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

In the Matter of Application 31751

New Land Fund

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean

COUNTY: Marin

WHEREAS:

1. Application 31751 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on March 19, 2009. Application 31751 requests to divert 5.5 acre-feet (af) per annum to storage in a proposed 5.5 af reservoir for the purpose of irrigation of 8.7 acres. Water will be collected from December 15 of each year to March 31 of the succeeding year. Water is proposed to be diverted from Pine Gulch Creek tributary to Bolinas Lagoon.

2. On March 24, 2009, the Division issued a public notice of Application 31751. On March 25, 2009, the California Salmon and Steelhead Association filed a protest on the basis of potential impact to the environment. The protest did not meet the requirements for filing as specified in the California Code of Regulations section 745. The protest was rejected on June 5, 2009, pursuant to California Code of Regulations section 749.

3. The State Water Board determined that there is unappropriated water available to serve Application 31751. On March 12, 2009, the Applicant submitted a Water Availability Analysis (WAA), prepared by the United States Department of the Interior, National Park Service, documenting the availability of water.

4. The water will be diverted and used without injury to any lawful user of water. The WAA completed for this project demonstrates that water is available to serve this application without injury to prior rights. No protests to approval of the application on the basis of injury to prior rights were filed with the Division.

5. On November 15, 2007, Marin County Community Development Agency approved a Coastal Permit (CP-03-4) and Design Review Clearance (DC 03-24). The project is located in a Coastal Zone and is exempt from grading permits.

6. Marin County, as Lead Agency, prepared an Initial Study (IS) for this project pursuant to the California Environmental Quality Act (CEQA) (California Code of Regulations (CCR), tit. 14, § 5063.) The IS identified potentially significant impacts to Geology, water quality, biological resources, and cultural resources.

Marin County proposed the following to mitigate for the potential environmental impacts that could occur from issuance of this permit:

a. limitations on the timing and magnitude of diversion;
b. streamflow bypass for the protection of aquatic life;
c. measures to prevent deterioration of water quality; and
d. cultural resource contingency actions in the event that sensitive resources are unearthed during project construction or operation.

7. As conditioned, the water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. National Marine Fisheries Service and the Department of Fish and Game developed *Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams*, dated June 17, 2002 (Draft Guidelines). The Draft Guidelines are recommended for use by permitting agencies, 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 31751 is consistent with the recommendations in the Draft Guidelines.

8. On August 24, 2007, Marin County circulated the IS and the Mitigated Negative Declaration (MND) (SCH No. 2007082139) pursuant to the CCR, Title 14, § 15072 and § 15073.

9. The MND prepared by the Lead Agency determined that the proposed project will have a less than significant effect on the environment with mitigation measures incorporated in the project, and will not result in significant cumulative impacts based on the reasons specified in the IS.

10. On November 15, 2007, Marin County adopted a Mitigation Monitoring and Reporting Plan (MMRP) in accordance with CEQA [Public Resources Code (PRC) § 21081.6]. The MMRP lists mitigation measures recommended in the IS/MND for the proposed project and specifies implementation and monitoring responsibilities. Pursuant to PRC § 21081.6(b), mitigation measures identified in the MMRP will be included as enforceable permit terms in any permit authorizing construction, diversion, or use of water pursuant to Application 31751.

11. On December 26, 2006, Marin County filed a Notice of Determination (NOD) with the Governor's Office of Planning and Research for this project in accordance with the CCR, title 14, § 15075.

12. The State Water Board, as a Responsible Agency, has considered the environmental documents prepared by Marin County and has determined that the 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 IS and supporting materials. The potential adverse impacts of the project were found to be less than significant and mitigated with the inclusion of specific permit terms, in accordance with CEQA § 15040 and § 15041. The documents or other materials that constitute the record are located in the files held by the Division.

13. The State Water Board will file an NOD for this project with the Governor's Office of Planning and Research within five days from the issuance of this order, in accordance with the CCR, title 14, § 15096.

NOW, THEREFORE, IT IS ORDERED THAT a permit is issued for Application 31751, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUL 3 1 2009

Attachment: Permit 21248

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21248

Application **31751** of

New Land Fund
Dennis Dierks
P.O. Box 382
Bolinas, California 94924

filed on **March 19, 2009**, 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:
Pine Gulch Creek

Tributary to:
Bolinas Lagoon thence
Pacific Ocean

within the County of **Marin.**

2. Location of point of diversion

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
(3) North 2166145 feet and East 5926265 feet	**SE ¼ of SE ¼**	**14***	**1N**	**8W**	**MDM**

Location of point of 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
(2) North 2166266 feet and East 5926798 feet	**NE ¼ of SW ¼**	**13***	**1N**	**8W**	**MDM**

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	**SW ¼ of SW ¼**	**13***	**1N**	**8W**	**MD**	**5.8**
	NW ¼ of NW ¼	**24***	**1N**	**8W**	**MD**	**2.9**
					Total	**8.7**

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 **5.5 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 maximum rate of diversion to offstream storage shall not exceed 0.22 cubic foot per second.

