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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21230

Application 31183 of

Rustic Retirement LLC
1961 Vichy Springs Road
Ukiah, CA 95482

filed on **May 10, 2001**, 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:
Sulphur Creek, thence
Russian River

within the County of **Mendocino**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,184,392 feet, East 6,229,858 feet	**SE ¼ of SW ¼**	**15**	**15 N**	**12 W**	**MD**

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation, Frost Protection, & Heat Protection	**SE ¼ of SW ¼**	**15**	**15 N**	**12 W**	**MD**	**4**
	SW ¼ of SE ¼	**15**	**15 N**	**12 W**	**MD**	**9**
	NE ¼ of NW ¼	**22**	**15 N**	**12 W**	**MD**	**3.5**
	NW ¼ of NE ¼	**22**	**15 N**	**12 W**	**MD**	**3.5**
					Total	**20**
Recreation & Fish and Wildlife Preservation (at reservoir)	**SE ¼ of SW ¼**	**15**	**15 N**	**12 W**	**MD**	
Domestic		**15**	**15 N**	**12 W**	**MD**	

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 **49.5** acre-feet per annum to be collected from **December 15** of each year to **March 31** 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 capacity of the reservoir covered under this permit shall not exceed **26** acre-feet.

(0000005N)

8. 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)

9. The State Water Board reserves jurisdiction to impose conditions to conform this permit to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

10. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from December 15 of each year through March 31 of each succeeding year bypass a minimum of 0.20 cubic foot per second (cfs) at Point of Diversion (POD).

Under all bases of right Permittee shall bypass the total streamflow at POD from April 1 through December 14 of each year. The total streamflow at POD shall be bypassed whenever it is less than 0.20 cfs.

(0140060)

11. Prior to the start of construction or diversion or use of water under this permit, the 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 have been or will be installed to measure streamflow 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.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Chief of the Division of Water Rights within 15 days upon request by the State Water Resources Control Board, the Chief of the Division of Water Rights, or other authorized designees of the State Water Resources Control Board.

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

(0000070)

12. 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 in order that water entering the reservoir that is not authorized for appropriation under this permit can be released. Before starting construction, Permittee shall submit plans and specifications of the outlet pipe, or alternative facility, to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, Permittee shall furnish evidence that substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043A)

13. Before storing water under this permit, Permittee shall install a staff gage in the reservoir, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. Permittee must maintain the staff gage in operating condition as long as water is being diverted or used under this permit.

(0070047)

14. Permittee shall record the staff gage readings on the last day of each month. Permittee shall record the maximum and minimum water surface elevations and the dates that these water levels occur each water-year between October 1 and September 30. Permittee shall maintain a record of all staff gage readings and shall submit these records to the Division of Water Rights with all required Reports of Permittee, Reports of Licensee or whenever requested by the staff of the Division.

(0100047)

15. Prior to withdrawal of water from the reservoir authorized by this permit, Permittee shall install 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 the reservoir at Point of Diversion.

The in-line flow meter must be maintained in operating condition as long as water is being consumptively used under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these records to the Division with all required Reports of Permittee, Reports of Licensee, or whenever requested by the staff of the Division of Water Rights.

(0100900)

16. Prior to the start of construction or diversion or use of water under this permit, Permittee shall obtain any required permit from the U.S. Army Corps of Engineers (USACE) and file a copy with the Division of Water Rights. If a permit from the USACE is not necessary for this

permitted project, the Permittee shall provide to the Division of Water Rights a letter from the USACE affirming that a permit is not needed.

If the project requires a permit from USACE, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Resources Control Board prior to the start of construction or diversion or use of water under this permit.

(0450800)

17. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code section 13260 and shall comply with all waste discharge requirements imposed by the California North Coast Regional Water Quality Control Board or by the State Water Resources Control Board.

(0000100)

18. Permittee shall not conduct construction activities within 50 feet of a watercourse from November 1 of each year to July 14 of the succeeding year.

(9990800)

19. Prior to the start of construction or diversion or use of water under this permit, the Permittee shall submit evidence to the Chief of the Division of Water Rights demonstrating that Permittee has complied with the pre-construction conditions set forth in the Award of Arbitration (per Fish and Game Code 1603) issued on November 17, 2004. Evidence shall include confirmation from the California Department Fish and Game (DFG) that a riparian habitat restoration plan has been prepared and submitted to DFG.

(0490300)

20. The riparian habitat restoration plan shall be implemented within two years of Department of Fish and Game's approval of the plan and prior to licensing of this permit.

(0400700)

21. At the direction of Department of Fish and Game, Permittee shall compensate for the loss of sediment input to the downstream watershed by placing gravel downstream of the dam for stream replenishment. Permittee shall report the annual quantity of gravel replenished to the stream and provide photographic evidence documenting gravel replenishment. Reports shall be submitted with all required Reports of Permittee, Reports of Licensee or whenever requested by the staff of the Division of Water Rights.

