

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21218

Application 29193 of

John and Patricia Bernardi
27195 Meadows Road
Carmel, CA 93923

filed on **February 17, 1988**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittees are hereby authorized to divert and use water as follows:

1. Source of water

Source:
Carmel River (Subterranean Stream)

Tributary to:
Pacific Ocean

within the County of **Monterey**.

2. Location of points of diversion

Points of Diversion to Offstream Storage (By California Coordinate System of 1983-Zone 4)	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
North 2,086,922 feet and East 5,726,424 feet	NE¼ of SW¼	22	16S	1E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NE¼ of SW¼	22	16S	1E	MD	1

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 a maximum instantaneous rate of **8,000 gallons per day** to be diverted from **March 1 to December 1** of each year. The maximum amount diverted under this permit shall not exceed **2.3 acre-feet** per year.

(000005A)

6. Complete application of the water to the authorized use shall be made by December 31, 2018.
(0000009)

7. During the season specified in this permit, the total quantity and rate of water diverted and used under this permit and under permittee's claimed existing right for the place of use specified in this permit, shall not exceed the quantity and rate of diversion and use specified in this permit. To the extent that the permittee claims riparian, overlying, pre-1914 appropriative or other rights to use the water covered by this permit, the permittee shall not be entitled to water in excess of the amount authorized in this permit. Any priority obtained for a permit by virtue of condition 10 of Decision 1632 shall be void if the permittee and/or others divert more water under the permit and claimed underlying rights than is authorized on the face of the permit; however, the priority shall not be voided for the diversion of de minimis amounts which can reasonably be attributed to operational uncertainties.

Permittee shall forfeit all rights under this permit if permittee 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 take and use water under the existing right claimed by permittee only in accordance with the law.

(0000021)

8. Permittees shall install and maintain devices satisfactory to the State Water Board to measure the instantaneous rate of diversion and cumulative quantity of water diverted under this permit. A record of such measurements shall be maintained by the permittee, and made available to interested parties upon reasonable request. A copy of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee". Permittee shall allow Monterey Peninsula Water Management District, or a designated representative, reasonable access to the measuring devices for the purpose of verifying measurement readings.

(00608000) (0090800)

9. The rate of direct diversion shall be subject to the same conservation and/or rationing reductions as the Monterey Peninsula Water Management District may require of consumers in the California American Water Company water distribution system in times of water supply shortages caused by drought.

0000024)

10. For the protection of fisheries, wildlife, and other instream uses in the Carmel River, diversions under this permit shall be subject to maintenance of minimum mean daily instream flows, based on the National Marine Fisheries Service report on fishery needs in the Carmel River. Minimum mean daily instream flows are specified in Table A, required Ramp-Down flows are specified in Table B and water year types for use with Tables A and B are specified in Table C. No water shall be diverted under this permit if the instream flows determined using Tables A, B and C are, or would be reduced by such diversion, below the designated rates. To ensure compliance with these conditions, by September 30 of each year, Permittees shall file a report with the Chief, Division of Water Rights containing the following information:

- a. Dates during the previous period of March 1 to December 1 of each year when water was diverted under this permit; and
- b. Mean daily flows recorded at the two monitoring locations specified in Table B during the same period.

Water year types defined in Table C, Carmel River Water Supply Index may be amended from time to time to include the most recent available hydrologic data. For the purpose of amending water

year types in Table C, Permittees shall submit to the Chief, Division of Water Rights, a request to approve revisions to criteria to define normal or better, below normal, dry and critically dry year types.