(0000005J)

8. The capacity of the reservoir covered by this permit (Application 31751) shall not exceed 5.5 acre-feet.

(0000005N

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

(0000009)

10. Prior to diversion or use of water under this permit, Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights that measures the instantaneous rate and the cumulative amount of water diverted from Pine Gulch Creek. This in-line flow meter must be maintained in operating condition as long as water is being diverted or 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 with annual progress reports, and whenever requested by the Division of Water Rights.

(0360800)

11. Before storing water in the reservoir, Permittee shall install a staff gage in the reservoir, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir. This staff gage must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall record the staff gage readings on the last day of each month and on December 15 annually. 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 with annual progress reports, and whenever requested by the Division of Water Rights. The State Water Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

(0360801)

12. For the protection of fish and wildlife, Permittee shall during the period from December 15 through March 31 bypass a minimum of 25 cubic feet per second. Water shall not be diverted under this permit unless streamflow as measured in Pine Gulch Creek is in excess of 25 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount.

(0140200)

13. No water shall be diverted under this permit until Permittee has installed a device, satisfactory to the Deputy Director for Water Rights, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be properly maintained.

(0060062AP)

14. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for 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 and the location of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
c) A time schedule for the installation 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.

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 for ten years from the date of collection and made available to the Deputy Director for Water Rights upon request.

Any non-compliance with the terms of the permit shall be reported by the Permittee promptly to the Deputy Director for Water Rights.

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

(0000070)

15. The rights acquired under this permit shall be of equal priority with the rights acquired under permits issued pursuant to Applications 31749, 31750, and 31752.

(0000113)

16. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

17. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the California Department of Fish and Game and the National Marine Fisheries Service to protect Steelhead Trout and Coho Salmon, listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) and the federal

Endangered Species Act (16 U.S.C.A. sections 1531 to 1544)]. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.

(0000214)

18. To prevent the introduction of invasive species and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall:

a) Not stock and shall not allow others to stock fish in any reservoir;
b) Cause an aquatic ecologist or biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, to monitor the reservoirs authorized under this permit on an annual basis for the presence of fish or other exotic aquatic predators. Within 30 days of discovery of fish or other exotic aquatic predators, Permittee shall consult with the Division of Water Rights and the Department of Fish and Game to develop a control plan acceptable to the Deputy Director for Water Rights. This plan shall include an implementation schedule, and may include draining the reservoirs where fish or exotic aquatic predators are found;
c) Prepare or cause to be prepared annually a report describing the methodology used to survey the reservoirs for the presence of fish or exotic aquatic predators, the dates when the surveys occurred, and what actions were taken if any were found. These monitoring reports shall be submitted to the Division of Water Rights with all required Reports of Permittee, Reports of Licensee, and whenever requested by the staff of the Division of Water Rights.

(0400500)

19. To allow for the continued growth of wetland vegetation and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall:

a) Establish a setback around the reservoir(s) authorized under this permit to encompass the interior of the upper embankment and the fringe of wetland vegetation (California Bulrush (*Scirpus californicus)* and Broad-leaf cattails (*Typha latifolia)*) surrounding the reservoirs. Upon completion of reservoir construction, no new ground disturbing activities shall occur within the setback area. Equipment access within the setback area shall be limited to activities necessary for the ongoing operation of the reservoir(s) and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native vegetation within the setback area is allowed; and
b) Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Game prior to any future reservoir dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations.

(0400500A)

20. Permittee shall implement the mitigation measures and monitoring and reporting action identified in the "Mitigation Monitoring and Reporting Plan", adopted by the Lead Agency on November 15, 2007, and in the file and records for A031751. Permittee shall submit reporting documents, including but not limited to, copies of all letters of compliance, approved compliance/management plans, operation authorizations, regulatory permits, and survey reports with the annual Report of Permittee, or whenever requested by the Deputy Director for Water Rights.

(0400300)

21. Any non-compliance with the terms of the permit shall be reported by the Permittee to the Deputy Director for Water Rights within 3 days of identification of the violation.

(9990999)

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 the 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 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 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

Victoria A. Whitney

Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUL 3 1 2009