

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21221

Application 30699 of

Phoenix Lake Golf Club Partners
c/o Michael White
21448 Paseo De Los Portales
Sonora, CA 95370

filed on **April 22, 1998**, 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.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Unnamed Stream

Tributary to:

Sullivan Creek thence

Woods Creek thence

Tuolumne River

within the County of **Tuolumne**

2. Location of point of diversion

Point of Diversion to Offstream Storage (By California Coordinate System of 1983 in Zone 3)	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,190,900 feet and East 6,618,870 feet	NW$\frac{1}{4}$ of SW$\frac{1}{4}$	23	2N	15E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NW$\frac{1}{4}$ of SW$\frac{1}{4}$	23	2N	15E	MD	40

The place of use is shown on map filed 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 total of **28** acre-feet per annum in Weslake Reservoir to be collected from **November 1** of each year to **May 30** of the succeeding year.

(000005D)

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.

(000005I)

The total quantity of water collected to storage under this permit and the permit issued pursuant to Application 30367 shall not exceed **45.6** acre-feet per annum.

(000005L)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2018.

(0000009)

7. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

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 prior approval of the State Water Resources Control Board.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law.

(000021A)

8. 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, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

9. If human remains are encountered, then the Permittee shall halt all project-related ground disturbances within 100 feet of the find until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the 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 above consultation and any recommendations that are determined necessary have been completed and evidence of completion has been submitted to the Chief of the Division of Water Rights.

(0380500)

10. Permittee shall not interfere with San Francisco's obligations to Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or any implementing agreement between the Districts and San Francisco.

(000T001)

Permittee shall provide replacement water to New Don Pedro Reservoir (NDP) for water diverted which is adverse to the prior rights of the Districts and San Francisco when and if the permit issued pursuant to Application 30699 ceases to exist either through cancellation or abandonment of the permitted irrigation use. A determination of whether permittee's diversion has potentially or actually reduced the water supplies of the Districts and San Francisco will be made by the latter parties in accordance with water accounting procedures being used by said parties. Permittee shall provide replacement water within one year of notification by San Francisco of potential or actual water supply reduction caused by permittee's diversions. Permittee shall provide replacement water in a manner that will offset the

separate reduction in water supplies of the Districts and San Francisco. Replacement water may be provided in advance and credited to future replacement water requirements. Permittee shall not be obligated to provide replacement water for diversions that occur during periods when the Districts' and San Francisco's reservoirs are spilling or are being operated in anticipation of spill. The source, amount and location at NDP of replacement water discharged to the reservoir shall be mutually agreed upon by permittee, the Districts, and San Francisco.

(0250700)
(0280700)

Permittee shall not provide replacement water from a source that is hydraulically connected to surface water tributary to Tuolumne River. If permittee replaces water diverted pursuant to this permit with groundwater which it extracts, permittee shall demonstrate that any extracted groundwater which replaces diverted surface water is water which would not otherwise reach NDP. Permittee shall demonstrate that there is hydrologic separation between the groundwater extracted and groundwater flow from the east into NDP or alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDP is not substantial and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface inflow from the east to NDP.

(0280800)

11. Permittee shall comply with the following provisions which are derived from the agreement between Permittee and Tuolumne Utility District (TUD) executed on January 24, 1996 and filed with the State Water Resources Control Board.
 - a. Permittee recognizes and agrees that TUD has prior downstream rights to divert and to store at Phoenix Reservoir the water at Sullivan Creek and its tributaries, including the tributary on which the Permittee's reservoir is located, for supplying the needs of the communities of Sonora, Jamestown, Columbia, and other areas served by TUD's Tuolumne Water System.
 - b. Permittee agrees that if any time in any year the available water supplies of TUD from its various sources, including the supply available to it from the Power Creek below the Phoenix Powerhouse (but not including water which TUD may purchase) is or appears to be inadequate to supply the needs of TUD's Tuolumne Water System service area downstream from Phoenix Lake, including its needs for adequate standby or reserve storage in Phoenix Lake Reservoir, all as solely determined by TUD, that Permittee will to the best of its ability, utilizing existing dam controls, and upon demand by TUD cease and no longer divert and/or impound surface waters, until further notice or the end of the water year, whichever occurs first.
12. Permittee will be solely responsible for the replacement of water if deemed necessary to City and County of San Francisco, TUD and Banta-Carbona Irrigation District. If water is released from storage to serve prior rights, Permittee shall not refill the reservoir until the subsequent diversion season following the water release.
13. This permit is specifically subject to any legally held prior right of Banta-Carbona Irrigation District under appropriation issued pursuant to Licenses 5404 and 5476 (Applications 1933 and 5248, respectively) and under Statement of Water Diversion and Use 495.
14. Permittee shall install and properly maintain staff gage in the reservoir, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.

(0000024)

(0000024)

(000T001)

Permittee shall record the staff gage readings on or about October 1, November 1 and May 30 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

The State Water Resources Control Board may require the release of water that cannot be verified as having been collected to storage prior to October 1 of each year.

Permittee shall allow City and County of San Francisco, Tuolumne Utility District and Banta Carbona Irrigation District and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.
(0070047)

15. In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water authorized by this permit is by means of a dam, permittee 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 Game, 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.

(0140069)

STANDARD 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 Resources Control Board (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.

(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 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.

(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 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

Original Signed by: JWK for

Victoria A. Whitney
Division Chief

Dated: August 29, 2008