(0400500)

TABLE A		
MINIMUM MEAN DAILY INSTREAM FLOW REQUIREMENTS		
Winter December 16-April 15	Spring April 16-May 31	Summer - Fall June 1-December 15
<u>Normal or Better and Below Normal Water Years</u>¹	<u>All Water Year Types</u>¹	<u>All Water Year Types</u>¹
<p>For Normal or Better and Below Normal Water Years, an Attraction Day is defined as: Estimated unimpaired flow² at the Highway 1 gage of 200 cfs or greater.</p> <p>Prior to First Attraction Day: Continue December 1-15 bypass flows.</p> <p>During Attraction Day(s): Bypass sufficient flow to maintain 200 cfs at the Highway 1 gage.</p> <p>Following Attraction Day(s): Ramp down bypass flows as indicated on Table B. Following the ramp-down period, bypass 90 cfs between the Sleepy Hollow Weir gage and the USGS Near Carmel gage, and 60 cfs between the USGS Near Carmel gage and the Highway 1 gage.</p>	<p>Bypass 80 cfs between the Sleepy Hollow Weir gage and the Highway 1 gage.</p>	<p>If feasible, June 1 to October 31, authorized diversions upstream of the Narrows should divert only when flow at the Narrows exceeds 20 cfs; authorized diversions downstream of the Narrows should divert only when inflow to the lagoon exceeds 5 cfs.</p> <p>December 1 – 15: May divert with minimum bypass of 40 cfs at the Highway 1 gage</p>
<u>Dry and Critically Dry Water Years</u>¹		
<p>For Dry and Critically Dry Water Years, an Attraction Day is defined as: Estimated unimpaired flow² at the Highway 1 gage of 200 cfs or greater in January, 100 cfs or greater in February, and 75 cfs or greater in March.</p> <p>Prior to First Attraction Day: Continue December 1-15 bypass flows.</p> <p>During Attraction Day(s): Bypass sufficient flow to maintain 150 cfs at the Highway 1 gage.</p> <p>Following Attraction Day(s): Ramp down bypass flows as indicated on Table B. Following the ramp-down period, bypass the same as for wet, normal, and below normal water years.</p>		

Table A Notes:

¹ Water Year types are as specified in Table C.

² For purposes of this Table A, "estimated unimpaired flow" shall be defined as the measured mean daily flow at the specified gage plus the mean daily diversion by California American Water from the Carmel River and underlying alluvial aquifer upstream of that gage during the preceding five days.

Table A is based on Table 9 in *Instream Flow Needs for Steelhead in the Carmel River, Bypass Flow Recommendations for Water Supply Projects Using Carmel River Waters*, National Marine Fisheries Service, Southwest Region – Santa Rosa Field Office, June 3, 2002, page 32.

TABLE B				
Carmel River Bypass Flows - "Ramp-Down" Flows				
Minimum Mean Daily Instream Flows Following an Attraction Day or Days (All Values in Cubic Feet Per Second)				
Between MPWMD Sleepy Hollow Gage and USGS Near Carmel Gage			Between USGS Near Carmel Gage and MPWMD Highway 1 Gage	
Days	Normal or Better and Below Normal Water Years	Dry and Critically Dry Water Years	Normal or Better and Below Normal Water Years	Dry and Critically Dry Water Years
0	200	150	200	150
1	175	125	175	125
2	150	100	150	100
3	125	90	125	80
4	90	90	100	60
5	90	90	80	60
6	90	90	60	60

Table B Notes:

Source: *Instream Flow Needs for Steelhead in the Carmel River, Bypass Flow Recommendations for Water Supply Projects Using Carmel River Waters*, National Marine Fisheries Service, Southwest Region - Santa Rosa Field Office, June 3, 2002, page 15.

Note: "Day 0" refers to an Attraction Day or Days. "Day 1" refers to the first day after an Attraction Day or Days. See Table A for the definition of an Attraction Day

