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

**DIVISION OF WATER RIGHTS**

# PERMIT FOR DIVERSION AND USE OF WATER

## PERMIT 21289 ON APPLICATION 31491

Permittee: G. Scott Fahey
2787 Stony Fork Way
Boise, ID 83706

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. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2007-0057.)

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 31491** filed on **January 28, 2004** 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: |
|---|---|
| **2 Unnamed Springs (aka Marco and Polo Spring)** | **an Unnamed Stream thence** |
| | **Hull Creek thence** |
| | **Clavey River** |

within the County of Tuolumne

2. Location of points of diversion

| By California Coordinate System of 1983 in Zone 3 | 40-acre subdivision of public land survey or projection thereof | Section (Projected)* | Township | Range | Base and Meridian |
|---|---|---|---|---|---|
| **(1) North 2,194,527 feet and East 6,679,255 feet** | **NW ¼ of NE ¼** | **22** | **2N** | **17E** | **MD** |
| **(2) North 2,193,583 feet and East 6,679,864 feet** | **NE ¼ of NE ¼** | **22** | **2N** | **17E** | **MD** |

| 3. Purpose of use | 4. Place of use | Section (Projected)* | Township | Range | Base and Meridian | Acres |
|---|---|---|---|---|---|---|
| **Industrial** | **Bottled water plant(s) (off premises)** | **(See Term 10)** | | | | |

Acronyms used in this permit: U.S. Stanislaus National Forest (Forest Service)

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **0.045 cubic foot per second from each spring, with a combined diversion limit of 0.089 cubic foot per second** to be diverted from **January 1** to **December 31** of each year. The maximum amount diverted under this permit shall not exceed **64.5** acre-feet per year.

(0000005A)

6. 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)

7. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

(0000022)

8. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the San Joaquin River Basin. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

9. 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 San Joaquin 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)

10. Prior to diverting water under this permit, permittee shall notify the State Water Board of the name(s) and location(s) of the company(s) that will be bottling the diverted water.

(0280999)

11. No diversion is authorized by this permit under the following conditions: (1) when in order to maintain water quality in the San Joaquin River at Vernalis at a level of 500 parts per million (ppm) Total Dissolved Solids (TDS), the Bureau of Reclamation is releasing stored water from New Melones Reservoir or is curtailing the collection of water to storage, or (2) during any time of low flows when TDS levels at Vernalis exceed 500 ppm. These restrictions shall not apply when, in the judgment of the State Water Board, curtailment of diversion under this permit will not be effective in lowering the TDS at Vernalis, or when in the absence of permittee's diversion, hydraulic continuity would not exist between permittee's point of diversion and Vernalis. The Board shall notify permittee at any time curtailment of diversion is required under this term.

(0000093)

12. Permittee shall minimize fugitive dust generation on all construction access roads and during trenching.

(0400500)

13. Permittee shall ensure that all on site construction equipment is equipped with muffler systems meeting the requirement of the California vehicle code.

(0400500)

14. Immediately prior to construction, a Biologist acceptable to the Deputy Director for Water Rights shall be assigned to flag, with an agreed-upon flagging color/pattern, a 100 foot radius around any active day-roosting habitat for Townsend's big-eared bat (Plecotus townsendii), pallid bat (Antrozous pallidus), and the western red bat (Lasiurus blossevillii). Site disturbance within 100 feet of potential day-roosting habitat shall not occur. The 100-foot radius perimeter shall be flagged with an agreed-upon flagging color/pattern and be off limits for pipeline construction. The flagged day-roosting habitat shall be avoided from March 1 through August 15.

(0400500)

15. Permittee shall not conduct any construction trenching activities within the two spotted owl Protected Activity Centers from March 1 through August 15.

(0400500)

16. Permittee shall construct silt fences within 50 feet of each point of diversion. The silt fence shall begin at a point 25 feet in the upstream direction from the springs' well-heads and shall continue on the level contour for a distance of 50 feet in the downstream direction from the springs' well-heads, bordering the riparian community. The installation shall be adjusted so as to catch all overflows of water or sediment emanating from the well-head.

