

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

**DIVISION OF WATER RIGHTS**

**Order WR 2009-0020-DWR**

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In the Matter of Permit 16860A (Application 24296A)

**Langtry Farms LLC and Guenoc Winery, Inc.**

**ORDER APPROVING CHANGE IN PLACE OF USE**

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SOURCES: Routan Creek, Unnamed Streams

COUNTY: Napa and Lake Counties

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**WHEREAS:**

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 16860 to Magoon Estate Limited on January 21, 1977 pursuant to Application 24296. On September 20, 1994, the Division divided Permit 16860 into three permits. Permit 16860A authorizes storage of 1,450 acre-feet per annum (afa) in Upper Bohn Reservoir. The maximum rate of diversion to offstream storage is 20 cubic feet per second. The time to complete full beneficial use of water ended on December 31, 1995. The permit authorizes irrigation of 281 acres.
2. On May 14, 1992, Division staff inspected the project. The Permittee requested a license be issued for Permit 16860A. The 1994 Progress Report by Permittee confirms that a license has been requested for this right. The request for license is reiterated in the June 17, 1996 Request for License and/or Continuation Permit, Upper Putah Creek Watershed form.
3. On May 2, 1997, the Permittee submitted a signed Request for License form.
4. On May 17, 2000, the Permittee petitioned to expand the place of use from 281 acres to 4,611 acres.
5. The petition was noticed on March 16, 2001. The Department of Fish and Game (DFG) protested. On June 15, 2001, the Division informed DFG that the protest was not accepted. The protest was based on impacts associated with increased diversions required to serve the increased place of use. DFG recommended that no increases in the place of use be granted unless there was adequate authorized storage to meet the needs of the proposed increase in the place of use. The protest was not accepted because the quantities assigned to the permit were fixed at the time of permit issuance and the combined rights are adequate to serve the expanded place of use.
6. Originally, the Permittee maintained that Lake County would serve as lead agency pursuant to the provisions of the California Environmental Quality Act (CEQA). The major project element that was to be built in Lake County was the Buckhorn Flat Reservoir under Permit 16860C. However, the Permittee abandoned its plan to develop Buckhorn Flat Reservoir. On October 23, 2001, the Permittee advised the Division that this would switch the CEQA lead agency from Lake

County to the State Water Board. As lead Agency pursuant to CEQA, the State Water Board prepared an Environmental Impact Report (EIR), SCH #2003042171 that includes the mitigation measures listed below. The EIR evaluated five alternatives. Reduced Intensity Alternative A was the environmentally superior alternative. Pursuant to this alternative, the acreage in the proposed place of use would be 2,773 net acres within a gross area of 4,611 acres. The place of use is shown on engineered maps dated March 2000, but does not include the mitigation areas shown on EIR Figure 2-4. The Division will issue a Notice of Determination within five days of issuance of this Order. Since the Permittee has signed the Request for License form, the Division will issue a license reflecting the enlarged place of use.

7. The mitigation measures are based on the Mitigation Monitoring Plan from the Water Rights Modification Project Final Environmental Impact Report shall be included in any license issued on Permit 16861. These measures are listed in the Order below.
8. The State Water Board standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game stream alteration agreement shall be included in the license.
9. The State Water Board has determined approval of the change petition does not constitute initiation of a new right, and does not injure prior rights or the public trust resources of the State.
10. The State Water Board shall add a term requiring submittal of a new license map if it is determined after license issuance that the as-built conditions of the project are not correctly represented by the map(s).
11. Decision 869 established separate reservations of water for Napa and Lake counties. A term shall be added requiring Licensee to comply with any limitations on the place of use established by the Watermaster to comply with the Condition 12 Settlement Agreement.

**NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY APPROVES THE PETITION FOR CHANGE AND ORDERS ISSUANCE OF A LICENSE.**

Permit 16860A shall be licensed in accordance with the provisions of this Order and shall include the terms in the signed License Offer dated May 2, 1997 and the terms identified in this Order.

The following acronyms are used in the license terms, and a list of acronyms shall be provided in the license.