TABLE C Carmel River Water Supply Index				
Cumulative Unimpaired Carmel River Flow at the Sleepy Hollow Weir Site in Acre-Feet Water Year Type				
Period	Normal or Better	Below Normal	Dry	Critically-Dry
Oct	> 300	300 - 100	99 - 1	0
Oct - Nov	> 1,000	1,000 - 500	499 - 300	< 300
Oct - Dec	> 4,000	4,000 - 1,700	1,699 - 1,200	< 1,200
Oct - Jan	> 11,700	11,700 - 5,700	5,699 - 3,200	< 3,200
Oct - Feb	> 28,800	28,800 - 11,800	11,799 - 7,300	< 7,300
Oct - Mar	> 40,600	40,600 - 21,300	21,299 - 10,700	< 10,700
Oct - Apr	> 47,600	47,600 - 24,300	24,299 - 13,200	< 13,200
Oct - May	> 49,500	49,500 - 26,000	25,999 - 13,900	< 13,900
Oct - Jun	> 49,900	49,900 - 26,800	26,799 - 14,600	< 14,600
Oct - Jul	> 50,000	50,000 - 27,200	27,199 - 14,700	< 14,700
Oct - Aug	> 50,300	50,300 - 27,300	27,299 - 14,800	< 14,800
Oct - Sep	> 50,700	50,700 - 27,400	27,399 - 14,900	< 14,900
Expected Unimpaired Carmel River Flow at the Sleepy Hollow Weir Site in Acre-Feet Assuming 75% Reliability Water Year Type				
Period	Normal or Better	Below Normal	Dry	Critically-Dry
Nov - Sep	50,400	34,000	25,000	21,000
Dec - Sep	43,000	27,000	17,500	14,900
Jan - Sep	36,000	22,300	12,200	10,000
Feb - Sep	29,000	17,300	9,000	7,000
Mar - Sep	21,500	11,275	6,000	3,400
Apr - Sep	13,000	5,850	3,250	1,575
May - Sep	5,000	2,500	1,425	800
Jun - Sep	2,000	900	625	400
Jul - Sep	600	300	300	300
Aug - Sep	200	200	200	200
Sep	100	100	100	100

Table C Notes:

1. "Cumulative" and "Expected" water year types are derived from the daily unimpaired flow record at the Sleepy Hollow Weir site simulated by the Monterey Peninsula Water Management District for Water Years 1902 through 1996.
2. Water Year types are based on selected exceedence frequencies. "Normal or Better" refers to flows that are equaled or exceeded 50% of the time. "Below Normal" refers to flows that are exceeded between 50% and 75% of the time. "Dry" refers to flows that are exceeded between 75% and 87.5% of the time. "Critically-Dry" refers to flows that are exceeded 87.5% of the time.
3. The Water Supply Index shall incorporate a daily timestep so that it can be updated on a daily basis.

11. Upon forty-eight (48) hours advance notice by Department of Fish and Game, permittee shall minimize or cease, if required, pumping for all outdoor uses for a single period not to exceed forty-eight (48) hours in any thirty (30) day period to assist the Department of Fish and Game, to mitigate adverse flow conditions to benefit public trust fish and wildlife resources of the Carmel River.
(000024)

12. Permittees shall maintain in good working order all riparian irrigation systems owned or operated by Permittees under the Monterey Peninsula Water Management District's (District) Water Allocation Program Environmental Impact Report, 5-Year Mitigation Program (November 1990) for use as needed during dry and critically dry water years.

Permittees shall irrigate and maintain the riparian corridor on permittee's property abutting the Carmel River if the District and California American Water Company fail to perform this obligation.
(0400500)

13. This permit authorizes diversion of water from the Carmel River subterranean stream irrespective of whether the diversion may be characterized as direct diversion or diversion from the alluvial storage basin.
(0000999)

14. 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 Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of 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 Chief of the Division of Water Rights.
(0000215)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE 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 said 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 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.

(000012)

- 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.

(000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 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.

(000014)

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 State 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 State Department of Fish and Game.

(0000063)

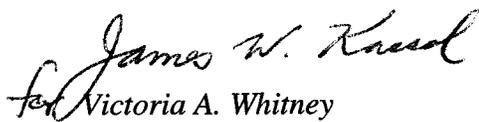
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

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


Victoria A. Whitney
Division Chief

Date

JUN 30 2008