(0400300)

22. Prior to diversion or use of water under this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights that demonstrates that the project has been constructed in accordance with the recommendations provided in the December 15, 2000 Geotechnical Engineering Investigation Report prepared for this project. Evidence shall include certification by a registered Engineer or registered Geologist that the project was constructed in accordance with the recommendations in the December 15, 2000 Geotechnical Engineering Investigation Report or that equally protective measures were implemented.

(0490301)

23. Project construction shall occur only in accordance with the Erosion Control Conditions set forth in Exhibit A of the Award of Arbitration (per Fish and Game Code Section 1603) issued on November 17, 2004.

(0450300)

31. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e)(1) of the California Environmental Quality Act Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances 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 and evidence of completion has been submitted to the Chief of the Division of Water Rights.

(0380500)

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 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

24. A 25 feet wide setback shall be established on each side of any Class II or Class III watercourse (as defined by Cal. Code Regs., tit. 14, §§ 895.1, 916.5) that flows through the place of use authorized by this permit. The buffer shall be measured from the centerline of the watercourse. No ground disturbing activities, with the exception of road crossings, shall occur within a buffer zone. Any road crossings within the setback shall be aligned perpendicular to the direction of flow in the watercourse at the location of the crossing

(0400500)

25. Permittee shall exclude bullfrogs and other non-native species from the reservoir authorized by this permit.

(0600500)

26. Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.

(0000208)

27. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090A)

28. This permit is specially subject to the prior right of Beckstoffer Vineyards under appropriation issued pursuant to Applications 4308, 16758, 24617, 24789A, and 24789B.

(000000T)

29. 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 Permittee diverts water under riparian right. With the approval of the Chief of the Division of Water Rights, 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 of Water Rights 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 of Water Rights 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.

(0560300B)

30. 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)

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 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

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

Dated:

DEC 01 2008

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0044-DWR

In the Matter of Application 31183
Rustic Retirement LLC

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream tributary to Sulphur Creek thence the Russian River

COUNTY: Mendocino County

WHEREAS:

1. Rustic Retirement LLC filed Application 31183 with the State Water Resources Control Board (State Water Board) on May 10, 2001.

2. The State Water Board has determined that there is unappropriated water available to serve Application 31183. O'Connor Environmental Inc. prepared and submitted a water availability analysis on October 28, 2005, documenting the availability of water. The water availability analysis was reviewed and accepted as sufficient by Division of Water Rights (Division) staff on June 5, 2006. Division staff concluded that unappropriated water is available and that approval of the application, as conditioned, would not result in potentially significant impacts to instream aquatic resources or injury to prior water rights.

3. The water will be diverted and used without injury to any lawful user of water. The Division issued a public notice of Application 31183 on July 6, 2001. Based on the water availability analysis, water is available to serve this application without injury to prior rights. All protests to approval of the application on the basis of injury to prior rights have been resolved by inclusion of a permit term recognizing protestant's prior rights.

4. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In 2002, National Marine Fisheries Service (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 were 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, Mendocino, and Marin Counties, and portions of Napa, and 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. The proposed project is not entirely consistent with the Draft Guidelines; however, permit conditions were included in the permit to address potential impacts to fish, wildlife or other instream beneficial uses. Additionally, a DFG 1603 Streambed Alteration Agreement has been obtained for this project through an arbitration order that

addressed fish and wildlife concerns and included mitigation measures. The proposed permit terms are consistent with those in the 1603 Streambed Alteration Agreement. All protests to approval of the application on the basis of potential impact to the environment and public trust have been cancelled pursuant to Water Code section 1335(d).

5. The intended uses are irrigation, frost protection, heat protection, domestic, fish and wildlife enhancement, and recreation. The applicant requested to divert 49.5 acre-feet per annum (afa) to storage in a 26 acre-foot reservoir. The applicant requested to divert 20 afa for irrigation, 20 afa for frost protection, and 7 afa for heat protection of a 20-acre vineyard, 2 afa for domestic use, and 0.5 afa for recreation use. The proposed water use is beneficial.

6. Pursuant to the provisions of the California Environmental Quality Act, the State Water Board adopted a Mitigated Negative Declaration (MND) pursuant to the California Code of Regulations, Title 14, section 15074. The MND determined that the proposed project 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 State Water Board found that the potential adverse impacts of the project were less than significant and were mitigated with the inclusion of specific permit terms. The State Water Board will file a Notice of Determination within 5 days of the date of this Order.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31183, subject to the conditions of the attached permit.

STATE WATER RESOURCES CONTROL BOARD

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

Dated:

Attachment DEC 01 2008