- Department of Fish and Game – DFG
  - Division of Water Rights – Division
  - Regional Water Quality Control Board – RWQCB
  - State Water Resources Control Board – State Water Board
  - U.S. Army Corps of Engineers – ACOE
  - U.S. Fish and Wildlife Service – USFWS
  - Water Rights Modification Project Final Environmental Impact Report - FEIR
1. Prior to commencement of construction activities, the Licensee shall obtain grading permits and approval of Erosion and Sedimentation Control Plans prepared in accordance with Napa County's Conservation Regulations from the County of Napa. The Napa County Erosion Control Plans shall be consistent with the Napa County use requirements in areas with greater than 5% slope. The Licensee shall also obtain grading permits and approval of Erosion and Sedimentation Control Plans from the County of Lake. The grading permits and Erosion Control Plans for Lake and Napa counties shall include all areas proposed for vineyard conversion. The project shall not develop on hillsides with slopes greater than 30%. Copies of the approved grading permits and

Erosion Control Plans from the counties of Lake and Napa shall be submitted to the Deputy Director of the Division for approval, prior to starting construction.

The project shall incorporate DFG fencing standards, which shall be reflected in the final plans for the grading permit and Erosion Control Plan approved by Lake and Napa counties. DFG fencing standards are listed in the 2009 Mitigation Monitoring and Reporting Plan. Wildlife corridors and streams shall not be fenced.

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2. A minimum 50-foot stream buffer along all intermittent and perennial drainages measured from the top of the bank on both sides of the stream shall be maintained within the place of use. Napa County Stream Setbacks may require an additional buffer beyond the 50-foot stream buffer. The buffers are reflected in the boundaries of the place of use (FEIR Figure 2-4) and shall be formally incorporated in the Erosion Control Plans for the project. The buffers shall be staked prior to construction by a biologist, whose qualifications are acceptable to Deputy Director of the Division, maintained throughout construction, and permanently avoided. No activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. Copies of the approved grading permits and Erosion Control Plans from the County of Napa, which incorporate the stream setbacks, shall be submitted to the Deputy Director of the Division, prior to starting construction.

A copy of the formal wetland delineation map verified by the ACOE shall be submitted to the Deputy Director of the Division and DFG within 30 days of verification by ACOE. No work shall commence and no discharge of any dredged or fill material within waters of the U.S. shall occur until the appropriate Department of the Army permit is obtained from ACOE and a Streambed Alteration Agreement is obtained from DFG. Stream impacts shall be mitigated by preservation and enhancement of existing streams at a ratio of 2:1 preserved and enhanced versus impacted streams, mitigation would occur onsite adjacent to the area of impact, to the extent feasible, contingent on final approval from the ACOE. Copies of all permits issued by ACOE and DFG shall be submitted to the Division within 180 days of issuance.

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3. No work shall commence on vegetation removal, soil disturbance, or other construction activities until State Water Quality Certification (Clean Water Act section 401) and a General Construction National Pollution Discharge Elimination System (NPDES) Permit is obtained from the RWQCB or State Water Board and filed with the Deputy Director of the Division. Compliance with the terms and conditions of the certification is the responsibility of the Licensee. If agreements are not necessary for the project, the Licensee shall provide a copy of any waiver issued for the certification or the NPDES permit to the Deputy Director of the Division.

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4. Construction activities within 100 feet of drainages shall occur between April and October to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. In addition, Best Management Practices (BMPs) to control erosion shall be implemented during construction activities. The BMPs may include, but are not limited to the following: placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) shall be prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. The project operator shall be responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation (usually the first growing season). Upon DFG determination that turbidity/siltation levels resulting from project related

activities constitute a threat to aquatic life, activities associated with the turbidity/siltation would be halted until effective DFG approved control devices are installed, or abatement procedures are initiated. Licensee shall submit a copy of DFG approved changes to sediment control devices. All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of construction activities shall be restored to their natural state by seeding with a blend of native and non-native erosion control grass seeds. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeded areas shall be covered with broadcast straw, anchored jute netting, coconut fiber blanket, or similar erosion control blanket. Supplemental watering may be required to establish plant growth. Licensee shall provide documentation that re-vegetation has been completed, seeded areas have been covered with straw, and anchored jute netting, coconut fiber blanket, or similar erosion control blanket within 180 days after construction of each vineyard block has been completed.

Sediment control measures shall be in place prior to the onset of construction and shall be monitored by a construction superintendent and/or inspector and maintained until construction activities have ceased.

