

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

DIVISION OF WATER RIGHTS

AMENDED PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 27758

PERMIT 20295

Permittee: Anderson Vineyards, Inc.
PO Box 67
Philo, CA 95466

The Deputy Director for Water Rights finds that: (a) the change will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; (c) the petition does not constitute the initiation of a new right; (d) the State Water Resources Control Board (State Water Board) has made the required findings pursuant to the California Environmental Quality Act (CEQA) or the project is exempt from CEQA; and, (e) the requirements of the Policy for Maintaining Instream Flows in Northern California Coastal Streams have been met.

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.)

The amended permit is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057.) Therefore, an amended permit on **Application 27758** filed on **May 25, 1983** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: Unnamed Stream	Tributary to: Mill Creek thence Navarro River
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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 2,171,895 feet and East 6,134,508 feet	NE¼ of SW¼	34	15N	15W	MD

Location of place 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
North 2,171,450 feet and East 6,135,939 feet	NE ¼ of SW ¼	34	15N	15W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NE ¼ of SW ¼	34	15N	15W	MD	14
Frost Protection	SE ¼ of SW ¼	34	15N	15W	MD	26
Heat Control	NW ¼ of SE ¼	34	15N	15W	MD	22
	NE ¼ of SE ¼	34	15N	15W	MD	24
	SW ¼ of SE ¼	34	15N	15W	MD	38
	SE ¼ of SE ¼	34	15N	15W	MD	36
	SE ¼ of NE ¼	34	15N	15W	MD	10
	NW ¼ of SW ¼	35	15N	15W	MD	27
	NE ¼ of SW ¼	35	15N	15W	MD	9
	NW ¼ of NE ¼	3	14N	15W	MD	22
	NE ¼ of NE ¼	3	14N	15W	MD	18
					Total	246

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 75 acre-feet per annum to be collected from November 1 of each year to June 1 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. The maximum rate of diversion to off-stream storage shall not exceed 1 cubic feet per second. (0000005J)
8. Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2010. (0000009)
9. The State Water Board reserves jurisdiction to impose conditions to conform this permit to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing. (00000020)
10. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (00000022)

11. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the rate and quantity of water diverted into the reservoir from the unnamed stream. (00600046)
12. Permittee shall install and properly maintain staff gages in the reservoirs, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoirs. Permittee shall record the staff gage readings on or about the last day of each month. Such readings shall be supplied to the State Water Board with the next progress report submitted to the State Water Board by Permittee. The State Water Board may require release of water that cannot be verified as having been collected under a valid basis of right. (0100047)
13. For the protection of fish and wildlife, Permittee shall during the period from November 1 through June 1 bypass a minimum of 0.04 cubic feet per second. The total stream flow shall be bypassed whenever it is less than the designated amount. (01400060)
14. Permittee shall install a device, satisfactory to the State Water Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained. (00600062)
15. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
 - a) A description of the physical facilities (i.e., 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;
 - 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 bypass flows 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.

Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan. The monitoring data shall be maintained by the Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request. Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

16. For the protection of riparian habitat, Permittee shall maintain the existing setbacks as shown on the Habitat Map, dated June 18, 2010, on file with the Division of Water Rights. The setbacks shall range from a minimum of 25 to 50 feet wide along the intermittent and ephemeral drainages adjacent to the expanded place of use as measured from the top of the bank on both sides of the stream. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of occasional equipment access reasonably necessary for continued operation of the vineyard. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area is allowed. Permittee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this permit.

(0000206)

17. Permittee shall compensate for the loss of 33 mature trees through planting of trees at a replacement ratio of 3:1.

The tree replacement plantings shall be located within or adjacent to the existing mixed evergreen forest as identified in Figure 6 of the Initial Study on file for Application 27758. Trees planted should be contiguous to existing stands to facilitate colonization by birds and arboreal mammals. Proposed replacement trees shall be planted with 35 feet of separation between trunks. Permittee shall provide a map showing the location of each replacement planting within one year of the date of permit issuance and provide updates to the map with subsequent monitoring reports if changes occur.

Replacement tree plantings for the mitigation area shall be obtained from a combination of nursery stock grown on site, direct planting in proposed mitigation area from acorns and seeds collected on site, and/or trees obtained from a local native plant nursery or supplier. Plantings will consist of propagules derived from locally collected stock (native of Mendocino County) having a similar genetic origin to indigenous species on site. Permittee shall provide a written statement within one year of permit issuance disclosing the origin of each of the replacement plantings and updates to the written statement with subsequent monitoring reports if failed plantings are replaced or relocated.

Permittee shall provide photographic evidence to document the tree replacement plantings within one year of the date of permit issuance and update photographs with subsequent reports if failed plantings are replaced or relocated.

Any diversion of water pursuant to this permit is unauthorized if survival of any of the replacement tree species falls below 75%. Permittee shall maintain replacement plantings such that survival rate of each species is not less than the identified thresholds. Survival rate shall be documented and submitted by Permittee annually.

Annual monitoring reports shall be prepared by a biologist or certified arborist whose qualifications are acceptable to the Deputy Director for Water Rights. The initial monitoring report shall be submitted to the Deputy Director for Water Rights within one year of the date of permit issuance.

The initial monitoring report shall include documentation of:

- planting locations (map)
- species of each planting
- size of each tree at planting (height and diameter at breast height if applicable)
- statement identifying the origin of each replacement tree
- photographic evidence documenting planted replacement trees.

Subsequent annual reports shall be submitted annually to the Deputy Director for Water Rights and shall include documentation of:

- size of each tree (height and diameter at breast height if applicable)
- age of each tree
- health status of each tree
- photographic evidence documenting progress of replacement trees
- locations (updated map), initial size measurement (height and diameter and breast height), photographic evidence and statement of origin for new plantings, if necessary to replace failed plantings.

These reports shall be filed annually for a minimum of five years until at least 75% of each species has survived five years. At this time a final report shall be filed that provides written and photographic documentation of the following:

- location of each tree
- size of each tree (height and diameter at breast height)
- age of each tree.

Permittee shall refrain from any activities which may impact the replacement plantings including but not limited to development and timber harvesting in the replanting area.

(0000210A)

18. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes and flaked 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 and the Potter Valley Tribe 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)

19. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e)(1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the Mendocino County Coroner has been notified. If the Coroner determines that the remains are Native American, the Coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.

(0380500)

20. Based on the information contained in the Division of Water Rights (Division) 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 Deputy Director for Water Rights' approval, Permittee may use water under basis of riparian right on valid lands within 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. (0560300B)
21. Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights, that measures the instantaneous rate and the cumulative amount of water diverted from the unnamed stream. This in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall record end-of-the-month meter readings and of the days and amounts of actual diversion. Such readings shall be supplied to the State Water Board with the next progress report submitted to the State Water Board by Permittee. (0100900)

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 candidate 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 state and federal Endangered Species Acts 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

Barbara Evoy
Deputy Director for Water Rights

Dated: