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

**DIVISION OF WATER RIGHTS**

# PERMIT FOR DIVERSION AND USE OF WATER

## PERMIT 21296

**OF:** William Spear
174 S Franklin Street, #201
Juneau, AK 99801

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.

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 Audobon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].)

Therefore, **Application 30059** filed on **February 3, 1992** 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. Source of water

| Source: | Tributary to: |
|---|---|
| **Unnamed Stream** | **Tularcitos Creek thence** |
| | **Carmel River thence** |
| | **Pacific Ocean** |

within the County of **Monterey.**

2. Location of points of diversion

| Points of Diversion to Offstream Storage By California Coordinate System of 1983-Zone 4 | 40-acre subdivision of public land survey or projection thereof | Section (Projected) | Township | Range | Base and Meridian |
|---|---|---|---|---|---|
| **North 2,053,762 feet and East 5,777,943 feet** | **SW¼ of NE¼** | **20** | **17S** | **3E** | **MD** |

| 3. Purposes of use | 4. Place of use | Section (Projected) | Township | Range | Base and Meridian | Acres |
|---|---|---|---|---|---|---|
| **Domestic** | **SE¼ of NW¼** | **20** | **17S** | **3E** | **MD** | |
| **Irrigation** | **SE¼ of NW¼** | **20** | **17S** | **3E** | **MD** | **7** |
| **Fire Protection** | **SW ¼ of NE ¼** | **20** | **17S** | **3E** | **MD** | |
| **Recreational** | **SE ¼ of NW ¼** | **20** | **17S** | **3E** | **MD** | |

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

Acronyms used in this permit: Monterey Peninsula Water Management District – MPWMD
National Marine Fisheries Service – NMFS
Department of Fish and Game - DFG

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **8.0** acre-feet per annum to be collected from **January 1** of each year to **April 30 of** the succeeding year.

(0000005C)

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.

(0000005I)

7. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2021.

(0000009)

8. During the season specified in this permit, the total quantity and rate of water diverted and used under this permit and under permittee's claimed existing right for the place of use specified in this permit, shall not exceed the quantity and rate of diversion and use specified in this permit. To the extent that the permittee claims riparian, overlying, pre-1914 appropriative or other rights to use the water covered by this permit, the permittee shall not be entitled to water in excess of the amount authorized in this permit. Any priority obtained for a permit by virtue of condition 10 of Decision 1632 shall be void if the permittee and/or others divert more water under the permit and claimed underlying rights than is authorized on the face of the permit; however, the priority shall not be voided for the diversion of deminimis amounts which can reasonably be attributed to operational uncertainties.

Permittee shall forfeit all rights under this permit if permittee 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 take and use water under the existing right claimed by permittee only in accordance with the law.

(0000021)

9. Permittees shall install and maintain devices satisfactory to the State Water Board to measure the cumulative quantity of water diverted under this permit. A record of such measurements shall be maintained by the permittee, and made available to interested parties upon reasonable request. A copy of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee". Permittee shall allow the State Water Board, or a designated representative, reasonable access to the measuring devices for the purpose of verifying measurement readings.

(00608000) (0090800)

10. For the protection of fisheries, wildlife, and other instream uses in the Carmel River, diversions under this permit shall be subject to maintenance of minimum mean daily instream flows as specified in Table A, Minimum Mean Daily Instream Flow Requirements. No water shall be diverted under this permit if the instream flows would be reduced by such diversion below the minimum mean daily flows specified in Table A. To ensure compliance with these conditions, by September 30 of each year, Permittees shall file a report with the Deputy Director for Water Rights, DFG, the District Engineer at MPWMD, and NMFS containing the following information:

a. Dates during the previous diversion season when water was diverted under this permit; and

b. Mean daily flows recorded at Carmel River at Highway 1 Bridge gage.

| **TABLE A** | |
|---|---|
| **MINIMUM MEAN DAILY INSTREAM FLOW REQUIREMENTS** | |
| **December 1-April 15** | **April 16-May 31** |
| **Prior to Carmel River lagoon opening to the ocean[1]:**<br>May divert with minimum bypass of **40 cfs** at the Carmel River at Highway 1 Bridge gage[2].<br><br>**Following Carmel River lagoon opening to the ocean:**<br>May divert with minimum bypass of **120 cfs** at the Carmel River at Highway 1 Bridge gage. | May divert with minimum bypass of **80 cfs** at the Carmel River at Highway 1 Bridge gage. |

[1] On December 1, if water in the lagoon is flowing to the ocean, the lagoon shall be deemed to be open to the ocean. If on December 1 water in the lagoon is not flowing to the ocean, the lagoon shall be deemed to be open to the ocean when the lagoon level drops rapidly from a stable elevation to a lower elevation as evidenced by the water surface elevation gage located at the Carmel Area Wastewater District effluent pipeline across the south arm of the lagoon. This elevation gage is operated by MPWMD.

[2] MPWMD operates a stream gage at Highway 1 and reports flows at this location on its website. Reported flows are not provided on a real-time basis and reported flows are subject to revision due to frequent changes in the riverbed at this location. In addition, updates of flow information at this location are carried out when the MPWMD has sufficient staff and resources and it should be noted that the MPWMD is under no obligation to provide this information on its website.

(0400500)

11. Upon forty-eight (48) hours advance notice by DFG, permittee shall minimize or cease, if required, collecting water to storage for a single period not to exceed forty-eight (48) hours in any thirty (30) day period in order to assist DFG to mitigate adverse flow conditions to benefit public trust fish and wildlife resources of the Carmel River.

(0000024)
(0400500)

12. 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)

**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 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 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

James W. Kassel
for *Barbara Evoy, Deputy Director*
*Division of Water Rights*

Date: MAY 24 2012