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5. The Licensee shall implement the following dust control practices during construction:

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, or vegetative ground cover;
- Replace ground cover in disturbed areas quickly;
- Cover all stock piles with tarps;
- All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled for fugitive dust emissions utilizing application of water or by presoaking.
- When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
- Limit traffic speeds on unpaved roads to 15 mph.

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6. Licensee shall avoid adverse impacts to special-status plant species. Prior to construction activities, the perimeters of the special-status plant locations, including the northern interior cypress forest sensitive habitat, shall be marked off with posts and construction fencing by a qualified biologist approved by the Deputy Director of the Division to avoid direct or indirect impacts to the species. A 100-foot no-disturbance buffer shall be established around all special-status species. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. All special-status plant locations and buffers shall be permanently avoided. No activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. Borrow sites and staging areas shall be located within the place of use, outside of buffer areas established to protect sensitive resources.

A biologist, whose qualifications are acceptable to the Division, shall conduct pre -construction surveys for small-flowered calycadenia and Jepson's leptosiphon during their bloom period, April to May and June to September, respectively, prior to any ground moving or construction activities. The results of the surveys shall be submitted for approval of the Deputy Director of the Division and DFG. If any small-flowered calycadenia or Jepson's leptosiphon are found during the pre-construction surveys, the above measures shall apply. This includes the establishment of a 100-foot no-disturbance buffer around the species' locations to avoid direct or indirect impacts. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. In addition, the buffers shall be permanently avoided and no activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

Licensee shall document compliance with this condition, subject to the approval of the Deputy Director of the Division, prior to construction and within 180 days of completion of construction of each vineyard block.

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7. Grubbing and grading activities should be conducted outside of the nesting season. The nesting season for resident and migratory birds is considered to be mid-February through mid-September. If grubbing or grading activities are to occur during the nesting season, a biologist, whose qualifications are acceptable to the Deputy Director of the Division, shall conduct a pre-construction survey for the purpose of identifying nesting bird species within proposed vegetation removal areas, including a 500-foot buffer from construction activities. The survey shall be conducted no more than two to ten days prior to grubbing or grading activities. If more than ten days occur between performance of the pre-construction survey and the start of vegetation removal, the survey shall be re-conducted. The results of the pre-construction surveys shall be submitted to the Deputy Director of the Division prior to construction.

If an active raptor or migratory bird nest is found during the pre-construction survey, the Licensee shall notify DFG and a 500-foot no disturbance buffer shall be established and maintained around the nest until all young have fledged. If a bald eagle is determined to be nesting within 500 feet of the project areas, the USFWS and DFG shall be consulted on impact avoidance measures; mitigation will involve having a biological monitor present during clearing activities to assure no impact to nesting behavior. No active nests shall be disturbed without a permit or other authorization from USFWS and DFG, with a copy provided to the Deputy Director of the Division. If active nests are identified during the survey, a minimum 500-foot buffer shall be established around the nests to prevent abandonment of the nests and nest failure. If more than two weeks take place between completion of grubbing activities and start of construction during the time period of mid-February through mid-September, a pre-construction survey shall be conducted within the adjacent areas for nesting birds.

A biologist, whose qualifications are acceptable to the Division, shall conduct a pre-construction survey for the purpose of identifying burrowing owls during both the wintering and nesting season (unless the species is detected on the first survey) prior to issuance of grading permits to establish the status of this species on the project site. If possible, the winter survey shall be conducted between December 1 and January 31 (when wintering owls are most likely to be present) and the nesting season survey should be conducted between April 15 and July 15 (peak breeding seasons). If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site shall be resurveyed. Surveys conducted from two hours before sunset to one hour after, or from one hour before to two hours after sunrise, are preferable. The survey techniques shall be consistent with the *Burrowing Owl Survey Protocol and Mitigation Guidelines* prepared by the California Burrowing Owl Consortium in April 1993 and shall include a 250-foot-wide buffer zone surrounding the project site. If no burrowing owls are

detected during pre-construction surveys, then no further mitigation is required. The results of the pre-construction survey shall be submitted to the Division for review and approval.

The DFG burrowing owl specialist for the area shall be contacted for specific guidance regarding any activities affecting active burrowing owl burrows identified within 500 feet of the construction site. Documentation that DFG has been contacted and all required mitigations have been implemented shall be submitted to the Deputy Director of the Division within 30 days of identification of any active burrows.

