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

**DIVISION OF WATER RIGHTS**

# RIGHT TO DIVERT AND USE WATER

REGISTRATION L032111 CERTIFICATE L203

Right Holder: Dennis Bunning
4292 Oak Grove School Road
Mariposa, CA 95338

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **May 23, 2013**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012. The Deputy Director for Water Rights finds that this registration meets the requirements for registration of livestock stockpond use appropriation. (Wat. Code, § 1228 et seq.)

**Right holder is hereby granted a right to divert and use water as follows:**

1. Source of water: **Unnamed Stream**

   tributary to: **Striped Rock Creek thence Chowchilla River**

   within the County of **Mariposa**

2. Location of point of diversion and place of storage

| By California Coordinate System of 1983 in Zone 3 | County | Assessor's Parcel Number |
|---|---|---|
| **North 1,956,024 feet and East 6,731,832 feet** | **Mariposa** | **017-190-016-0** |

| 3. Purpose of use | 4. Place of use | |
|---|---|---|
| | County | Assessor's Parcel Number(s) |
| **Stockwatering and the following incidental uses: Aesthetic, Recreational and Fish and Wildlife Preservation and Enhancement** | **Mariposa** | **017-190-016-0** |

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

5. Quantity and Season: The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **3.3 acre-feet per year** to be collected from January 1 to December 31 of each year. The capacity of the reservoir shall not exceed **3.3 acre-feet**.

6. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies.

7. Diversion works shall be constructed and water applied to beneficial use with due diligence.

8. No water shall be diverted under this right unless right holder complies with all lawful conditions required by the California Department of Fish and Wildlife. (Wat. Code, § 1228.6, subd. (a)(2).)

9. No water shall be diverted under this right unless it is diverted in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, and quantity and season of diversion. This information is reproduced as conditions 1 through 5 of this certificate.

10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, 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.

11. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:

    a. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

    b. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;

    c. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,

    d. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

12. Diversion of water under this right is subject to prior rights. Right holder may be required to curtail diversion or release water stored during the most recent collection season should diversion under this right result in injury to holders of legal downstream senior rights. If a reservoir is involved, right holder may be required to bypass or release water through, over, or around the dam. If release of stored water would not effectively satisfy downstream prior storage rights, right holder may be required to otherwise compensate the holders of such rights for injury caused.

13. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

14. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

15. If storage or diversion of water under this right is by means of a dam, right holder shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the California Department of Fish and Wildlife, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir. (Fish & G. Code, § 5937.)

16. The facilities for diversion under this right shall include satisfactory means of measuring and bypassing sufficient water to satisfy downstream prior rights and any requirements of the California Department of Fish and Wildlife.

17. This right does not authorize any act which results in the taking of a threatened, endangered or candidate 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 section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. section 1531 et seq.). If a “take” will result from any act authorized under this water right, the right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the state and Federal Endangered Species Acts for the project authorized under this right.

18. This right is subject to the submittal of a report of water use and satisfactory renewal, on forms to be furnished by the State Water Board, including payment of the then-current renewal fees prior to the expiration of each five-year period following the priority date of this right. (Wat. Code, § 1228.5.)

19. This right shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.

20. This right is subject to enforcement, including but not limited to revocation, by the State Water Board if 1) the State Water Board finds that the right holder knowingly made any false statement, or knowingly concealed any material fact, in the right; 2) the right is not renewed as required by the conditions of this certificate; or 3) the State Water Board finds that the right holder is in violation of the conditions of this right. (Wat. Code, § 1228.4 et seq.)

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
KATHERINE MROWKA FOR

*Barbara Evoy, Deputy Director*
*Division of Water Rights*

Dated: JAN 21 2014

State of California – Natural Resources Agency
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STATE WATER RESOURCES
CONTROL BOARD

2013 DEC 23 AM 10: 56

DIV OF WATER RIGHTS
SACRAMENTO

December 16, 2013

Jane Ling
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812-2000

**Subject: Measures for Livestock Stockpond Use Registration to Appropriate Water in Mariposa County (L032111) by Dennis Bunning.**

Dear Ms. Ling:

The California Department of Fish and Wildlife (CDFW) has completed its review of the above-referenced registration in Mariposa County (Assessor's Parcel Number 17-190-016-0). Under Water Code Section 1228.3, CDFW may impose any "lawful conditions, including, but not limited to, conditions upon the construction and operation of diversion work the registration covers." The purpose of this letter is to transmit such conditions, described below, to the State Water Resources Control Board (State Water Board).