(0400500)

17. When well-drilling is complete, Permittee shall remove the silt fence fabric along with sediments caught by the fence and dispose of in the County Landfill.

(0400500)

18. Permittee shall cover any soil exposure created by the silt fence removal with natural mulch removed from nearby dry upland forest habitat. So as to create a minimum disturbance, the mulch (leaf-litter/ duff) shall be hand-raked and placed in wheelbarrows for hand-spreading. Seeding of exposed soil shall be by "passive restoration" (allowing native seed to re-vegetate disturbed sites). Mulch cover shall be approximately one foot in depth.

(0400500)

19. Permittee shall complete all erosion and sediment control measures by October 1 of the construction year.

(0400500)

20. For each point of diversion Permittee shall continuously bypass a minimum of 5 gallons per minute. For each point of diversion, the total streamflow shall be bypassed whenever it is less than the designated amount.

(0140400)

21. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring and recording the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained.

(0060062AP)

22. Within six months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass term 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 and record spring bypass.
c) A time schedule for the installation 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.

The 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. Any non-compliance with the terms of the permit shall be reported by the permittee promptly to the Deputy Director for Water Rights.
Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

23. Permittee shall avoid direct impacts to streams and wetland (waters of the United States and waters of the state) through the maintenance of a 50 foot setback from the boundaries of the riparian area. The 50 foot setback area shall be flagged by a qualified biologist acceptable to the Deputy Director for Water Rights prior to the start of construction activities.

(0400500)

24. A qualified biologist, acceptable to the Deputy Director for Water Rights, shall conduct a monitoring inspection in July of each year and shall report the results of the inspection to the Division with the Progress Report by Permittee and shall also report to the Forest Service annually. The inspection shall utilize the same transects on a year-to-year basis to monitor the size and area of the wetland. At a minimum, the number of transects identified in the Biological Survey Report, Riparian Community Monitoring Plan shall be used. The final transect locations shall be selected in cooperation with the Forest Service, and any additional transects required by the Forest Service shall be included in future submittals to the Division. Permittee shall submit a map to the Division showing the final transect locations, after completing consultation with the Forest Service. No diversion is allowed under this permit after July 30 in any year that the monitoring inspection is not conducted, until termination of this condition. Baseline monitoring shall be conducted prior to any diversion under the permit.

If the size and/or area of the wetland along the transect declines below baseline conditions, diversions at the specific spring shall be reduced to 16 gallons per minute (gpm) (20 percent reduction) by August 1. When this occurs, monthly monitoring shall be conducted starting in August and continue until freezing conditions preclude monitoring. If monitoring documents continued decline from baseline conditions, permittee shall reduce diversions in 20 percent increments until monitoring documents no further reduction in baseline conditions. The monthly monitoring (except during freezing conditions) and diversion adjustments shall continue until the biologist determines that the wetland area has returned to baseline conditions.

If permittee documents that baseline conditions have been restored, diversions may be increased to the last known extent that did not cause reduction in size and/or area of the wetland.

Monitoring may be terminated after five consecutive years of no-net change in wetland area. The last documented diversion rate that resulted in no-net change shall become the permanent diversion limit for each spring under the permit.

(0400500)

25. Prior to the start of construction and diversion and use of water, in order to avoid any project related impacts to previously identified cultural resources including sites identified as FS-05-16-51-0015/CA-Tuo and Camp 21 (FS 05-16-51-0200/Ca-Tuo-2335H), Permittee shall obtain the services of a professional archeologist acceptable to the Forest Service and the Deputy Director for Water Rights, to conduct monitoring of the Project. The archaeologist will obtain a permit from the Forest Service Archeologist prior to project related work commencing in the vicinity of the sites. The archeologist shall be present during all ground disturbing activities along the railroad grade to ensure that the wood culverts are protected and the grade is returned to the original condition. Permittee shall be responsible for all costs associated with the cultural resources related work.

