

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

In the Matter of Application 30895

County of San Mateo

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Two Unnamed Streams tributary to Butano Creek thence Pescadero Creek
thence Pacific Ocean

COUNTY: San Mateo

WHEREAS:

1. Application 30895 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on June 7, 1999 by the County of San Mateo (Applicant). The Applicant requests the right to divert a total of 41.8 acre-feet (af) per annum to storage into 4 existing on-stream reservoirs. Reservoir 1 holds 20 af, Reservoir 2 holds 4.6 af, Reservoir 3 holds 1.2 af, and Reservoir 4 holds 16 af. The original purpose of use of Reservoir 1 was mining. On October 27, 2000, the purpose was changed to fire protection and other (sediment control). The original purpose of use for Reservoirs 2, 3 and 4 was industrial. The purpose of use for these three reservoirs was changed to fire protection on October 27, 2000. Water will be diverted from January 1 to March 31 from two Unnamed Streams tributary to Butano Creek.
2. On December 8, 2000, the Division issued a public notice of Application 30895. Four protests were received from The Committee for Green Foothills, Robert Zatkan, National Marine Fisheries Service (NMFS) and Department of Fish and Game (DFG). All protests were based on potential impacts to several sensitive species.
3. On November 19, 2001, the Applicant met with The Committee for Green Foothills, Robert Zatkan, and NMFS. The outcome of this meeting is summarized in the Applicant's December 19, 2001 letter. The three parties agreed to dismiss their protests subject to the following terms: fish and wildlife enhancement is added as a purpose of use, and permit term 40, which prohibits further development of the ponds for consumptive use, is included in any permit issued pursuant to this application.
4. On April 17, 2002, the Division dismissed the protests from the Committee for Green Foothills, Robert Zatkan, and NMFS, based on the conditions listed above.
5. On July 27, 2006, Applicant submitted an Enhancement Plan for California Red-Legged Frog (*Rana draytonii*), Western Pond Turtle (*Actinemys marmorata*), and San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*) to the Division. The plan had been

- requested by DFG. The Division subsequently prepared a Compliance Plan which includes permit conditions for management of bullfrogs and non-native plant species. The Applicant and the DFG approved the plan. On August 30, 2010, the Division advised DFG that it appeared that the protest had been addressed and unless we were advised to the contrary the protest would be considered abandoned. DFG did not respond within the time period provided and did not identify any unresolved protest issues. Therefore, the protest is dismissed.
6. The State Water Board has determined that there is unappropriated water available to serve Application 30895. On April 14, 2008, Applicant submitted a Water Availability Analysis (WAA). On March 18, 2010, Division staff approved a revised version of the WAA.
 7. The water will be diverted and used without injury to any lawful user of water.
 8. To resolve the protests, Applicant agreed to add fish and wildlife enhancement as a purpose of use. The Division may correct the omission of an incidental use of a reservoir which consumes a minimal quantity of water at any time such omissions are discovered. (tit. 23, CCR § 798.)
 9. Applicant requests the right to divert 41.8 af per annum for the following beneficial uses: other (sediment control), fire protection, and fish and wildlife enhancement. Although Reservoir 1 may serve as a holding facility for sediment, water will not be released from the reservoir or otherwise put to beneficial use for the purpose of sediment control. Consequently, the Division is not authorizing this purpose of use. The remaining intended uses are beneficial.
 10. Environmental review began on June 7, 1999. All project facilities were in place in 1967. Approval of this project will not result in construction or expansion in the facilities or water use beyond that existing on the date environmental review began. Pursuant to the provisions of the California Environmental Quality Act (CEQA), the Applicant, as Lead Agency, issued a Notice of Exemption on December 1, 2000 based on a Class 1 Existing Facilities exemption, pursuant to California Code of Regulations, Title 14 section 15301. The Division will issue an NOE within 5 days of the date of this order.
 11. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Ca.3d 419 [189 Cal.Rptr. 346].) There is no evidence in the record that would indicate, as conditioned, approval of the application will have any adverse impacts on public trust resources.
 12. The authority to issue this permit 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 30895, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
Su Barbara Evoy
Deputy Director for Water Rights

Dated: MAR 04 2011
Attachment: Permit 21273

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21273

Application 30895 of

County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063-1665

filed on **June 7, 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:

Two Unnamed Streams

Tributary to:

