

State Water Resources Control Board

MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21080(c)
Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: Water Right Application 31373 of Flowers Vineyard and Winery

APPLICANT/PETITIONER: Walter and Joan Flowers
c/o Drew Aspegren
Napa Valley Vineyard Engineering
176 Main Street, Suite B
St. Helena, CA 94574

PROJECT LOCATION:

The proposed project associated with Application 31373 of Flowers Vineyard and Winery is located in the town of Cazadero, approximately eight miles northwest of the town of Jenner, in Sonoma County California. The project site consists of approximately 36 acres located within the "Fort Ross, California" U.S. Geological Survey Base and Meridian.

PROJECT DESCRIPTION:

Water Right Application 31373 requests diversion of 13 acre-feet per annum of water to storage, at a rate not to exceed 2.0 cubic feet per second, from December 15 of each year to March 31 of the succeeding year. Water would be diverted via an off-set well from the South Fork Gualala River tributary to the Gualala River thence the Pacific Ocean into two offstream reservoirs. Stored water would be used for irrigation and frost protection of approximately 35 acres of existing vineyard, domestic uses, including landscape irrigation and dust control, at on-site residences and the winery buildings, and incidental fire protection at the winery buildings. The project involves review of potential impacts resulting from changing an existing 8 acre-foot regulatory reservoir into a storage reservoir, construction and operation of an existing unauthorized 5 acre-foot storage capacity reservoir, and installation and operation of approximately 2,300 linear feet of four inch diameter pipeline to connect the 5 acre-foot reservoir with the pipeline between the point of diversion and the 8 acre-foot reservoir. At this time, all components of the project exist.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

**DETERMINATION:**

The State Water Resources Control Board has determined that the above-described project will have a less than significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

**PERMIT CONDITIONS:**

Source: Water is to be appropriated from the South Fork Gualala River tributary to the Gualala River thence the Pacific Ocean.

Point of Diversion: North 1,966,896 feet and East 6,210,105 feet, California Coordinate System 1983, Zone 2. Being within the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of projected Section 7, Township 8N, Range 12W, MDB&M.

Places of Storage (POS): POS 1 (reservoir 1) within NW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of E  $\frac{1}{2}$  of NW  $\frac{1}{4}$  projected Section 7 and SW  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of E  $\frac{1}{2}$  of SW  $\frac{1}{4}$  of projected Section 6; POS 2 (reservoir 2) within S  $\frac{1}{2}$  of SE  $\frac{1}{4}$  of E  $\frac{1}{2}$  of NW  $\frac{1}{4}$  of projected Section 7, T8N, R12W, MDB&M.

Amount and Season: Water appropriated shall not exceed 13 acre-feet per annum to be collected to storage between December 15 of each year to March 31 of the succeeding year.

Total Annual Use: Not to exceed 13 acre-feet per annum.

Purpose of Use: Irrigation, Frost Protection, Domestic, Incidental Fire Protection

Place of Use: Includes all of the following, located in Sonoma County:

Use Within	Section	Township	Range	B & M	Acres	Cultivated
NE $\frac{1}{4}$ of NW $\frac{1}{4}$	7	8N	12W	MD	18	Yes
SE $\frac{1}{4}$ of NW $\frac{1}{4}$	7	8N	12W	MD	18	Yes
<b>Total:</b>					<b>36</b>	

**PERMIT/LICENSE TERMS:**

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Resources Control Board.

1. The maximum rate of diversion to offstream storage shall not exceed 2 cubic feet per second.
2. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 13 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year as follows: 8 acre-feet per annum in Reservoir 1 and 5 acre-feet per annum in Reservoir 2.

3. 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 Resources Control Board may require release of water that cannot be verified as having been collected under a valid basis of right.
4. 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 South Fork Gualala River. 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.
5. For the protection of fish and wildlife, and other instream and public trust uses, Permittee shall bypass the total streamflow, at all points of diversion when the flow in the South Fork Gualala River is equal to or less than 461 cubic feet per second, as measured at the United States Geological Survey Stream Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, California.

