

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

**DIVISION OF WATER RIGHTS**

**AMENDED PERMIT FOR DIVERSION AND USE OF WATER**

APPLICATION 30717

PERMIT 21253

Permittee: David Jenks  
P.O. Box 68  
Philo, CA 95466

An amended permit on **Application 30717** filed on **June 19, 1998** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended permit.

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

1. Source of water

Source: <b>Unnamed Stream</b> <hr/> <hr/> <hr/>	Tributary to: <b>Unnamed Stream thence</b> <hr/> <b>Floodgate Creek thence</b> <hr/> <b>Navarro River</b> <hr/>
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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
<b>North 2,174,395 feet and East 6,132,758 feet</b>	<b>NE ¼ of NE ¼</b>	<b>33</b>	<b>15N</b>	<b>15W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Irrigation</b>	<b>NE ¼ of NE¼</b>	<b>33</b>	<b>15N</b>	<b>15W</b>	<b>MD</b>	
<b>Frost Protection</b>						
					<b>TOTAL</b>	<b>20</b>
<b>At Reservoir</b>						
<b>Recreation</b>	<b>NE ¼ of NE¼</b>	<b>33</b>	<b>15N</b>	<b>15W</b>	<b>MD</b>	
<b>Wildlife Preservation and Enhancement</b>						
<b>Fire Protection</b>						

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 **3.81** 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 the 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 (Application 30717) shall not exceed 3.81 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, 2019**.  
(0000009)
9. Prior to the diversion and use of water under this permit, Permittee shall install a diversion and bypass structure in the Unnamed Stream upstream of the reservoir consistent with the "Bypass Flow Control Structure – Preliminary Design" on file with the Division of Water Rights for the purpose of diverting and directing bypass flows around the reservoir to the Unnamed Stream. The structure must be capable of passively bypassing the flows required by the conditions of this permit. To demonstrate compliance with this term, Permittee shall furnish evidence which substantiates that the bypass structure has been installed within sixty (60) days from the date of approval of this permit. If the bypass structure is rendered inoperative for any reason, all diversions shall cease until such time as it is restored to service. Said bypass structure shall be properly calibrated, operated, and maintained by Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 30717.  
(0140200)
10. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from December 15 through March 31 bypass a minimum of 0.013 cubic feet per second. Under all bases of right, Permittee shall bypass the total streamflow from April 1 through December 14. The total streamflow shall be bypassed whenever it is less than 0.013 cubic feet per second.  
(0140060)
11. 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)
12. Permittee shall maintain the existing spillway pipe through the dam in proper working order.  
(000000S)
13. 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.

(0070500)

14. For the protection of fish and wildlife and instream uses, Permittee shall bypass the total streamflow, at all points of diversion, whenever the flow in the Navarro River is less than 325 cubic feet per second as measured at the United States Geological Survey Navarro River gage 11468000 located on the Navarro River. In the event that said gage is no longer available for streamflow measurements, Permittee (or successors-in-interest) must install and maintain an equivalent type gage, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the United States Geological Survey Navarro River gage 11468000 or Permittee must propose an alternative means of replacing the gage data, such as referencing another stream gage in the region that could be correlated with the Navarro River gage, that is satisfactory to the Deputy Director for Water Rights. In the absence of such an equivalent gage or an approved alternative means of replacing the gage data, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 30717.

(0000211)

15. Permittee shall maintain records of operation and maintenance of the diversion and bypass structure to document compliance with permit conditions. Observations shall be recorded and photocopied annually for submittal to the Division of Water Rights prior to July 1 of each year. Records will document the following:

- a) Date and time of installation and removal of flashboards in the diversion and bypass structure;
- b) Date and time of all routine maintenance activities related to diversion and bypass facilities, including clearance of debris from weir, culverts, pipe and weir inlets and outfalls, and observations of bypass swale for evidence of erosion;
- c) Weekly observations, with a maximum interval between observations of seven (7) days, of flow conditions at the diversion/bypass control structure during the diversion season, and general character of reservoir storage (not filling, filling, or spilling through outlet pipe);
- d) Weekly flow observations of the United States Geological Survey Navarro River gage 11468000, beginning on December 14 or prior to diversion of flows to the reservoir and continuing until the end of the diversion season. When flow at the gage is less than 500 cubic feet per second, the gage flow data must be examined again within three (3) days. When flow at the gage is less than 400 cubic feet per second, the gage flow data must be examined again within one (1) day. Documentation of observations of the gage may be achieved by printing out a copy of downloaded gage flow data from the United States Geological Survey National Water Information System website at the time of observation, and collecting these copies in a binder; and
- e) Monthly calibration of the diversion and bypass structure to ensure that it is functioning to bypass the amount of water specified in terms of this permit.