If active burrowing owl burrows are identified within 500 feet of the construction site, project activities shall not disturb the burrow during the nesting season, February 1 to August 31 or until a qualified biologist has determined that the young have fledged or the burrow has been abandoned. A no-disturbance buffer zone of 160 feet is required to be established around each burrow with an active nest until the young have fledged the burrow as monitored by a qualified biologist.

If destruction of the occupied burrow is unavoidable during the non-breeding season, September 1 to January 31, passive relocation of the burrowing owl may be conducted. Passive relocation involves installing a one-way door at the burrow entrance, encouraging owls to move from the occupied burrow. No permit is required to conduct passive relocation; however, this process shall be conducted by a qualified biologist and in accordance with DFG mitigation measures. To offset the loss of foraging habitat (calculated as a 300 foot foraging radius around the burrow - per pair or unpaired resident bird), additional land shall be preserved on site and permanently protected at a location acceptable to DFG.

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8. Licensee shall conduct construction activities near intermittent drainages during non-rainy or no-flow periods to reduce the likelihood of the presence of special status reptiles and amphibians and the associated impacts. If a special-status reptile or amphibian is encountered during construction, Licensee shall cease construction and ground-disturbing activities in the area until a biologist whose qualifications are acceptable to the Division, has been consulted and appropriate corrective measures have been implemented or it has been determined that the animal will not be harmed. In the event that any species with State or Federal status are injured or harmed, DFG or the USFWS, respectively, and the Deputy Director of the Division shall be contacted immediately.

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9. A biologist, whose qualifications are acceptable to the Division shall conduct a pre-construction survey for American badger dens within the project areas. The results of the pre-construction surveys shall be submitted to the Deputy Director of the Division and DFG prior to construction. If found, dens should be avoided with a minimum of a 500-foot no-disturbance buffer and DFG should be contacted for guidance.

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10. A biologist, whose qualifications are acceptable to the Division, shall conduct pre-construction surveys for elderberry shrubs (*Sambucus* spp.) prior to any ground moving or construction activities in order to avoid any elderberry shrubs that may have sprouted since the previous biological surveys. Surveys should include the proposed disturbance area and all areas within 100 feet of the disturbance area. The results of the surveys shall be submitted to the Deputy Director of the Division and USFWS. A permanent 100-foot no-disturbance buffer shall be established around all identified shrubs for complete avoidance of potential impacts to the federally listed valley elderberry longhorn beetle. Construction avoidance measures shall be incorporated into final plans, with copies to the Deputy Director of the Division, to avoid all elderberry shrubs according to the USFWS guidelines. The buffer shall consist of fencing and flagging; contractors and construction crews shall be briefed on the purpose of the buffer, the need for protection, areas to avoid and reporting measures to carry out if an impact occurs. Buffer areas shall be maintained during the duration of construction. At the discretion of the USFWS, permanent fencing may be

installed around the elderberry shrubs. If construction-related disturbance will occur within 100-foot of elderberry shrubs, the USFWS shall be consulted to determine if an impact will occur. If Valley Elderberry Longhorn beetles are determined to occupy the site, no activities determined to have a potential to adversely affect the shrubs or beetles shall be conducted without a Biological Opinion, Incidental Take Permit, or other authorization from the USFWS, and findings and a compliance plan shall be provided for approval of the Deputy Director of the Division. All terms and conditions of any USFWS authorization shall be met. Weeds and other invasive plants shall be removed at least once a year, or at the discretion of the USFWS and DFG (USFWS, 1999). Mechanical removal of the plants shall be used; herbicides will not be used.

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11. The boundaries of the mitigated place of use that avoid adverse impacts to wetlands and waters of the U.S are shown on FEIR Figure 2-4. The boundaries of the proposed vineyard were reduced to remove all acreage of intermittent and perennial drainages, vernal pools and other wetlands from vineyard development. Additionally, the boundaries reflect a minimum 50-foot no-disturbance buffer along all intermittent and perennial drainages measured from the top of the bank on both sides of the stream, and around all wetlands, that shall be permanently maintained. Napa County Stream Setbacks could require an additional buffer and uses permitted in the stream setbacks in both Lake and Napa counties shall be consistent with the Napa County Stream Setback requirements (see Table 4.2-1 in the Draft EIR for a list of Napa County required setbacks based on slope). No activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. The buffers are shown on FEIR Figure 2-4 and shall be formally incorporated into the Erosion Control Plans, staked prior to construction by a biologist, whose qualifications are acceptable to the Division, maintained throughout construction, and permanently avoided. Copies of the approved grading permits and Erosion Control Plans from Lake and Napa counties shall be submitted to the Deputy Director of the Division, prior to starting construction. Work shall proceed according to the approved documents; modifications shall be approved by Lake and Napa counties as appropriate, and the Deputy Director of the Division shall be copied on all correspondence.