No diversion shall take place under this permit if the streamflow in South Fork Gualala River is, or would be reduced by the diversion, below the designated rate.

In the event that said gage is no longer available for streamflow measurements, Permittee (or successors-in-interest) is responsible for installing and maintaining an equivalent gage in accordance with a plan, including timelines, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the United States Geological Survey Stream Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, California. A plan must be submitted within 15 days of the existing gage becoming non-operable. In the absence of timely installation of such an equivalent gage, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Permittee (or successors-in-interest) under any permit or license issued pursuant to Application 31373.

6. 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.

- 7. Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
- 8. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, approximately 8 acre-feet per year of riparian water has been used on the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Rights' approval, this information may be updated, and Permittee may use water under basis of riparian 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.
- 9. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.
- 10. 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 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.

11. Permittee shall compensate for the loss of 8 Douglas fir, 5 California bay, and 3 black oak trees through planting of trees at a replacement ratio of 3:1. Total numbers of trees to be replanted are 24 Douglas fir (3x8), 15 California bay (3x5), and 9 black oaks (3x3).

The tree replacement plantings shall be located west of the 5 acre-foot reservoir and within or adjacent to the existing mixed oak forest and annual grassland habitats as identified in Figure 4 of the Initial Study on file for Application 31373. Trees planted should be contiguous to existing stands to facilitate colonization by the Sonoma Tree Vole (*Arborimus pomio*). 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 Sonoma 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% (18 Douglas fir, 12 California bay, and 7 black oaks, respectively). 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.

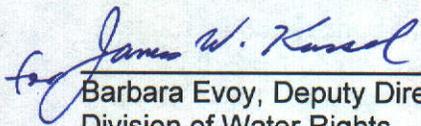
12. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a Lake and Streambed Alteration Agreement between the California Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions 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.
13. The prehistoric resources identified as CA-SON-1792/H and CA-SON-1973 by Analytical Environmental Services in the report titled Cultural Resources Study, Flowers Vineyards Water Right Project (Application 31373) dated August, 2008 and the January 5, 2009 Supplemental Letter Report, Flowers Water Right Project shall be avoided by all ground-disturbing activities that are beyond the historic layer of disturbance (i.e., the plow or disc zone). Routine vineyard maintenance shall be limited to the existing disc zone (~25cm below surface), and not include deep ground disturbance such as ripping, as recommended by the previous site investigator (Jablonowski, 1995). If vines are to be removed for replanting or changing to another crop, then techniques for removal of vines in areas of the sites shall be restricted to using mechanical non-invasive techniques (i.e., pulling the vines with a chain attached to a backhoe, rather than excavation of vines. Vines shall be pulled when the soils are not muddy, but while the soil is moist down to six inches, and vines shall be replanted in the same location as the vines which were removed to avoid excessive disturbance that can be caused using heavy equipment. Any future project-related activities or developments at the locations of either of the above listed sites may be allowed only if an archaeologist that has been approved by the California Historical Information System to work in the area, and that is acceptable to the Deputy Director for Water Rights is retained to determine the significance of the sites. If mitigation is determined to be necessary, then the archeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.

14. 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.
15. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act 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 Sonoma 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.

The Initial Study in support of the Mitigated Negative Declaration is available on the Division of Water Rights website at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ceqa/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ceqa/index.shtml). A hard copy of these documents or additional information concerning this action may be obtained by contacting the staff person indicated below or writing to State Water Resources Control Board, Division of Water Rights, Attn: Matt McCarthy, PO Box 2000, Sacramento, CA 95812-2000.

Contact Person: Matt McCarthy	Telephone: (916) 341-5310 email: <a href="mailto:mmccarthy@waterboards.ca.gov">mmccarthy@waterboards.ca.gov</a>
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APPROVED:



Barbara Evoy, Deputy Director  
Division of Water Rights

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Date