

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31360
Rodney Carley

**ORDER APPROVING MITIGATION, MONITORING AND
REPORTING PLAN AND ISSUANCE OF PERMIT**

SOURCE: Unnamed Stream tributary to Turner Creek thence Mill Creek thence Middle Fork Eel River thence Eel River

COUNTY: Mendocino

WHEREAS:

1. Application 31360 was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on July 19, 2002.
2. Application 31360 requests to divert 19 acre-feet (af) per annum storage in an existing 19 af reservoir for domestic, irrigation, and fire protection uses. Water will be collected from January 1 to April 1 of each year. The reservoir currently impounds 10 af of water as authorized under Small Domestic Use Registration Certificate R603 (Application D031221R). Application 31360 seeks to authorize an additional 9 af of water, for a total of 19 af.
3. The Division issued a public notice of Application 31360 on December 20, 2002. The California Department of Fish and Game (DFG) filed a protest on the basis of potential impact to the environment on January 21, 2003.
4. The State Water Board determined that there is unappropriated water available to serve Application 31360. The consulting firm, Natural Resources Management Corporation, submitted a revised water availability analysis on November 9, 2004, documenting the availability of water. Division staff conditionally accepted the water availability analysis in a letter dated December 1, 2004.
5. The water will be diverted and used without injury to any lawful user of water. The water availability analysis 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. National Marine Fisheries Service and DFG developed *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. The Draft

Guidelines are recommended for use by permitting agencies, planning agencies and water resources development interests when evaluating proposals to divert and use water from northern California coastal streams. The Draft Guidelines apply to projects located in the geographic area of Sonoma, Napa, Mendocino, and Marin Counties, and portions of Humboldt County. The Draft Guidelines recommend that terms and conditions be included in new water right permits for small diversions to protect fishery resources in the absence of site-specific biologic and hydrologic assessments.

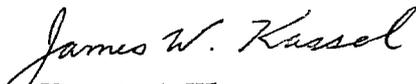
The project covered by Application 31360 is located outside of the geographic scope of the Draft Guidelines. Nonetheless, the physiographic conditions in the vicinity of the project are similar to those in the area covered by the Draft Guidelines. Therefore, the Draft Guidelines are evidence of the measures necessary to protect fishery resources in the project area, and approval of Application 31360 is consistent with the recommendations in the Draft Guidelines. All protests to approval of the application on the basis of potential impact to the environment and public trust have been cancelled pursuant to Water Code section 1335(d).

7. The Division prepared an Initial Study (IS) for this project pursuant to the California Environmental Quality Act (CEQA) (California Code of Regulations (CCR), tit. 14, § 15063.) The IS identified potentially significant impacts to biological resources, cultural resources, hydrology and water quality, and utilities and service systems. The Division proposed the following mitigation measures to mitigate for the potential environmental impacts that could occur from issuance of this permit, and Permittee agreed to incorporate these measures into the permit:
 - a. limitations on the timing and magnitude of diversion;
 - b. streamflow bypass for the protection of aquatic life;
 - c. measures to prevent deterioration of water quality; and
 - d. cultural resource contingency actions in the event that sensitive resources are unearthed during project construction or operation.
8. On November 3, 2008 the Division circulated the IS, a Notice of Proposed Mitigated Negative Declaration (MND), and the MND (SCH No. 2008112002) pursuant to the CCR, Title 14, § 15072 and § 15073.
9. The MND determined that the proposed project will have a less than significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the IS. The potential adverse impacts of the project were found to be less than significant with the inclusion of mitigation measures specified as permit terms.
10. The Division prepared a Mitigation, Monitoring and Reporting Plan (MMRP) in accordance with CEQA (Public Resources Code (PRC) § 21081.6). The MMRP lists mitigation measures recommended in the IS/MND for the proposed project and specifies implementation and monitoring responsibilities. Pursuant to PRC § 21081.6(b), each of the mitigation measures identified in the MMRP will be included as enforceable permit terms in any permit authorizing construction, diversion, or use of water pursuant to Application 31360.
11. The MND reflects the State Water Board's independent judgment and analysis. No substantive comments identifying new or unmitigated environmental impacts were received during the public review process for the proposed MND. After considering the document, the State Water Board has determined that the proposed project, with mitigation measures, will have a less than

significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the IS. The potential adverse impacts of the project were found to be less than significant and mitigated for with the inclusion of specific permit terms. The documents or other material that constitute the record are located in the files held by the Division. The State Water Board will file a Notice of Determination for this project with the Governor's Office of Planning and Research within five days from the issuance of this order in accordance with the CCR, title 14, Section 15075.

NOW, THEREFORE, IT IS ORDERED THAT the Mitigation, Monitoring and Reporting Plan is adopted, and a permit is issued for Application 31360, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD

for 
Victoria A. Whitney
Deputy Director for Water Rights

Dated:

JUN 29 2009

Attachment: Permit 21236