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

DIVISION OF WATER RIGHTS

In the Matter of Application 31077
Nan Tucker McEvoy

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream tributary to San Antonio Creek thence Petaluma River

COUNTY: Marin

WHEREAS:

1. Application 31077 was filed with the State Water Resources Control Board (State Water Board) on June 20, 2000.

2. Applicant requested to divert 1.6 acre-feet per annum (afa) to storage in an existing 14 acre-feet (af) reservoir for irrigation, recreation and fire protection. The initial 12.4 af of water is authorized to be diverted to storage under Amended Permit 20549, and the Applicant seeks to authorize the remaining 1.6 af of storage under Application 31077. The 1.6 af of water will be used in combination with water authorized for diversion under Amended Permits 20549, 20550, 20551, 20812, and newly issued Permit 21223 for irrigation of 153 acres of olive orchard. The proposed water uses under Application 31077 are beneficial.

3. The Division of Water Rights (Division) issued a public notice of Application 31077 on September 27, 2000. No protests were received on the basis of injury to prior rights. A protest was received from the National Marine Fisheries Service (NMFS) on the basis of potential impact to the environment. Although the Department of Fish and Game staff provided input on this project, they did not file a formal protest. Permit condition(s) were included in the permit to mitigate for potential impacts to the environment.

4. The State Water Board has determined that there is unappropriated water available to serve Application 31077. The consulting firm Entrix, Inc., prepared a water availability analysis (WAA) on January 10, 2005, documenting the availability of water. Division staff accepted the WAA on May 19, 2005. No protests based on the injury to lawful users of water were received. Based on the WAA, Division staff concluded that water will be diverted and used without injury to any lawful user of water. Division staff also concluded that unappropriated water is available and that approval of the application, as conditioned, would not result in potentially significant impacts to anadromous fish or aquatic resources.

5. Based on information contained in the WAA, NMFS determined that the project would not pose a threat to steelhead, and they withdrew their protest on March 14, 2008.

6. In 2002, NMFS and California Department of Fish and Game (DFG) developed *Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams* (Draft Guidelines), dated June 17, 2002. The Draft Guidelines are recommended for use by permitting agencies (including the State Water Board), planning agencies and water resources development interests when evaluating proposals to divert and use water from northern California coastal streams. The Draft Guidelines apply to projects located in the geographic area of Sonoma, Napa, Mendocino, and Marin Counties, and portions of Humboldt County. The Draft Guidelines recommend that terms and conditions be included in new water right permits for small diversions to protect fishery resources in the absence of site-specific biologic and hydrologic assessments. Approval of Application 31077 is consistent with the recommendations in the Draft Guidelines.

7. The State Water Board, Division of Water Rights, as Lead Agency, prepared an Initial Study for this project pursuant to the California Environmental Quality Act. (Cal. Code Regs., tit. 14, § 5063.) The Initial Study identified potentially significant impacts to biological resources, cultural resources, geology and soil, and hydrology and water quality. The Division proposed the following mitigation measures to mitigate for the potential environmental impacts that could occur from issuance of this permit, and Permittee agreed to incorporate these measures into the permit:

   a. cultivation of the place of use in accordance with recommendations in the geotechnical investigation;
   b. measures to prevent deterioration of water quality;
   c. streamflow bypass for the protection of aquatic life;
   d. limitations on existing rights under this permit in combination with riparian rights; and
   e. cultural resource contingency actions in the event that sensitive resources are unearthed during project construction or operation.

   Conditions should be included in the permit requiring implementation of these mitigation measures.

8. On March 21, 2008 the Division, acting as lead agency, circulated the Initial Study, a Notice of Intent to Adopt a Mitigated Negative Declaration (MND), and the Mitigated Negative Declaration (SCH No. 2008032080) pursuant to the California Code of Regulations, Title 14, sections 15072 and 15074.

9. All protests to approval of the application have been resolved by inclusion of permit conditions.

10. The MND reflects the State Water Board's independent judgment and analysis. No substantive comments identifying new or unmitigated environmental impacts were received during the public review process for the proposed MND. After considering the document, the State Water Board has determined that the above-proposed project, with mitigation measures, will have a less than significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the Initial Study. The potential adverse impacts of the project were found to be less than significant and mitigated for with the inclusion of specific permit terms. The documents or other material that constitute the record are located in the files held by the Division. The Division filed a Notice of Determination on March 26, 2009 in accordance with the California Code of Regulations, title 14, section 15075.

NOW, THEREFORE, IT IS ORDERED THAT a permit is issued for Application 31077, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Victoria A. Whitney, Chief*
Division of Water Rights

Dated: MAY 21 2009

Attachment: Permit 21224

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21224

Application **31077** of

Nan Tucker McEvoy
P.O. Box 341
Petaluma, CA 94953

filed on **June 20, 2000**, has been approved by the State Water Resources Control Board (State Water Board or 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:
San Antonio Creek thence
Petaluma River thence
San Pablo Bay

within the County of **Marin.**

2. Location of point(s) of diversion and rediversion

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
Reservoir 3 Point of Diversion North 2,251,991 feet and East 5,936,425 feet	**NE ¼ of SW ¼**	**30**	**4N**	**7W**	**MDB&M**
Reservoir 4 Point of Rediversion North 2,252,616 feet and East 5,936,050 feet	**NE ¼ of SW ¼**	**30**	**4N**	**7W**	**MDB&M**

