

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

In the Matter of Application 30929
Karen and Gregory Crouse

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream tributary to Pickle Canyon Creek thence Redwood Creek thence Napa Creek thence Napa River

COUNTY: Napa

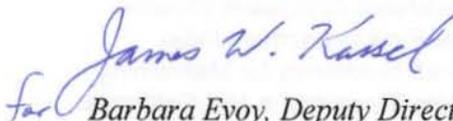
WHEREAS:

1. John J. Kirlin filed water right Application 30929 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on June 15, 1999. The Division's records for Application 30929 show the current owners as Karen and Gregory Crouse (Applicants).
2. Application 30929, as filed, requests authorization to divert 2 acre-feet (af) per annum of water to storage in an existing onstream reservoir and direct diversion of 0.13 cubic foot per second with an annual limit of 1 af from an Unnamed Stream tributary to Pickle Canyon Creek thence Redwood Creek thence Napa Creek thence the Napa River. Application 30929 identifies a proposed season of diversion to storage from December 15 of each year to July 1 of the succeeding year and a proposed season of direct diversion from March 1 to July 1 of each year. Diverted water is proposed to be used for the purpose of irrigation of 20 acres of vineyard.
3. The Division accepted Application 30929 on August 18, 1999 and issued a public notice of the application on December 3, 1999. No protests were received.
4. Division staff prepared a Water Availability Analysis (WAA) for Application 30929, dated July 18, 2000. This analysis concluded that there is sufficient water available for appropriation under Application 30929 but did not include an examination of downstream cumulative impacts. Wagner & Bonsignore submitted a WAA and associated Cumulative Flow Impairment Index calculations (CFII) on March 27, 2007 completed pursuant to the Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Draft Guidelines), dated June 17, 2002, prepared by the National Marine Fisheries Service (NMFS) and the Department of Fish and Game (DFG). The WAA/CFII report concludes that water is available in all years if a bypass equal to the February Median Flow (FMF) is not required. If a FMF is required, water is available in all years for the storage portion of the application and in most years for the direct diversion portion.
5. The water will be diverted and used without injury to any lawful user of water. The March 20, 2007 WAA/CFII report 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.

6. The water will be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses. In order to comply with the State Water Board's independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible, Division staff completed an evaluation of impacts to public trust resources. Per the evaluation, dated June 29, 2010, Division staff recommends denial of the direct diversion portion of the application and reduction of the season of diversion to minimize fishery resource impacts and to conform to the season recommended in the Draft Guidelines. Division staff also recommends inclusion of mitigation measures for aquatic special status species and riparian habitat that may be impacted by the project. These conditions and modifications shall be incorporated in the permit to conform the project to portions of the Draft Guidelines and minimize or avoid impacts to instream beneficial uses.
7. Environmental review of Application 30929 began on June 15, 1999. Based on aerial photographs and a vineyard survey provided by the Applicants, 17.22 acres of vineyard and the 2 af capacity reservoir appear to have been in place prior to June 15, 1999. Approval of this project with a reduction in the place of use consistent with the vineyard survey will not result in construction or expansion in the facilities beyond that existing on the date the environmental review began. Therefore the project, with reductions incorporated, is exempt from the California Environmental Quality Act (CEQA) under California Code of Regulations, title 14, section 15301, Class I, Existing Facilities.
8. The proposed water use is beneficial. As conditioned, the Applicants will divert 2 af per annum to storage for irrigation of 17.22 acres of existing vineyard.
9. The State Water Board will file a Notice of Exemption for this project with the Governor's Office of Planning and Research after issuance of this order, in accordance with the California Code of Regulations, title 14, section 15062.
10. The authority to issue water right permits has been delegated to the Deputy Director for Water Rights pursuant to State Water Board Resolution No. 2007-0057, Section 4.2.14.

NOW, THEREFORE, IT IS ORDERED THAT a permit is issued for Application 30929, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD


for *Barbara Evoy, Deputy Director*
Division of Water Rights

Dated: **FEB 17 2011**

Attachment: Permit 21271

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21271

Application 30929 of **Karen and Gregory Crouse**
2570 Wine Country Avenue
Napa, CA 94558-2534

filed on **June 15, 1999**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

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

1. Source of water

Source:

Tributary to:

Unnamed Stream

Pickle Canyon Creek thence

Redwood Creek thence

Napa Creek thence

Napa River

within the County of **Napa**.

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 1,892,858 feet and East 6,448,291 feet	SE ¼ of SE ¼	15	6N	5W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	SW ¼ of SE ¼	15	6N	5W	MD	8.7
	SE ¼ of SE ¼	15	6N	5W	MD	8.52
					Total	17.22

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 2 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 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 shall not exceed 2 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, 2020**. (000009)
9. For the protection of amphibian reproduction, Permittee shall not withdraw stored water until inflow from the Unnamed Stream has ceased or June 1, whichever occurs first. (0400500B)
10. 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)
11. To allow for the continued growth of wetland vegetation and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*) and the northwestern pond turtle (*Clemmys marmorata marmorata*), Permittee shall:
 - a. Maintain existing setback around the reservoir authorized under this permit to encompass the interior of the upper embankment and the fringe of wetland vegetation surrounding the reservoir. 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;
 - 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;

- c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
- d. Make no introduction of non-native fish species into the reservoir; and
- e. Consult with the United States Fish and Wildlife Service and California Department of Fish and Game should any bullfrogs or non-native fish be discovered at or near the reservoir to develop and implement an acceptable bullfrog eradication program.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 30929.

(0400500A)

12. To control bullfrog population, Permittee shall completely drain the reservoir by October 15. Once drained, the reservoir shall remain empty for a period of no less than 30 days. Permittee shall submit verification, such as photographic evidence, that this draining requirement has been met at least once every three years with the Progress Report for Permittee.

(0400500C)

13. 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)

14. 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)

15. 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)

16. 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)
17. 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 BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.
- (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
- (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the 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 and 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 and 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)

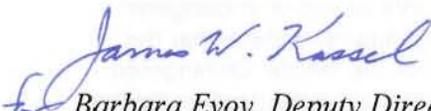
This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

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 BOARD


for Barbara Evoy, Deputy Director
Division of Water Rights

Dated: FEB 17 2011