The registration covers an existing on-stream pond with a surface area of approximately 0.5 acre and storage capacity of 3.3 acre-feet (reservoir). The reservoir collects water from an unnamed tributary to Stripe Rock Creek which is a tributary to the West Fork of the Chowchilla River, and impounds water behind an earthen berm approximately 160 feet long and a vertical height of 15.6 feet from the downstream toe of slope to spillway level. Freeboard dam height above the spillway crest is 2.5 feet. The quantity of water stored will be used for stockwatering cattle over a grazing area of 270 acres.

CDFW has determined the reservoir provides potential habitat for the State Species of Special Concern western pond turtle (*Emys marmorota*) and foothill yellow-legged frog (*Rana boylii*); as well as the State and Federal threatened California tiger salamander (*Ambystoma californiense*). General wildlife in the area will likely utilize the reservoir as a seasonal water supply. For these reasons, CDFW requires the following two conditions to be included in the registration:

1. Registrant shall not use chemicals (herbicides, pesticides, etc.) in or adjacent to the reservoir, on aquatic vegetation or saturated soils.

2. There is the possibility that stocked fish would adversely impact native amphibian populations. For this reason, stocking of any species of fish in the reservoir shall be prohibited.

As stated above, the reservoir provides potential habitat for the State threatened California tiger salamander. Under Fish and Game Code section 2081, a person may not take a species that is listed as threatened or endangered, or is a candidate for such listing under the California Endangered Species Act (CESA). "Take" is defined in Fish and Game Code section 86 as to hunt, pursue, catch, capture, or kill; or to attempt to hunt, pursue, catch, capture, or kill. This prohibition does not apply if the take is incidental to a lawful activity and CDFW authorizes the take by issuing a permit, referred to as an incidental take permit (ITP). More information on incidental take permits, including the permit application, is available on CDFW's website: http://www.dfg.ca.gov/habcon/cesa/.

CDFW will not place any bypass flow requirements on the facility. As the reservoir has been in place since 1974, a Lake and Streambed Alteration Agreement will not be required for the reservoir's initial construction. However, CDFW has determined that Fish and Game Code section 1602 applies to the operation of the reservoir. Section 1602 requires a person to notify CDFW for any activity that will: 1) substantially divert or obstruct the natural flow of a river, stream, or lake; 2) substantially change the bed, channel, or bank of a river, stream, or lake; or 3) use material from the bed, channel, or bank of a river, stream, or lake. Examples of activities that require notification include diverting water from a river, stream, or lake for domestic use or irrigation and, as in this case, impounding water in an on-stream reservoir. Maintenance activities associated with the dam, reservoir, or stream (including vegetation removal, repairs or modification to the dam or spillway, and sediment dredging activities), will require notification pursuant to Fish and Game Code section 1602. As a result, CDFW requires the following condition to be included in the registration:

3. Prior to conducting any maintenance activities to the reservoir, dam, or stream, the registrant shall notify the CDFW in accordance with Fish and Game Code section 1602 by submitting a notification form and appropriate notification fee.

If CDFW determines the project described in the notification could have a significant adverse effect on a fish or wildlife resource, the registrant will need to obtain a permit, referred to as a Lake or Streambed Alteration Agreement (LSAA), which will include measures to protect the affected resource(s). The registrant may obtain more

information on CDFW's Lake and Streambed Alteration Program, including notification materials, on CDFW's website: http://www.dfg.ca.gov/habcon/1600/.

If you have questions regarding our comments, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, at (559) 243-4014 extension 231, or by electronic mail at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

Jeffrey R. Single, Ph.D.
Regional Manager

cc: Dennis Bunning
4292 Oak Grove School Road
Mariposa, California 95338

ec: Julie Vance, Environmental Program Manager, CDFW
Julie.Vance@wildlife.ca.gov

Annette Tenneboe, Senior Environmental Scientist (Specialist), CDFW
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