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	**NE ¼ of NW ¼**	**31**	**4N**	**7W**	**MDB&M**	**3.8**
	NW ¼ of NE ¼	**31**	**4N**	**7W**	**MDB&M**	**8**
	SE ¼ of SW ¼	**30**	**4N**	**7W**	**MDB&M**	**20.4**
	NE ¼ of SW ¼	**30**	**4N**	**7W**	**MDB&M**	**20**
	NW ¼ of SW ¼	**30**	**4N**	**7W**	**MDB&M**	**2.3**
	SW ¼ of SE ¼	**30**	**4N**	**7W**	**MDB&M**	**18**
	NW ¼ of SE ¼	**30**	**4N**	**7W**	**MDB&M**	**30**
	SW ¼ of NE ¼	**30**	**4N**	**7W**	**MDB&M**	**23.7**
	SE ¼ of NE ¼	**30**	**4N**	**7W**	**MDB&M**	**0.6**
	NW ¼ of NE ¼	**30**	**4N**	**7W**	**MDB&M**	**2.2**
	SE ¼ of NW ¼	**30**	**4N**	**7W**	**MDB&M**	**2.5**
	NE ¼ of NW ¼	**30**	**4N**	**7W**	**MDB&M**	**7.5**
	NW ¼ of NW ¼	**30**	**4N**	**7W**	**MDB&M**	**2**
	SW ¼ of NW ¼	**30**	**4N**	**7W**	**MDB&M**	**12**
					TOTAL	**153**
At Reservoir 3						
Recreation	**NE ¼ of SW ¼**	**30**	**4N**	**7W**	**MDB&M**	
Fire Protection						

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 **1.6** acre-feet per annum to be collected from **November 1** of each year to **May 1** of the succeeding year.

(0000005C)

6. 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)

7. The total quantity of water collected to storage under this permit and **Amended Permit 20549** (Application 25209) shall not exceed **14** acre-feet per annum.

(0000005L)

8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2019.

9. Permittee, when required by the State Water Board, 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 Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Chief of the Division of Water Rights for approval within six months of the date upon which the Board issues notice that an outlet is required. 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.

(0050044)

10. Permittee shall install staff gages or other measuring devices in the reservoir, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. The measuring devices must be maintained in operating condition as long as water is being diverted or used under this permit.

Permittee shall record the water surface elevation readings on the last day of each month. Permittee shall maintain a record of all water surface elevation readings and shall submit these records with annual progress reports, and whenever requested by the Division.

The State Water Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

(0100900)

11. Prior to diversion or use of water under this permit, Permittee shall install and maintain in-line flow meters, satisfactory to the Chief of the Division of Water Rights, that measure the instantaneous rate and the cumulative amount of water withdrawn from each reservoir and consumptively used. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual water withdrawal for consumptive use, and shall submit these records with annual progress reports, and whenever requested by the Division.

(0100900)

12. Permitee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance to enter into or be placed where it may be washed by rainfall runoff into the waters of the State.

(0400500)

13. For the protection of fish, wildlife, and public trust resources, under all bases of right, Permittee shall, during the period October 1 through May 31, bypass a minimum of 0.5 cubic feet per second. Under all bases of right Permittee shall bypass the total streamflow from June 1 through September 30. The total streamflow shall be bypassed whenever it is less than the 0.5 cubic feet per second. Bypass flows shall be met downstream of Reservoir 4.

(0140400)

14. No water shall be diverted or used under this permit until Permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained.

(0060062B)

15. Within three months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Chief of the Division of 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 be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by Permittee and made available to the Chief of the Division of Water Rights, upon request.

Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0490400)

16. Cultivation of the new places of use, as shown on New Place of Use Map No. 01, on file with the Division of Water Rights, within the following areas:

N½ of NW¼ and SW¼ of NW¼ and SE¼ of SW ¼ and NW¼ of SW¼ of Section 30, T4N, R7W, MDB&M, and NE¼ of NW¼ and NW¼ of NE¼ of Section 31, T4N, R7W, MDB&M

shall be conducted in accordance with the following recommendations as specified in the September 7,1999 geotechnical evaluation prepared for this project:

a) cutting pits for individual trees instead of continuous cross furrowing;
b) minimizing the depths of cuts as much as feasible; and
c) maintaining uniform slopes and avoiding depressed areas to facilitate runoff.

For the purposes of this permit term cultivation shall include site preparation, planting, installation of irrigation systems, and all other activities associated with establishment and maintenance of new orchards. Prior to issuance of a license for this permit, Permittee shall submit evidence, for approval by the Chief of the Division of Water Rights, which demonstrates that cultivation has occurred in accordance with this term. Evidence shall include certification by a registered Geologist.

(0400500)

17. Based on the information contained in the Division of Water Rights files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee diverts water under riparian right. With the Chief of the Division's approval, Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300)

18. 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)

19. If human remains are encountered, then Permittee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native 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 process detailed under Section 15064.5 (e) has been completed. Project-related ground disturbance in the vicinity of the find shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Chief of the Division of Water Rights.

(0380500)

ALL PERMITS ISSUED BY THE STATE WATER 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 the 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, endangered, or candidate 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. The 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 lake or streambed 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 lake or streambed alteration 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/she accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore 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

for James W. Kassel

Victoria A. Whitney, Chief
Division of Water Rights

Dated:

MAY 21 2009