

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application A033065

Klingman Revocable Trust

ORDER ISSUING WATER RIGHT PERMIT

SOURCE: San Gregorio Creek

COUNTY: San Mateo

WHEREAS:

1. On August 1, 2019, the Klingman Revocable Trust (Applicant) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to appropriate water from the San Gregorio Creek stream system in San Mateo County. Water right application A033065 seeks a water right authorizing:
 - a. Diversion of up to 20 acre-feet of water per year (afy), at a rate not to exceed 0.5 cubic foot per second (cfs), to off-stream storage from a single point of diversion;
 - b. A season of diversion from December 15 of each year to March 31 of the succeeding year; and
 - c. Use of the diverted water for irrigation of 25.6 acres of currently cultivated land, as well as stockwatering and fire protection uses at the place of off-stream storage.
2. The Applicant holds an adjudicated water right on San Gregorio Creek as described in the San Gregorio Creek Stream System Decree No. 355792 (Decree) as diversion numbers 204, 205, and 206, which authorizes direct diversion of up to 336,240 gallons of water per day (gpd) from April 1 to November 1 of each year for irrigation of 90 acres, 1,000 gpd annually for domestic use, and 450 gpd annually for stockwatering use. The Applicant's diversions pursuant to the Decree are administered by the San Gregorio Creek Watermaster, and the Applicant reports diversions under this adjudicated right by means of water right statements S028242, S028243, and S028244.

3. On August 19, 2019, the Applicant filed a petition pursuant to Water Code section 1707 with the State Water Board to change the place of use and purpose of use of their adjudicated water right at diversion number 206 (S028244). The petition seeks to add fish and wildlife enhancement and preservation as a purpose of use and seeks to add a portion of San Gregorio Creek as an authorized place of use. The Applicant has asked for the State Water Board to act only on the application in this order to allow the Applicant to divert water during the winter of 2022. Therefore, the petition is described here for informational purposes only, as the application and petition were filed and publicly noticed as a combined project. Any decision made on the petition will be through a separate State Water Board order.
4. The Applicant seeks to use the same diversion and use facilities for the application that are currently authorized under the adjudicated right. Construction activity for the new reservoir was underway when the application and petition were filed and was completed on October 15, 2019.
5. The State Water Board has determined that there is unappropriated water available in San Gregorio Creek to serve the right requested by the application. State Water Board staff reviewed the water availability analysis that was prepared and submitted by the Applicant's agent. Based on the analysis, water is available to serve the right requested by the application without injury to prior rights and in consideration of the amounts of water required for preservation and enhancement of downstream fish and wildlife resources.
6. On June 29, 2021, the State Water Board provided public notice of the application and petition. No protests against the application were received.
7. Water diversions in the San Gregorio Creek watershed have caused a loss in rearing habitat for the Central California Coast Steelhead (*Oncorhynchus mykiss*) due to low streamflow during late summer and early fall. The right requested by the application, when operated in conjunction with the license, will allow the right holder to divert water to storage during higher winter flows from December 15 of each year to March 31 of the succeeding year. The additional storage of water will allow the right holder to reduce the diversion of water as authorized in the adjudicated right. With the petition, right holder seeks to dedicate water that may be diverted pursuant to the adjudicated right but is not needed for irrigation due to the availability of stored water. When available, the dedication of water would be exercised during the critical low-flow months in late summer and early fall to provide water for instream fishery needs.
8. This Order does not remove any authorized uses or reduce the amount of water that may be diverted under the adjudicated right. In addition to continued efforts to pursue the petition on the adjudicated right, the right holder has entered into a long-term forbearance agreement with the San Mateo County Resource Conservation District and Trout Unlimited that will prohibit right holder from

diverting water under the adjudicated rights from August 1 through October 31. Execution of the agreement is not a condition of the approval of the application.