(0380500)

26. Permittee shall document compliance with all of the Forest Service Special Use Permit requirements and any issues relating to cultural resources that are identified during consultation with the Forest Service. Within 60 days of completion of construction, Permittee shall provide documentation of compliance with this condition to the Division of Water Rights.

(0380500)

27. To avoid effects to historic features of the WSRR grade, the pipeline ditch and pipeline shall traverse above the culverts, and, if necessary, Permittee shall move the line laterally or horizontally beneath any historic wooden box culverts that are within three feet of the surface of the WSRR grade. After the waterline installation is complete, the trench shall be backfilled and compacted, and the Grade restored to its original appearance.

(0380500)

28. All box culverts along the WSSR grade shall be flagged/staked to ensure none are accidentally affected during construction. Flagging/staking shall be conducted by the on-site Archaeologist. Once staked the Archaeologist shall notify the Forest Service. Relevant historic resource records must be on-site during the flagging process and throughout construction.

(0380500)

29. As the lateral pipeline routes leave the WSRR grade to the Marco Spring and to the Polo Spring, respectively, the lateral alignment shall avoid effects to the cut bank or fill areas of the grade. The suitability of the alignment location shall be verified by the Archaeologist and Forest Service prior to construction.

(0380500)

30. To preserve any archaeological or paleontological resources which may be discovered during trench construction, the finding of unusual fragments or artifacts (obsidian and chert flakes, chipped stone tools, ground stone implements, darkened midden soils and any structural remains) or fossilized/petrified rocks shall be reported to the Forest Service Heritage Resource Manager and the Division and activities shall cease in the findings area. The further implementation of mitigation measures shall be under the direction of the Forest Service Archaeologist, Forest Heritage Resource Manager and the Division.

(0380500)

31. 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 cup; 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 the professional archaeologist shall evaluate the find and recommend appropriate mitigation measure. Proposed mitigation measure shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall to resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director of Water Rights.

(0000215)

32. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e) 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 Stanislaus 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)

33. Permittee shall not interfere with San Francisco's obligations to Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or any implementing agreement between the Districts and San Francisco.

(0240300)

34. Permittee shall provide replacement water to New Don Pedro Reservoir (NDPR) for water diverted under this permit which is adverse to the prior rights of San Francisco and the Districts. A determination of whether permittee's diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made by the latter parties in accordance with water accounting procedures used by said parties.

Permittee shall provide replacement water within one year of notification by San Francisco of potential or actual water supply reduction caused by permittee's diversion. Permittee shall provide replacement water in a manner that will offset the separate reductions in water supplies of San Francisco and the Districts. Replacement water may be provided in advance and credited to future replacement water requirements. Permittee shall not be obligated to provide replacement water for diversions that occur during periods when the Districts and San Francisco's reservoirs are spilling or are being operated in anticipation of spill.

Permittee's obligations to provide replacement water under this letter agreement shall take into consideration permittee's obligations to provide replacement water under the Water Exchange Agreement executed on December 12, 1992 between Permittee and the Districts. The source, amount and location at NDPR of replacement water discharged into NDPR shall be mutually agreed upon by the permittee, the Districts, and San Francisco, and shall be reported to the State Water Board with the annual Progress Report by Permittee.

Permittee shall not provide replacement water from a source that is hydraulically connected to surface water tributary to the Tuolumne River. If permittee replaces water diverted pursuant to this permit with groundwater which it extracts, permittee shall demonstrate that any extracted

groundwater which replaces diverted surface water is water which would not otherwise reach NDPR. Permittee shall demonstrate that there is hydrologic separation between the groundwater extracted and groundwater flow into NDPR; or, alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDPR is not substantial and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface flow to NDPR.

(0240300)

35. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained.

(000000J)

36. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

**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**

John O'Hagan, For

*Barbara Evoy, Deputy Director*
*Division of Water Rights*

**Dated:** AUG 01 2011

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 the acceptance of 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 Rivas, Deputy Director
Division of Water Rights

Dated: AUG 0 1 2008