 acre-foot in Reservoirs 1 and 3, respectively).
 - e. Reduce the season of diversion to December 15 through March 31.

- f. Remove Irrigation, Frost Protection, and Heat Control as purposes of use and add incidental aesthetic.
 - g. Reduce the place of use to the area of Reservoir 1 and Reservoir 3 for stockwatering.
4. On December 1, 2022 the State Water Board provided notice and an opportunity to provide comments regarding the minor change to the applicant and protestants. One comment was received from CDFW. This comment questioned the reasonable necessity of the amount and purpose requested and expressed concern for the application's impacts on fish. The comment raises concerns related to application A031887, rather than the requested minor change and therefore no modifications to the minor change will be made as a result of the comment. Pursuant to California Code of Regulations, Section 698, an application will not be approved if the amount of water requested is in excess of an amount reasonably necessary for the proposed use. In addition, before the State Water Board can issue a water right permit, it must find that there is "unappropriated water available to supply the applicant." (Wat. Code, § 1375, subd. (d).) "In determining the amount of water available for appropriation for other beneficial uses, the [State Water Board] shall take into account, when it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources." (Id. § 1243.). Further, this application is located within the geographic area subject to the Policy for Maintaining Instream Flows in Northern California Coastal Streams, the primary objective of which is to ensure that the administration of water rights occurs in a manner that maintains instream flows needed for the protection of fishery resources.
5. The State Water Board may make a minor change to the application without requiring the filing of a petition for change if the board finds all of the following:
 - a. The change does not enlarge or increase the authorized rate, amount, or season of diversion.
 - b. The change does not increase the total area subject to inundation by water diverted to storage or the area where facilities will be constructed.
 - c. The change is not substantial or constitutes a reduction, agreed to by the applicant, in the authorized diversion, affected area, or other feature of the application.

- d. The change does not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses.

(Wat. Code, § 1700.4.)

6. The proposed changes will not enlarge or increase the authorized rate, amount, or season of diversion. The amount of water diverted will be reduced from 59 acre-feet per year to 50 acre-feet per year. The season of diversion will be reduced to December 15 through March 31. The rate of diversion at POD 2 will be removed and the rate of diversion at PODs 1 and 3 will not change.
7. The proposed changes will not increase the total area subject to inundation by water diverted to storage or the area where facilities will be constructed. POD 2 and Reservoir A will be removed from the pending application.
8. The proposed changes are not substantial or constitute a reduction, agreed to by the applicant, in the authorized diversion, affected area, or other feature of the application. The application will be reduced in scope by decreasing the amount of water for diversion, removing a source, removing POD 2 and Reservoir A, removing purposes of use and reducing the place of use. The application will not substantially change with the inclusion of incidental aesthetic as a purpose of use.
9. The proposed changes do not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses. The changes above constitute a reduction in amount. As such, these changes do not have the potential to adversely affect the water supply of other legal users or instream beneficial uses.
10. Pursuant to Resolution 2012-0061, the State Water Board has delegated the authority to conduct and supervise the activities of the State Water Board to the Executive Director. By memorandum dated April 28, 2022, the Executive Director has redelegated the authority to act on minor changes to the Deputy Director for Water Rights. The Deputy Director for Water Rights has further redelegated this authority pursuant to a memorandum dated June 6, 2022.

NOW, THEREFORE, IT IS ORDERED:

1. The minor change to the application is approved.
2. The following source of water is removed: unnamed stream tributary to Ingram Creek, thence Dry Creek, thence the Russian River
3. Point of Diversion 2, located at North 2,092,915 feet and East 6,231,978 feet by California Coordinate System, Zone 2, North American Datum 1983, within the

Northeast quarter of the Southeast quarter of Section 11, Township 12 North, Range 12 West, Mount Diablo Base and Meridian is removed.

4. Reservoir A is removed as a place of storage.
5. The maximum amount of water requested for diversion is reduced to 50 acre-feet per year.
6. The season of diversion is reduced to December 15 through March 31.
7. Irrigation, Frost Protection, and Heat Control are removed as purposes of use and incidental aesthetic is added as a purpose of use.
8. The place of use is changed to Reservoir 1 and Reservoir 3 for stockwatering.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
KATY LEE, FOR

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: February 17, 2023