Butano Creek thence

Pescadero Creek thence

Pacific Ocean

within the County of **San Mateo**

2. Location of points 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
1) North 1,917,125 feet and East 6,009,148 feet	SW ¼ of SE ¼	9	8S	5W	MD
2) North 1,918,998 feet and East 6,007,250 feet	NW ¼ of SW ¼	9	8S	5W	MD
3) North 1,919,185 feet and East 6,007,197 feet	NW ¼ of SW ¼	9	8S	5W	MD
4) North 1,919,413 feet and East 6,007,071 feet	NW ¼ of SW ¼	9	8S	5W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Fish and Wildlife Enhancement	<u>Reservoirs 1 to 4</u> SW ¼ of SE ¼ and NW ¼ of SW ¼	9	8S	5W	MD	
Fire Protection	<u>Reservoirs 1 to 4</u> SW ¼ of SE ¼ and NW ¼ of SW ¼	9	8S	5W	MD	

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **41.8 acre-feet per annum** to be collected from January 1 of each year to March 31 as follows: **20 acre-feet per annum** in Reservoir 1, **4.6 acre-feet per annum** in Reservoir 2, **1.2 acre-feet per annum** in Reservoir 3 and **16 acre-feet per annum** in Reservoir 4. (000005D)
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 reservoirs covered under this permit shall not exceed 41.8 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. After the initial filling of the storage reservoirs, permittee's right under this permit extends only to water necessary to keep the reservoirs full by replacing water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season. (0000040)
10. The two storage reservoirs with capacities greater than 10 acre-feet authorized under this permit are subject to the continuing authority of the State Water Board to reduce the amount of water named in the permit upon a finding by the State Water Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the State Water Board without prior notice to the permittee and an opportunity for hearing. (0000042)
11. Permittee, when required by the State Water Board, shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Deputy Director for Water Rights for approval within six months of the date upon which the State Water Board issues notice that an outlet is required. Permittee shall furnish evidence which substantiates that the outlet pipe or alternative facility has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050044)

12. For the protection of habitat for the California red-legged frog (*Rana aurora draytoni*) and the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and to allow for the growth of riparian vegetation in Reservoir 1, Permittee shall:
- establish and maintain, undisturbed, a 100 foot wide strip of natural upland vegetation around the water storage reservoir;
 - obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the Department of Fish and Game prior to any reservoir dredging operations;
 - refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations; and,
 - restrict cattle and domestic stock access to the reservoir to a maximum of 10 percent of the shoreline or construct outlet pipes to watering troughs.
- These requirements shall remain in effect as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 30895. (0000205)
13. For the protection of the California red-legged frog in Reservoir 1, the following conditions shall apply to activities authorized under any permit or license issued pursuant to Application 30895:
- A bullfrog survey shall be conducted by a qualified biologist every three years;
 - If bullfrogs are detected, Permittee shall drain the reservoir 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 eliminate any mature bullfrogs found inhabiting Reservoir 1;
 - Permittee shall document efforts to monitor and control bullfrog populations. A qualified biologist acceptable to the Deputy Director for Water Rights shall implement the bullfrog survey and report survey results. If bullfrogs are detected, Permittee shall record the date that the drainage of Reservoir 1 was initiated and completed and provide photographs verifying their drained condition. These reports 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; and,
 - 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 Game to the Deputy Director for Water Rights. (0600300)
14. To control invasive plant species, the following conditions shall apply to activities authorized under any permit or license issued pursuant to Application 30895:
- If conditions allow, Permittee shall apply herbicide and/or mow annually or as necessary to control invasive species around the perimeter of the gravel area above the quarry and along existing dirt and gravel roads;
 - Herbicide shall not be applied within 100 feet of ponds or along the dirt road adjacent to Reservoir 1;
 - As necessary, Permittee shall manually remove Pampas grass (*Cortaderia* sp.) not controlled by herbicide application or mowing;
 - For the protection of the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), areas to be mowed that are less than 100 feet from Reservoir 1 shall be manually inspected for snakes. If any snakes are observed, mowing activities within the 100-foot barrier shall cease immediately and Pampas grass will be removed manually from that area; and

- e. Permittee shall maintain records of the date and location of herbicide application, mowing, and manual removal activities. These records 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.

(0400300)

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 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 stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

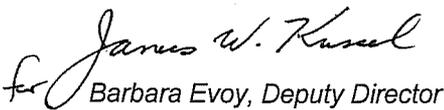
This permit is issued and permittee takes it subject to the following provisions of the California Water Code:

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 therefor 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, county and 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


for Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 04 2011