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12. Development of the mitigated place of use requires the construction of 15 new road segments or the extension of existing roads outside of the mitigated proposed place of use. New roads shall be constructed to minimize grading and disturbance to trees and the areas have been selected to avoid impacts to wetlands, waters of the U.S. and other sensitive areas. No work shall commence on any project-related vegetation removal, soil disturbance, or other construction activities until a Streambed Alteration Agreement is approved by DFG and filed with the Deputy Director of the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Licensee. If an agreement is not necessary for this project, the Licensee shall provide the Deputy Director of the Division with a copy of a waiver signed by DFG.

Construction activities should occur during non-rainy or no-flow periods and follow Best Management Practices and approved Erosion Control Plans from Lake and Napa counties to minimize project-related impacts to water resources.

Impacts to wetlands/waters of the U.S. outside of the place of use (those inside the place of use shall be avoided) that result from development of the stream crossings, shall be mitigated through wetland creation and riparian enhancement onsite. Improving the access roads will require installation of culverts or bridge sections at stream crossings and gravel-topping of the road surface on an as-needed basis throughout the project development. It is anticipated that seven existing road-stream crossings would require improvements to enable development of the place of use. Each stream crossing would require about 400 square feet of disturbance, for a total of about 2,800 square feet of disturbance.

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13. For the protection of fish and wildlife, Licensee shall bypass 10 percent of the total flow from the watershed upstream of the dam. The bypass flow shall be continuously released from Upper Bohn Reservoir using the North Dam to release water to the Unnamed Stream and the South Dam to release water to Routan Creek. Releases to Unnamed Stream and Routan Creek shall be based on proportion of inflow from each source. Upon documentation of method of measurement and approval of the Deputy Director of the Division, seepage through the dam embankments may be credited toward this requirement. Runoff accruing to Upper Bohn Reservoir and bypass flows shall be metered and recorded. Bypass amounts released from the dam shall be determined and adjusted on a weekly basis throughout the diversion period of October 1 to April 30. Flows for the following week shall be based on the previous weeks gaging. All inflows outside of the diversion period shall be bypassed.

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14. Areas of high oak tree density, as shown in FEIR Figure 2-4, shall not be developed.

A count and identification of the trees in the proposed vineyard area shall be conducted by a biologist, whose qualifications are acceptable to the Division, prior to commencement of any construction activities. The tree count and identification shall be provided to the Division for review and approval within 30 days of completion. Direct impacts to native oak trees shall be mitigated by the following. An oak tree replacement program shall be implemented, which shall include the planting, irrigation, monitoring, and maintenance of replacement native oak trees at a 1 for 1 ratio on the Guenoc Ranch in areas not included in the place of use. Tree replacement shall be conducted consistent with the Oak Tree Replacement Plan that has been submitted to the Division of Water Rights and tree mitigation shall occur in the areas depicted in FEIR, Figure 4-19 (Appendix G). A permit for removal of trees greater than six inches in diameter shall be obtained from Napa County prior to any tree removal activities, unless specifically waived by Napa County. A copy of the Napa County permit or waiver shall be submitted to the Deputy Director of the Division prior to the commencement of any construction activities or any oak tree removal. Pursuant to Napa County requirements, vegetation identified by Napa County for preservation that is removed (either advertently or inadvertently) or vegetation that is removed before any required permit from Napa County has been issued, shall be replaced with fifteen-gallon trees at a ratio of 2 to 1 at locations approved by Napa County, or replaced with smaller trees at a higher ratio to be determined by Napa County. Failed plantings shall be replaced to achieve net success criteria of 80% tree survival after 5 years. Trees surviving 5 years shall be maintained in perpetuity. Photo documentation showing the results of the tree replacement shall be submitted to the Deputy Director of the Division after the 5 years. All photos shall be dated and the location of the photos shown on a drawing.

