

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

In the Matter of Application 31752

Fresh Run Farm

ORDER APPROVING ISSUANCE OF AMENDED PERMIT

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

COUNTY: Marin

WHEREAS:

1. The State Water Resources Control Board, Division of Water Rights (Division) issued Permit 21249 to Fresh Run Farm (Permittee) on July 31, 2009 pursuant to Application 31752.
2. The Permittee notified the Division by letter dated March 11, 2009 that a Safe Harbor Agreement was being prepared by the United States Fish and Wildlife Service to address the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*) and to prevent the introduction of invasive species.
3. The permit prepared by the Division omitted the management activities for population control of bullfrogs and other California red-legged frog predators as outlined in Attachment 3, Section 1A of the Safe Harbor Agreement agreed upon by the Permittee and the United States Fish and Wildlife Service.
4. Pursuant to Water Code section 1124, the board may at any time amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon. This authority has been delegated to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057, dated September 18, 2007. In a memorandum dated October 4, 2007, this authority was redelegated to the Manager of the Permitting Section.

NOW, THEREFORE, IT IS ORDERED THAT

1. Permit Term 0400500 be amended to read as follows:

To prevent the introduction of invasive species and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall comply with the following or provide annual written and photographic evidence of compliance with the Safe Harbor Agreement, Attachment 3, Section 1A on file with the Division of Water Rights:

 - 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

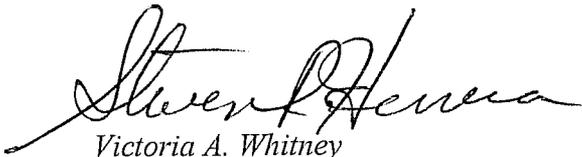
annual basis for the presence of fish or other exotic aquatic predators. Within 30 days of discovery of fish or other exotic aquatic predators, Permittee shall consult with the Division of Water Rights and the Department of Fish and Game to develop a control plan acceptable to the Deputy Director for 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)

2. All other terms and conditions specified in Permit 21249, dated July 31, 2009, shall remain in the permit and are not affected by this order.

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JAN 20 2010**

Attachment: Amended Permit 21249

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

AMENDED PERMIT 21249

Application 31752 of

**Fresh Run Farm
Peter Martinelli
P.O. Box 478
Bolinas, California 94924**

filed on **March 19, 2009**, has been approved by the State Water Resources Control 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:

(1B) Unnamed Stream

(4), (5) Pine Gulch Creek

Tributary to:

Pine Gulch Creek

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
(4) North 2167962 feet and East 5925476 feet	NE ¼ of SE ¼	14*	1N	8W	MD
(5) North 2169207 feet and East 5924856 feet	SW ¼ of NE ¼	14*	1N	8W	MD
(1B) North 2169892 feet and East 5925316	NE ¼ of NE ¼	14	1N	8W	MD

Location of point of redirection

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
(1B) North 2169892 feet and East 5925316	NE ¼ of NE ¼	14	1N	8W	MD

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
(1A) North 2169788 feet and East 5924424 feet	NW ¼ of NE ¼	14*	1N	8W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NE ¼ of NE ¼	14*	1N	8W	MD	0.3
	NW ¼ of NE ¼	14*	1N	8W	MD	2.4
	SW ¼ of NE ¼	14*	1N	8W	MD	1.1
	SE ¼ of NE ¼	14*	1N	8W	MD	12.6
	NE ¼ of SE ¼	14*	1N	8W	MD	6.5
					Total	22.9
Recreation						
Fire Protection						

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **20.5 acre-feet** per annum to be collected from **December 15** of each year to **March 31** of the succeeding year as follows: 17 acre-feet per annum in point of diversion/point of rediversion 1B (New Green Pond), 3.5 acre-feet per annum in point of storage 1A (Hilltop Pond).

(0000005D)

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 from point of diversion 4 to offstream storage at point of diversion/rediversion 1B and the maximum rate of diversion from point of diversion 5 to offstream storage at point of storage 1A shall not exceed a combined rate of 0.8 cubic feet per second.

(0000005J)

8. The capacity of the reservoirs covered under this permit (Application 31752) shall not exceed the following amounts: 3.5 acre-feet for reservoir 1A (Hilltop Pond) and 17 acre-feet for reservoir 1B (New Green Pond).

(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. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam of reservoir 1B (New Green Pond), as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which 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 Deputy Director for Water Rights for approval. Before storing water in reservoir 1B (New Green Pond), Permittee shall furnish evidence which 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)
11. 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)
12. Before storing water in the reservoir(s), Permittee shall install staff gages in the reservoir(s), satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir(s). This staff gages 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 Resources Control Board may require the release of water that cannot be verified as having been collected under a valid basis of right.
(0360801)
13. 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 in Pine Gulch Creek. Water shall not be diverted under this permit from point of diversion 4 or point of diversion 5 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)
14. 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)

15. 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)

16. 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 Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

(0000100)

17. The rights acquired under this permit shall be of equal priority with the rights acquired under permits issued pursuant to Applications 31749, 31750, and 31751.

(0000113)

18. 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)

19. No water shall be diverted from Pine Gulch Creek 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)

20. To prevent the introduction of invasive species and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall comply with the following or provide annual written and photographic evidence of compliance with the Safe Harbor Agreement, Attachment 3, Section 1A on file with the Division of Water Rights:

- 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 reservoir(s) 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 reservoir(s) 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)

21. 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)

22. 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 A031752. 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)

23. 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 Resources Control Board until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said the State Water Resources Control 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 Resources Control 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 Resources Control 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 Resources Control 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 Resources Control 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 Resources Control 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 Resources Control Board if, after notice to the Permittee and an opportunity for hearing, the State Water Resources Control 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 Resources Control 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 Resources Control 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 *for*
Deputy Director for Water Rights

Dated: **JAN 20 2010**