

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

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

APPLICATION 31379

PERMIT 21290

Permittee: Okizu Foundation  
16 Digital Drive  
Novato, CA 94949

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2012-0029).

Additionally, the State Water Board has complied with its 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 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Therefore, **Application 31379** filed on **December 17, 2002** has been approved by the 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. Sources of water

Source: <u>(1) Berry Creek</u> <hr/> <u>(2), (3), (4) 3 Unnamed Streams</u> <hr/>	Tributary to: <u>North Fork Feather River thence</u> <hr/> <u>Feather River</u> <hr/> <u>Berry Creek thence</u> <hr/> <u>Feather River</u> <hr/>
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within the County of **Butte**.

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey	Section	Township	Range	Base and Meridian
<u>Diversion to Offstream Storage:</u>					
<b>To Lower Pond:</b> <b>(1) North 2,364,485 feet and East 6,740,471 feet</b>	<b>NW¼ of NE¼</b>	<b>25</b>	<b>21N</b>	<b>5E</b>	<b>MD</b>

<b>To Upper Pond:</b> (2) North 2,366,755 feet and East 6,744,540 feet	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	19	21N	6E	MD
<b>To Bell Lake:</b> (3) North 2,365,372 feet and East 6,740,818 feet	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	25	21N	5E	
<u>Diversion to Storage:</u>					
<b>Bell Lake:</b> (4) North 2,364,599 feet and East 6,739,507 feet	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	25	21N	5E	MD

Location of point of redirection

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey	Section	Township	Range	Base and Meridian
<b>Bell Lake:</b> North 2,364,599 feet and East 6,739,507 feet	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	25	21N	5E	MD

Location of places of storage

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>Lower Pond</b> North 2,362,163 feet and East 6,740,163 feet	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	25	21N	5E	MD
<b>Upper Pond</b> North 2,363,738 feet and East 6,742,121 feet	SE $\frac{1}{4}$ of NE $\frac{1}{4}$				
<b>Bell Lake</b> North 2,364,599 feet and East 6,739,507 feet	NE $\frac{1}{4}$ of NW $\frac{1}{4}$				

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Recreational</b>	<b>At Reservoirs Lower Pond, Upper Pond, and Bell Lake</b>					
<b>Irrigation</b>	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	25	21N	5E	MD	1
	NE $\frac{1}{4}$ of NW $\frac{1}{4}$					4
	SW $\frac{1}{4}$ of NW $\frac{1}{4}$					1
	SE $\frac{1}{4}$ of NW $\frac{1}{4}$					19

<b>Irrigation</b>	<b>NE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>25</b>	<b>21N</b>	<b>5E</b>	<b>MD</b>	<b>13</b>
	<b>NW<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub></b>					<b>3</b>
	<b>SW<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub></b>					<b>35</b>
	<b>SE<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub></b>					<b>1</b>
	<b>NW<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub></b>					<b>12</b>
					<b>Total</b>	<b>89</b>

The place of use is shown on map on file 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 **40 acre-feet per year** by storage to be collected from October 1 of each year to May 31 of the succeeding year as follows: **7 acre-feet per year** in Lower Pond, **9 acre-feet per year** in Upper Pond, and **24 acre-feet per year** in Bell Lake. (000005D)
6. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)
7. The maximum rate of diversion to offstream storage shall not exceed: **0.2 cubic foot per second** from point of diversion 1; **0.06 cubic foot per second** from point of diversion 2; and **0.03 cubic foot per second** from point of diversion 3. (000005J)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2027. (0000009)
9. If the claimed existing prior right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the total quantity of water diverted and/or collected to storage, the rate of diversion, and the amount beneficially used under this permit shall be reduced by the net of the face value specified in this permit less the respective amounts recognized under the quantified existing prior right during the season specified in this permit. No water shall be diverted to the place of use during the season authorized by this permit, whenever the amounts diverted can be covered by the quantified existing prior right.  
  
 Permittee shall forfeit the permit if he/she transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Board.  
  
 Permittee shall divert water under the claimed existing right only in accordance with the law. (0000021A)
10. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)

11. This permit is 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 owner and an opportunity for hearing.

(0000042)

12. Permittee, when required by the State Water Board, shall install and maintain an outlet pipe of adequate capacity in the dam for Bell Lake 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)

13. No water shall be diverted to offstream storage under this permit unless Permittee is monitoring and reporting said diversion of water. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of monitoring the rate and quantity of water diverted and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the devices are functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of all diversions under this right that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

14. No water shall be diverted under this permit unless Permittee is monitoring and reporting water levels in Bell Lake. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring water surface levels from the maximum high water line to the minimum water line known to exist for the reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed and the reading corresponding to the high water line of the reservoir with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of reservoir levels on or about the 1<sup>st</sup> of each month and the dates these levels were reached. If water is used for frost protection or other authorized refill, Permittee shall also maintain a record of water surface levels before withdrawal for frost protection and after each reservoir refill. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water

held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

(0100047)

15. 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 Sacramento River Basin 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 Board, made after notice to interested parties and opportunity for hearing.

(0000090)

16. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, prior to commencement of construction of any new water diversion, conveyance or storage facility named in this permit that does not exist as of the date of this permit, Permittee shall file a report pursuant to Water Code section 13260 and shall comply with all waste discharge requirements imposed by the Regional Water Quality Control Board, Central Valley Region, or by the State Water Board.

(0000100)

17. No dredging of reservoirs covered under this permit until Permittee has filed a report of waste discharge with the Regional Water Quality Control Board, Central Valley Region, pursuant to Water Code section 13260, and the Regional Water Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Water Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Water Board or the State Water Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

(1) the Regional Water Board issues a waiver pursuant to Section 13269, or

(2) the Regional Water Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

18. No water shall be diverted under this permit, and no construction, including dredging, related to such diversion shall commence, unless Permittee obtains all necessary permits or other approvals required by other agencies. Permittee shall transmit copies of all permits or other approvals to the Division of Water Rights.

(0000203)

19. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and 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)

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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 the 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 which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 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 water shall be diverted under this permit, and no construction related to such diversion shall commence, until Permittee obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized development schedule, until Permittee complies with the requirements of this term.

Within 90 days of the issuance of this permit or any subsequent amendment, Permittee shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, Permittee shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Game (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002.); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344.); or, (5) local grading permits.

Permittee shall, within 30 days of issuance of all permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

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***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 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, 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:  
JAMES W. KASSEL FOR

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: MAR 18 2013