To protect oak trees intended to remain undisturbed from construction-related disturbance, construction fencing shall be installed as far as feasible outside of the driplines of oak trees within the vicinity of construction areas. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. Where encroachment is necessary past the driplines, a certified arborist shall document compliance with the following. At least 12 inches of mulch will be temporarily placed to protect roots from compaction. Any tree roots to be severed shall be the maximum feasible distance from the trunk. Any roots over one-inch in diameter that are damaged as a result of construction activities shall be traced back and cleanly cut behind any damaged area, and exposed roots shall be kept moist or covered immediately.

Documentation that this mitigation measure has been completed shall be submitted to the Division within 180 days of installation of each vineyard block.

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15. A total of up to 2,765 acres shall be preserved consistent with the Open Space Preservation Plan in the FEIR (Appendix H).  
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16. If contaminated soil and/or groundwater are encountered or if suspected contamination is encountered during construction, work should be halted in the area, and the type and extent of the contamination shall be determined. A qualified professional, in consultation with appropriate regulatory agencies, should then develop an appropriate method to remediate the contamination. A copy of the remediation plan shall be submitted to the Deputy Director of the Division.  
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17. The cultural resource sites, identified in the letter report dated October 1, 2008 signed by Mike Taggart of Analytical Environmental Services and in the attached letter report to Jennifer Aranda dated September 12, 2008 signed by Tom Origer of Tom Origer & Associates, that may be impacted by the proposed project shall be protected via avoidance. These sites include and are identified as CA-LAK-231/408,-232,-397,-406, 411, CA-NAP-240, -319, GR-2, -4, -6 -8, GR2000-4, -5, -6, -7, -8, -9, -10, -12, -13, -14, -16, -19, -20, -22, -26, TOA-10. All of the sites shall be avoided during project construction, development, and operation activities. The sites shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of pipelines; stream crossings, roads or road improvements; and ripping, trenching, grading or planting related to both conversion of land to agricultural use and maintenance of the place of use). This shall be accomplished by establishing a buffer of 15 feet around the perimeter of the site and erecting a permanent fence and/or expanding nearby adjacent wetland and/or slope buffers to incorporate the site areas. The site boundaries, inclusive of buffer zones, shall be delineated by a qualified archaeologist. The fence shall be installed, with the Licensee's archeologist present, prior to any ground disturbance in the proximity of the sites. The fencing shall remain in place for as long as water is being diverted pursuant to this license. Avoidance by incorporation into proposed buffer zones for wetlands or oak woodlands would apply to sites CA-LAK-413H, GR-6, and GR2000-13. Any future project-related activities or developments at the location of any 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 of the Division 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 of the Division. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director of the Division prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.  
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18. The thirteen prehistoric archaeological resources characterized as sparse lithic scatters, including twelve sites (GR2000-4, GR2000-5, GR2000-6, GR2000-7, GR2000-11, GR2000-12, GR2000-16, GR2000-19, GR-4, PA-88-5, PA-88-6, PA-88-7) and one additional site, GR-8 a lithic scatter with a stone alignment, are likely eligible for treatment under the California Archaeological Resource Identification and Data Acquisition Program for Sparse Lithic Scatters (CARIDAP). PA-88-5, PA-88-6, PA-88-7, GR2000-6 and -11 can be avoided by incorporating them into oak woodland or wetland buffer zones. If avoidance of the above listed sites is not feasible, then the above listed sites shall be treated under the CARIDAP program. In addition, the rock alignment associated with GR-8 must be formally recorded with measurements and photo documentation if the site cannot be avoided. 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 of the Division shall be present during installation of the fencing to prevent any inadvertent damage to the sites. The fencing shall remain in place for as long as water is being diverted pursuant to this license. If this is not feasible then any of the sites not treated under the CARIDAP program shall be further evaluated in accordance with the criteria of the California Environmental Quality Act

(CEQA) and the California Register of Historical Resources (CRHR) by an archaeologist. Any proposed mitigation measures shall be submitted to the Deputy Director of the Division for review and approval, prior to implementation of the measures. Any future project-related activities or developments at the location of the above listed sites that were not treated under the CARIDAP program may be allowed only if an archaeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the Deputy Director of the Division is retained to determine the significance of the sites. If mitigation is determined to be necessary, then the archeologist shall design, conduct, and complete an appropriate mitigation plan that must be approved by the Deputy Director of the Division prior to any activities related to any new developments. There will be no further treatment required for any sites that have been dealt with under the CARIDAP program. Licensee shall be responsible for all costs associated with the cultural resource related work. This mitigation measure shall be implemented prior to any ground disturbance in proximity to the applicable sites.