(0090499)

16. In accordance with California Department of Fish and Wildlife Code section 6400 and for the protection of fish and wildlife, the reservoir shall not be stocked with non-native fish or aquatic species, unless the Permittee has received written consent from the California Department of Fish and Wildlife. A copy of the written consent shall be provided to the Deputy Director for Water Rights prior to stocking the reservoir with non-native fish or aquatic species.

(0400501)

17. For the protection of California red-legged frog (*rana aurora draytonii*), a species that is designated as threatened pursuant to the Endangered Species Act, Permittee shall conduct the following activities to control bullfrog populations:

- a) For every third year beginning on the date of this permit, no earlier than October 1 and no later than October 15 of that year, Permittee shall drain any remaining water from the reservoir and pool covered by this permit. The reservoir and pool shall be allowed to dry for at least one week from the date draining is completed to disrupt the reproductive cycle of the bullfrog.
- b) In years that the reservoir and pool are not drained, Permittee shall eliminate any mature and emerging bullfrogs found inhabiting the reservoir and pool with manual control efforts. If Permittee is the entity implementing manual control efforts for bullfrogs, then Permittee shall receive bullfrog identification training from a qualified biologist. Upon completion of training, Permittee shall submit bullfrog identification training records to the Department of Fish and Wildlife.
- c) If Permittee does not employ manual control efforts prior to October 1 of each year, Permittee shall complete the activities described in item a) above every year until manual control efforts are reestablished.
- d) Permittee shall submit a report of all manual control efforts and reservoir draining activities to control bullfrog populations by June 30 of the year following every third year beginning on the date of this permit, or whenever requested by the Division of Water Rights. Said report shall include a description of all manual control efforts, training records, dates that draining activities were initiated and completed, and photographs verifying the drained condition.
- e) Water drained in compliance with this term shall be released into the downstream channel below the decorative pool via an outlet pipe or pump.
- f) Bullfrog control activities specified by this term may be modified or terminated following written consent from the Regional Manager of the Department of Fish and Wildlife and the Deputy Director for Water Rights.

(0400500)

18. 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 approval of the Deputy Director for 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 Deputy Director for 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 Deputy Director for 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.

(0260500)

19. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators can include, but not necessarily be limited to: stone tools and flaking debris; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles); and locally darkened midden soils containing artifactual material such as bone and shell fragments, stone tools, or fire-cracked rock. Historic period site indicators can include: fragments of glass, ceramic, and metal objects; milled and split lumber; structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for 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 Deputy Director for 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 Deputy Director for Water Rights.

(0000215)

20. 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 Public Resources 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. 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 Deputy Director for Water Rights.
- (0380500)
21. Any non-compliance with the terms of the permit shall be reported by the Permittee to the Deputy Director for Water Rights within three (3) days of identification of the violation.
- (9990999)
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**THIS PERMIT IS ALSO 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 Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit. (0000014)
- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605. (0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a lake or streambed alteration agreement between the State Department of Fish and Wildlife 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, Permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Wildlife. (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

ORIGINAL SIGNED BY:  
PHILLIP CRADER FOR

*Barbara Evoy, Deputy Director  
Division of Water Rights*

**Dated:** FEB 01 2013

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Water Right Permit 21253 (Application 30717)

**DAVID JENKS**

**ORDER AMENDING PERMIT**

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SOURCE: Unnamed Stream tributary to Unnamed Stream thence Floodgate Creek thence the Navarro River

COUNTY: Mendocino

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**WHEREAS:**

1. Permit 21253 was issued to David Jenks on December 22, 2009, pursuant to Application 30717.
2. Condition 17 of the permit allowed for the modification or termination of the condition following written consent from the Regional Manager of the Department of Fish and Wildlife to the Deputy Director for Water Rights.
3. On October 15, 2012, the Division of Water Rights received written consent from the Regional Manager of the Department of Fish and Wildlife to modify condition 17.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Condition 17 of Permit 21253 is replaced by the following term:

*For the protection of California red-legged frog (*rana aurora draytonii*), a species that is designated as threatened pursuant to the Endangered Species Act, Permittee shall conduct the following activities to control bullfrog populations:*

- a) *For every third year beginning on the date of this permit, no earlier than October 1 and no later than October 15 of that year, Permittee shall drain any remaining water from the reservoir and pool covered by this permit. The reservoir and pool shall be allowed to dry for at least one week from the date draining is completed to disrupt the reproductive cycle of the bullfrog.*
- b) *In years that the reservoir and pool are not drained, Permittee shall eliminate any mature and emerging bullfrogs found inhabiting the reservoir and pool with manual control efforts. If Permittee is the entity implementing manual control efforts for bullfrogs, then Permittee shall receive bullfrog identification training from a qualified biologist. Upon completion of training, Permittee shall submit bullfrog identification training records to the Department of Fish and Wildlife.*

- c) *If Permittee does not employ manual control efforts prior to October 1 of each year, Permittee shall complete the activities described in item a) above every year until manual control efforts are reestablished.*
- d) *Permittee shall submit a report of all manual control efforts and reservoir draining activities to control bullfrog populations by June 30 of the year following every third year beginning on the date of this permit, or whenever requested by the Division of Water Rights. Said report shall include a description of all manual control efforts, training records, dates that draining activities were initiated and completed, and photographs verifying the drained condition.*
- e) *Water drained in compliance with this term shall be released into the downstream channel below the decorative pool via an outlet pipe or pump.*
- f) *Bullfrog control activities specified by this term may be modified or terminated following written consent from the Regional Manager of the Department of Fish and Wildlife and the Deputy Director for Water Rights.*

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:  
PHILLIP CRADER FOR

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: FEB 01 2013

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Application 30717

**David Jenks**

**ORDER APPROVING MITIGATION, MONITORING AND  
REPORTING PLAN AND ISSUANCE OF PERMIT**

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SOURCE: Unnamed Stream tributary to Unnamed Stream thence Floodgate Creek thence Navarro River

COUNTY: Mendocino County

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**WHEREAS:**

1. David Jenks filed application 30717 with the State Water Resources Control Board, Division of Water Rights on June 19, 1998.
2. Application 30717 requests to divert 3.81 acre-feet (af) per annum to storage in a 3.81 af reservoir for irrigation and frost protection of 1.5 acres of vineyard and 18.5 acres of landscape vegetation and recreation, fire protection, and wildlife and fish preservation and enhancement purposes. Water will be collected from December 15 of each year to March 31 of the following year.
3. The Division of Water Rights issued a public notice of Application 30717 on December 17, 1999. California Sportfishing Protection Alliance, Friends of the Navarro Watershed, Sierra Club Mendocino Group, Navarro Watershed Protection Association, Daniel Myers, and the Department of Fish and Game (DFG) filed protests on the basis of potential impact to the environment. On April 20, 2000, the protest filed by DFG was rejected pursuant to California Water Code § 749. On May 22, 2009, protests filed by California Sportfishing Protection Association, Friends of the Navarro Watershed, Sierra Club Mendocino Group, Navarro Watershed Protection Association, and Daniel Myers were dismissed pursuant to Water Code § 1335 (d).
4. The State Water Resources Control Board has determined that there is unappropriated water available to serve Application 30717. The consulting firm, O'Connor Environmental, prepared and submitted a water availability analysis on July 10, 2006, documenting the availability of water. Division of Water Rights staff conditionally accepted the water availability analysis on July 11, 2006.
5. The water will be diverted and used without injury to any lawful user of water. The water availability analysis 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 of Water Rights.
6. The Division of Water Rights prepared an Initial Study (IS) for this project pursuant to the California Environmental Quality Act (CEQA) (California Code of Regulations (CCR), tit. 14, § 15063.) The IS identified potential environmental impacts to biological resources and hydrology and water quality.

The Division of Water Rights 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. limitations on the timing and magnitude of diversion;
- b. streamflow bypass for the protection of aquatic life; and
- c. measures to prevent deterioration of water quality.

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 (NMFS) and DFG 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 were 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.

