

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Permit 20395 (Application 26061)

City of Calistoga

ORDER REVOKING WATER RIGHT

SOURCE: Kimball Creek

COUNTY: Napa

WHEREAS:

1. City of Calistoga (Water Right Holder) is the water right holder or authorized agent for the water holder of Water Right Permit 20395.
2. On March 7, 2013, the Water Right Holder requested that the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), revoke Water Right Permit 20395.
3. By signing the voluntary request for revocation, Water Right Holder waived the right to the hearing and notice requirements set forth in Water Code sections 1410 et seq.
4. The State Water Board has delegated the authority to revoke water rights to the Deputy Director of the Division pursuant to Resolution No. 2012-0029. The Deputy Director has redelegated this authority to the Assistant Deputy Directors, Program Managers, and Unit Seniors pursuant to redelegation order dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT WATER RIGHT PERMIT 20395 IS HEREBY REVOKED, AND THE WATER IS DECLARED TO BE SUBJECT TO APPROPRIATION.

This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

It is Water Right Holder's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Water Right Holder is hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this water right permit may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and

Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, Water Right Holder should consult with the Department of Fish and Wildlife and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Water Right Holder must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Water Right Holder shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
AMANDA MONTGOMERY FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 20 2013

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 20395 (Application 26061)

City of Calistoga

**ORDER APPROVING CHANGE IN PLACE OF USE
AND AMENDING THE PERMIT**

SOURCE: Kimball Creek tributary to Napa River

COUNTY: Napa County

WHEREAS:

1. Permit 20395 was issued to the City of Calistoga (Petitioner) on November 27, 1989, pursuant to Application 26061.
2. A petition to change the place of use of Permit 20395 was filed by the Petitioner with the State Water Resources Control Board (State Water Board) on January 15, 2002. The petition stated that, due to an oversight, the service area map previously filed by Petitioner with the State Water Board for Permit 20395 had omitted a portion of the Petitioner's service area located outside of the city limits, which had historically been serving approximately 60 existing customers. The petition requested correction of the place of use map currently on file for Permit 20395. Subsequently, Petitioner filed with the State Water Board a revised place of use map for Permit 20395, dated July 11, 2006. The State Water Board has determined that good cause for such change has been shown.
3. Public notice of the change was issued on May 25, 2002 and protests were filed by the Department of Fish and Game (DFG) and National Marine Fisheries Service (NMFS). The protests were dismissed for failure of DFG and NMFS to timely submit information in support of their protests, as requested by Division letters dated September 17, 2002.
4. The State Water Board has determined that the petition for change in place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Pursuant to Resolution No. 2002-0106, the State Water Board has delegated authority to the Chief of the Division of Water Rights (Division) to administer the duties required under the California Environmental Quality Act (CEQA). (Attachment to Resolution No. 2002-0106, § 2.9.) The Division Chief has redelegated this authority to the Assistant Chief, the Chief of the Permitting Section, and the Chief of the Hearings and Special Projects Section. (Redelegations memo from Edward Anton (June 19, 2003).)
6. The project is exempt from CEQA under California Code of Regulations, title 14, section 15061, subdivision (b). The Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this order.
7. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 20395 IS AMENDED TO READ AS FOLLOWS:

1. The following Endangered Species Act condition shall be added:

This permit does not authorize any act, which results in the taking of a threatened or endangered species, or any act, which 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.

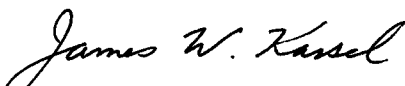
(0000014)

2. Condition 4 of the permit is deleted and replaced with:

Place of Use: Within the service area of the City of Calistoga Municipal Water System, as shown on map dated July 11, 2006, on file with the State Water Board.

3. All other conditions of Permit 20395 are still applicable.

STATE WATER RESOURCES CONTROL BOARD

for 
Victoria A. Whitney, Chief
Division of Water Rights

Dated: **MAR 20 2007**

STATE OF CALIFORNIA
 WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20395

Application 26061 of City of Calistoga
1232 Washington Street, Calistoga, CA 94515

filed on August 10, 1979, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

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

1. Source: Kimball Creek Tributary to: Napa River thence
San Pablo Bay

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	* Section	Town-ship	Range	Base and Meridan
KIMBALL CREEK DAM N45° 26'W 1,079 FEET FROM SW CORNER OF FRACTIONAL SECTION 23	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	23	9N	7W	MD

County of Napa

*Projected

3. Purpose of use:	4. Place of use:	Section	Town-Ship	Range	Base and Meridan	Acre
MUNICIPAL	Within the service area of the City of Calistoga Municipal Water System, as shown on a map on file with the State Water Resources Control Board.					

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.66 cubic feet per second by direct diversion and 718 acre-feet per annum by storage from November 16 of each year to February 29 of the succeeding year. The total amount of water to be taken from the source shall not exceed 857 acre-feet per water year of October 1 to September 30. (0000005)
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. (000005I)
7. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
8. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
9. Construction work shall be completed by December 31, 1995. (0000008)
10. Complete application of the water to the authorized use shall be made by December 31, 2010. (0000009)
11. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)
12. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
13. 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 the State Water Resources Control 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 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 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 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 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)

14. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the 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 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)
15. The equivalent of the continuous direct diversion flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed. (0000027)
16. Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Resources Control Board for approval within one year from the date of this permit or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period. All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein. (000029B)
17. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. (0050043)
18. Enlargement of the storage dam shall not be commenced until the Department of Water Resources has approved the plans and specifications. (0130049)
19. In accordance with the requirements of Water Code Section 1393, permittee shall clear the area covered by the proposed reservoir enlargement of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)
20. For the protection of fish and wildlife, permittee shall during the period: (a) from November 16 through February 29 bypass a minimum of 5.0 cubic feet per second or the total streamflow, whichever is less; (b) from March 1 through November 15 bypass all surface inflow. (0140060)
21. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)
22. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

23. The archeological site identified as 04-Nap-68/04-Nap-176 in the report prepared by Archeological Resource Service shall not be impacted by any developments related to or resulting from the proposed dam enlargement project. Such developments would include access road reconstruction, borrow or slurry deposition areas, or dam relocation and construction. If it is necessary to rebuild the access road, the roadbed shall be built up from the present grade. A qualified archeologist shall monitor modifications of the access road north of the current office building (1987 location) or any activities in the immediate vicinity of the vineyard (within 100 feet of the 1987 fenceline). If any previously unrecorded cultural resources are encountered during project construction or ongoing maintenance activities, work shall be temporarily halted until a qualified archeologist can evaluate the find, and notify the Division of Water Rights and the Office of Historic Preservation.

(0380500)

24. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

(0000100)

25. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, San Francisco Bay Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

- (1) the Regional Board issues a waiver pursuant to Section 13269, or (2) the Regional Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops.

(0290101)

26. The total quantity of water diverted to storage under this permit, together with that diverted to storage under the licenses issued pursuant to Applications 9376 and 15874 shall not exceed 1,123 acre-feet per annum.

(0000114)

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).

Dated: **NOVEMBER 27 1989**

STATE WATER RESOURCES CONTROL BOARD

Walter J. Pettit
Chief, Division of Water Rights