

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31461

Josh and Tammy Salans

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream tributary to West Canal thence Unnamed Stream (aka Ross Creek)
thence Powerhouse Canal thence East Fork Russian River

COUNTY: Mendocino

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

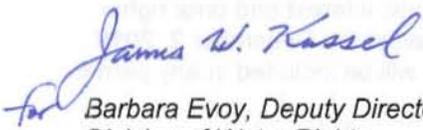
WHEREAS:

1. Application 31461 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on September 30, 2003 by Josh and Tammy Salans (Applicants). As originally filed, the Applicants requested the right to divert 55 acre-feet per annum (AFA) of water to storage in an existing onstream reservoir from an Unnamed Stream tributary to West Canal thence an Unnamed Stream (aka Ross Creek) thence Powerhouse Canal thence East Fork Russian River. Application 31461 proposes a season of diversion to storage from October 1 of each year to May 31 of the succeeding year. Diverted water is proposed to be used for the purpose of irrigation, recreation, and fish and wildlife preservation and enhancement.
2. The application was noticed on November 27, 2007. On December 18, 2007, Sonoma County Water Agency (SCWA) filed a protest on the basis of injury to the public interest and prior rights. The Applicants and SCWA agreed to protest dismissal terms identified in the December 2, 2010 email with the understanding that the terms, substantially as written, will be included in any permit issued pursuant to Application 31461.
3. On November 10, 2009, the Applicants requested the storage amount be reduced from 55 AFA to 36.9 AFA, and the place of use be reduced from 15 acres to 1.4 acres (existing).
4. On October 7, 2010, the Applicants contacted Division staff to request a withdrawal from storage limit of 2.8 acre-feet annually for irrigation.
5. The Applicant's consultant prepared a Water Availability Analysis (WAA) for Application 31461 on April 26, 2010. The analysis concluded that there is sufficient water available for appropriation under Application 31461.
6. The water will be diverted and used without injury to any lawful user of water. The April 26, 2010 WAA demonstrates that water is available to serve this application without injury to prior rights.

7. 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 October 6, 2010, Division staff recommends inclusion of mitigation measures for aquatic special status species and riparian habitat that may be impacted by the project. These mitigation measures shall be incorporated in the permit to minimize or avoid impacts to instream beneficial uses.
8. The proposed use is beneficial. As conditioned, the Applicants request a right to divert 36.9 AFA to storage and to withdraw and use 2.8 AFA for irrigation.
9. Approval of Application 31461 will not result in any physical changes to the environment relative to the California Environmental Quality Act (CEQA) baseline conditions because all project features associated with the application existed in their current configuration prior to the date the Division began its environmental review under CEQA (September 30, 2003). According to the Applicants, a portion of the existing place of use will be re-planted. Thus, the project involves negligible or no expansion of an existing use. Pursuant to California Code of Regulations, title 14, sections 15301 and 15304, this class of project has been determined not to have a significant effect on the environment. Accordingly, the project is categorically exempt from the requirement for the preparation of environmental documents.
10. 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.
11. The authority to issue this permit has been delegated to the Deputy Director for Water Rights pursuant to State Water Resources Control Board Resolution No. 2007-0057, section 4.2.14.

NOW, THEREFORE, IT IS ORDERED THAT a permit is issued for Application 31461, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD


Barbara Evoy, Deputy Director
Division of Water Rights

Dated: **MAY 12 2011**

Attachment: Permit 21282

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21282

Application **31461** of **Josh and Tammy Salans**
752 S. Mary Avenue
Sunnyvale, CA 94087

filed on **September 30, 2003**, 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:
Unnamed Stream

Tributary to:
West Canal

Unnamed Stream aka Ross Creek

Powerhouse Canal

East Fork Russian River

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
North 2,258,581 feet and East 6,239,591 feet	SW ¼ of NE ¼	1	17N	12W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	SW ¼ of NE ¼	1	17N	12W	MD	1.2
	NW ¼ of SE ¼	1	17N	12W	MD	0.2
					Total	1.4
At Reservoir						
Recreation	SW ¼ of NE ¼	1	17N	12W	MD	
Fish and Wildlife Preservation and Enhancement	SE ¼ of NW ¼	1	17N	12W	MD	

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **36.9** acre-feet per annum to be collected from **October 1** of each year to **May 31** of the succeeding year. The total withdrawal for beneficial use from storage shall not exceed **2.8** acre-feet per annum. (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 36.9 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, 2021**. (000009)
9. Before collecting water to storage under this permit, 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 October 1 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.

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)
10. No water shall be diverted under this permit until Permittee installs and maintains an in-line flow meter satisfactory to the Deputy Director for Water Rights that is capable of measuring the cumulative amount of water withdrawn for beneficial use from the reservoir. Permittee shall maintain a record of the end-of-the-month meter and gage readings, and daily irrigation logs that include records of date and amount of water used, and submit them with annual progress reports, or whenever requested by Sonoma County Water Agency or by the Deputy Director for Water Rights. (0100900)

11. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Resources Control Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

12. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Resources Control Board, made after notice to interested parties and opportunity for hearing.

(0000090A)

13. Permittee shall provide means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir (outside the season of diversion) which is not authorized for appropriation under this permit can be released. Before diverting water under this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the terms specified in this permit. The Compliance Plan shall include the following:

- a. A description of the physical facilities (i.e., pumps, outlet pipes, siphons, pipelines, bypass ditches, splitter boxes, etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow or release unauthorized storage water;
- b. A description of the gages and monitoring devices that will be installed or have been installed to measure streamflow and/or reservoir storage capacity, including any necessary calibration;
- c. A time schedule for the installation and rating of these facilities;
- d. A description of the frequency of data collection and the methods for recording unauthorized storage water and storage levels;
- e. An operation and maintenance plan that will be used to maintain all facilities in good condition; and
- f. A description of the events that will trigger recalibration of the monitoring devices and the process that will be used to recalibrate.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan and installing and maintaining all physical facilities and monitoring facilities described in the Compliance Plan.

Permittee shall furnish evidence which substantiates that the facilities have been installed. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Deputy Director for Water Rights within 15 days upon request by the State Water Resources Control Board, the Deputy Director for Water Rights, or other authorized designees of the State Water Resources Control Board.

(0000070a)

14. Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or be placed where it may be washed by rainfall runoff into the waters of the State.

(0000208)

15. The Permittee shall obtain all necessary federal (including United States Army Corps of Engineers Section 404), state, and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights. (0000203M)
16. To allow for the continued growth of wetland vegetation and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall:
- a. 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 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; and
 - d. Make no introduction of non-native fish species into the reservoir.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 31461. (0400500A)

17. Based on the information in the Division of Water Right's 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)
18. 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 the 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.

- E. 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)

- F. 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)

- G. 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)

H. Permittee shall maintain records of the amount of water diverted and used to enable State Water Resources Control Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

I. 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 California 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 California Department of Fish and Game.

(0000063)

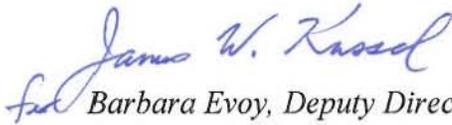
This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

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


Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAY 12 2011