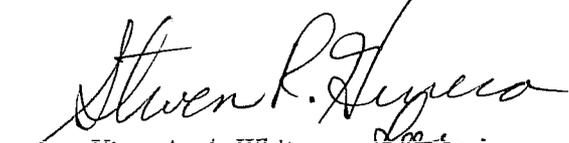
Division of Water Rights staff performed a site-specific evaluation and consulted with staff from DFG and found the project conforms to the recommendations in the Draft Guidelines. The project also conforms to recommendations for a dual bypass flow described in the November 12, 2003 letter from the NMFS and DFG. Permit conditions have been included in the permit to address potential impacts to fish, wildlife or other instream beneficial uses. All protests to approval of the application have been resolved by inclusion of permit conditions and by dismissal pursuant to Water Code § 1335, subdivision (d).

8. On June 18, 2008, the Division of Water Rights circulated the IS, a Notice of Proposed Mitigated Negative Declaration (MND), and the Proposed MND (SCH No. 2008112002) pursuant to the CCR, Title 14, § 15072 and § 15073. Public review of the document began on June 18, 2008 and ended on July 17, 2008.
9. 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 IS. The potential adverse impacts of the project were found to be less than significant with the inclusion of mitigation measures specified as permit terms.
10. The Division of Water Rights received a comment letter from DFG on August 1, 2008, which included recommendations to protect potential California red-legged frog (*Rana aurora draytonii*) habitat by controlling bullfrogs at the Jenks property. In response to DFG's comments and in an effort to protect public trust resources, the Division of Water Rights staff recommended an additional term be included in any permit or license issued pursuant to the above-referenced application.
11. The Division of Water Rights prepared 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), each of the 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 30717.

12. The MND reflects the State Water Resources Control Board's independent judgment and analysis. After considering the document, the State Water Resources Control Board 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. 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 of Water Rights. The State Water Resources Control Board will file a Notice of Determination 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, § 15075.

**NOW, THEREFORE, IT IS ORDERED THAT** the Mitigation, Monitoring and Reporting Plan is adopted, and a permit is issued for Application 30717, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

  
*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: **DEC 22 2009**

Attachment: Permit 21253

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

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 21253**

Application 30717 of

**David Jenks  
P.O. Box 68  
Philo, CA 95466**

filed on **June 19, 1998**, 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:

Tributary to:

**Unnamed Stream**

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**Unnamed Stream, thence  
Floodgate Creek, thence  
Navarro River**

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within the County of **Mendocino**.

2. Location of point of diversion (POD)

By California Coordinate System of 1927 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<b>North 2,174,395 feet and East 6,132,758 feet</b>	<b>NE ¼ of NE ¼</b>	<b>33</b>	<b>15N</b>	<b>15W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NE ¼ of NE¼	33	15N	15W	MD	
Frost Protection						
					<b>TOTAL</b>	<b>20</b>
At Reservoir						
Recreation	NE ¼ of NE¼	33	15N	15W	MD	
Wildlife Preservation and Enhancement						
Fire Protection						

The places of use are 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 **3.81** acre-feet per annum to be collected from **December 15** of each year to **March 31** of the succeeding year. (000005C)
6. This permit does not authorize the collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)
7. The capacity of the reservoir covered under this permit (Application 30717) shall not exceed 3.81 acre-feet. (000005N)
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**. (000009)
9. Prior to the diversion and use of water under this permit, Permittee shall install a diversion and bypass structure in the Unnamed Stream upstream of the reservoir consistent with the "Bypass Flow Control Structure – Preliminary Design" on file with the Division of Water Rights for the purpose of diverting and directing bypass flows around the reservoir to the Unnamed Stream. The structure must be capable of passively bypassing the flows required by the conditions of this permit. To demonstrate compliance with this term, Permittee shall furnish evidence which substantiates that the bypass structure has been installed within sixty (60) days from the date of approval of this permit. If the bypass structure is rendered inoperative for any reason, all diversions shall cease until such time as it is restored to service. Said bypass structure shall be properly calibrated, operated, and maintained by Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 30717. (0140200)
10. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from December 15 through March 31 bypass a minimum of 0.013 cubic feet per second. Under

all bases of right, Permittee shall bypass the total streamflow from April 1 through December 14. The total streamflow shall be bypassed whenever it is less than 0.013 cubic feet per second.