9. Pursuant to California Code of Regulations, title 23, section 731, subdivision (a), a person who claims an existing right to the use of water shall be granted a permit or license to appropriate no more water than is needed over that which is available under the existing right to meet the beneficial use requirements of the project. Right holder holds an adjudicated right that provides that the right holder may directly divert up to 336,240 gpd from April 1 through October 31 of each year for irrigation use on 90 acres, 1,000 gpd annually for domestic use, and 450 gpd annually for stockwatering use. Right holder's application requests the storage of up to 20 afy for irrigation and stockwatering uses. The place of use for the application is within the irrigation place of use allowed in the right holder's adjudicated right. The maximum amount of water that the right holder may divert for irrigation and stockwatering purposes under the project is 221.4 afy, which is the maximum amount of water that can be diverted and used for irrigation and stockwatering uses under the adjudicated right. Therefore, right holder is prohibited from diverting more than 221.4 afy under the application and adjudicated right for the purpose of irrigation within the authorized place of use for the application.
10. The appropriation of water to off-stream storage during the winter and spring months is consistent with the Decree. The project: (1) will be operated in accordance with water rights as recognized in the Decree; (2) will be subject to seasonal diversion limits established in the Decree; and (3) does not change the priorities of rights established in the Decree.
11. The Decree sets forth minimum bypass flow conditions for future appropriative rights. For the requested season of diversion, the application is subject to a minimum bypass flow of 10 cfs, except the entire creek flow shall be bypassed for 5 consecutive days after a Pacific storm causes streamflow to rise above 50 cfs. Right holder proposes to divert up to 70 gallons per minute (gpm) when the streamflow is between 3 and 10 cfs, ceasing diversion when streamflow is below 3 cfs.

Per paragraph 24 of the Decree, future appropriative rights may operate under a different minimum bypass flow condition if a showing is made that the proposed diversion will not adversely affect fisheries, wildlife, and other instream and public trust uses. The additional storage allowed by the project is proposed to offset late summer diversions. Right holder is limited to a maximum diversion rate of 70 gpm when the flow is less than 10 cfs and greater than 3 cfs. This diversion rate represents no more than 5 percent of the ambient streamflow as measured at the USGS San Gregorio stream gage; therefore, the diversion is not likely to adversely affect fisheries, wildlife, and other instream and public trust uses.

12. The San Mateo County Resource Conservation District filed a Notice of Exemption (State Clearinghouse No. 2017068200) pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) under a categorical exemption for small habitat restoration projects. (Cal. Code Regs., tit. 14, § 15333.).

The California Department of Fish and Wildlife, Wildlife Conservation Board also filed a Notice of Exemption (State Clearinghouse No. 2019048181) for the project under categorical exemptions for new construction or conversion of small structures and small habitat restoration projects (Cal. Code Regs., tit. 14, §§ 15303 & 15333.).

Project facilities were existing at the time at which the State Water Board began its environmental review in accordance with CEQA. The project meets the categorical exemptions for existing facilities and small habitat and restoration projects (Cal. Code Regs., tit. 14, §§ 15301 & 15333.). The State Water Board will file a Notice of Exemption for the subject project after issuance of this Order.

13. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an 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].). Division staff considered potential effects to public trust resources as documented in the memorandum titled Consideration of Potential Effects on Public Trust Resources and Compliance with the California Environmental Quality Act Regarding the Approval of Water Right Application A033065, on file with the State Water Board. Division staff concluded that with the conditions identified in the aforementioned memorandum, actions associated with the application will not result in adverse effects to public trust resources as long as the protective measures described in the aforementioned memorandum are implemented.
14. Pursuant to Resolution 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program to the Deputy Director for Water Rights, who has redelegated this authority pursuant to a memorandum dated June 6, 2022.

NOW, THEREFORE, IT IS ORDERED:

1. Permit 21425 is issued for application A033065 subject to the conditions included therein.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
AMANDA MONTGOMERY FOR:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: June 24, 2022