(0140060)

11. 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)

12. Permittee shall maintain the existing spillway pipe through the dam in proper working order.

(000000S)

13. 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 Resources Control Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

(0070500)

14. For the protection of fish and wildlife and instream uses, Permittee shall bypass the total streamflow, at all points of diversion, whenever the flow in the Navarro River is less than 325 cubic feet per second as measured at the United States Geological Survey Navarro River gage 11468000 located on the Navarro River. In the event that said gage is no longer available for streamflow measurements, Permittee (or successors-in-interest) must install and maintain an equivalent type gage, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the United States Geological Survey Navarro River gage 11468000 or Permittee must propose an alternative means of replacing the gage data, such as referencing another stream gage in the region that could be correlated with the Navarro River gage, that is satisfactory to the Deputy Director for Water Rights. In the absence of such an equivalent gage or an approved alternative means of replacing the gage data, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 30717.

(0000211)

15. Permittee shall maintain records of operation and maintenance of the diversion and bypass structure to document compliance with permit conditions. Observations shall be recorded and photocopied annually for submittal to the Division of Water Rights prior to July 1 of each year. Records will document the following:

- a) Date and time of installation and removal of flashboards in the diversion and bypass structure;
- b) Date and time of all routine maintenance activities related to diversion and bypass facilities, including clearance of debris from weir, culverts, pipe and weir inlets and outfalls, and observations of bypass swale for evidence of erosion;

- c) Weekly observations, with a maximum interval between observations of seven (7) days, of flow conditions at the diversion/bypass control structure during the diversion season, and general character of reservoir storage (not filling, filling, or spilling through outlet pipe);
- d) Weekly flow observations of the United States Geological Survey Navarro River gage 11468000, beginning on December 14 or prior to diversion of flows to the reservoir and continuing until the end of the diversion season. When flow at the gage is less than 500 cubic feet per second, the gage flow data must be examined again within three (3) days. When flow at the gage is less than 400 cubic feet per second, the gage flow data must be examined again within one (1) day. Documentation of observations of the gage may be achieved by printing out a copy of downloaded gage flow data from the United States Geological Survey National Water Information System website at the time of observation, and collecting these copies in a binder; and
- e) Monthly calibration of the diversion and bypass structure to ensure that it is functioning to bypass the amount of water specified in terms of this permit.

(0090499)

16. In accordance with California Department of Fish and Game Code section 6400 and for the protection of fish and wildlife, the reservoir shall not be stocked with non-native fish or aquatic species, unless the Permittee has received written consent from the California Department of Fish and Game. A copy of the written consent shall be provided to the Deputy Director for Water Rights prior to stocking the reservoir with non-native fish or aquatic species.

(0400501)

17. For the protection of the California red-legged frog (*Rana aurora draytonii*), a species that is designated as threatened pursuant to the Endangered Species Act, the following conditions shall apply to activities authorized under any permit or license issued pursuant to this application:

- a) No earlier than October 1 of each year and no later than October 15 of the same year, to break the reproductive cycle of the bullfrog, Permittee shall drain any remaining water not previously beneficially used from the reservoir covered by this permit, and shall drain the decorative pool.
- b) Permittee shall eliminate any mature bullfrogs found inhabiting the project reservoir or decorative pool.
- c) Permittee shall document the efforts to control bullfrog populations, identify the date that drainage of the ponds was initiated and completed, and provide photographs verifying their drained condition. This report shall be submitted to the Division of Water Rights with the annual progress report by Permittee, or whenever otherwise requested by the Division of Water Rights.
- d) Water being drained in compliance with this term, if not beneficially used under the permit, shall be released into the downstream channel below the decorative pool via an outlet pipe or pump maintained by the Permittee.
- e) Bullfrog control activities specified by this term may be modified or terminated following written consent from the Regional Manager of the California Department of Fish and Game to the Deputy Director for Water Rights.

(0400500)

18. 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 approval of the Deputy Director

for 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 Deputy Director for 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 Deputy Director for 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.

(0260500)

19. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators can include, but not necessarily be limited to: stone tools and flaking debris; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles); and locally darkened midden soils containing artifactual material such as bone and shell fragments, stone tools, or fire-cracked rock. Historic period site indicators can include: fragments of glass, ceramic, and metal objects; milled and split lumber; structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for 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 Deputy Director for 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 Deputy Director for Water Rights.

(0000215)

20. 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 Public Resources 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. 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 Deputy Director for Water Rights.

(0380500)

21. Any non-compliance with the terms of the permit shall be reported by the Permittee to the Deputy Director for Water Rights within three (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 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 the 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, 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:

DEC 22 2009