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19. The prehistoric resource identified as GR-2 has been previously impacted by placement of a pipeline and a road that cause ongoing impacts to the site. In order to limit any additional project related impacts a qualified archaeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division shall provide recommendations and a plan for relocation of the pipeline and road. If this is not feasible, then the archaeologist shall conduct limited testing to provide information evaluating the areas impacted, the past impacts and the current status of the site. If it is determined necessary to continue using the road, then after the limited testing has been completed the Licensee shall use gravel to provide a protective cap on the site in the locations of the road and pipeline. An archeologist shall be present when the protective gravel is being positioned and shall determine the placement and depth of the gravel.

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20. Five sites identified as (CA-LAK-394, CA-LAK-404, CA-NAP-241, GR2000-27, and GR-3) that may be subject to project-related impacts are located in vineyards that have previously been planted. These sites shall be avoided by all ground-disturbing activities that are beyond the historic layer of disturbance (i.e., the plow or disc zone). Maintenance shall be limited to the existing disk zone (~25cm below surface), and not include deep ground disturbance such as ripping. 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) or cutting off the old vines at the surface level, leaving them in place and replanting in between the old vines. Vine removal shall be monitored by a qualified archeologist. In addition, maintenance work within the archaeological site boundaries shall be accomplished with hand tools; in cases where heavy equipment is necessary, such equipment shall be fitted with rubber tracks or tires to limit the amount of disturbance to the resources. If the use of heavy equipment is necessary it shall be accomplished when the soils are not muddy and would not be excessively disturbed using heavy equipment.

(0380500)

21. Five cultural resource sites identified as (CA-LAK-230, -391, -392, -409, and CA-NAP 318) are potentially located within the expanded place of use, and thus subject to impacts. However, in the report dated June 8, 2000 titled *A Cultural Resources Survey of Selected Portions of Guenoc Ranch Lake and Napa Counties, California*, Origer and Schroder and in the subsequent letter reports dated October 1, 2008 signed by Mike Taggart of Analytical Environmental Services and in the attached letter report to Jennifer Aranda dated September 12, 2008 signed by Tom Origer of Tom Origer & Associates, the archeologists were unable to identify any manifestation of the sites during their survey. Accordingly, all ground disturbance proposed in areas where these sites have been previously plotted shall be monitored by a qualified archaeologist who has been approved by the California Historical Information System to work in the area, and who is

acceptable to the Deputy Director of the Division. In the event that site indicators are encountered, project-related activities shall cease and shall not resume within 100 feet of the find until an appropriate inadvertent discovery treatment plan has been completed and executed to the satisfaction of the Deputy Director of the Division.

(0380500)

22. The areas of isolated artifacts identified as IF-4 (A-E) and IF-5 (A-B), in the letter report to Jennifer Aranda dated September 12, 2008 documenting supplemental survey work signed by Tom Origer of Tom Origer & Associates, shall be monitored by a qualified archaeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division, during any project related road improvements. If additional archeological specimens are uncovered, and if either of the locations is found to contain an archeological site, then an archeologist shall complete additional investigations to determine the significance of the site. If the site is determined to be significant, then any avoidance measures or mitigation measures deemed necessary shall be submitted to the Deputy Director of the Division for approval. If mitigation is determined to be necessary, then the archeologist shall design an appropriate mitigation plan that must be approved by the Deputy Director of the Division, and then conduct and complete mitigation prior to any activities in the areas. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

23. The area recorded as IF-1, characterized as "historic stone fences/corrals", shall be protected by avoidance. IF-1 shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of pipelines; stream crossings, roads or road improvements; and ripping, trenching, grading or planting related to both conversion and maintenance of the place of use). This shall be accomplished by establishing a buffer of 15 feet around the perimeter of the feature and erecting a permanent fence. If the feature cannot be avoided, then the rock alignments/corrals shall be formally recorded with measurements and photo documentation as determined appropriate by a qualified archaeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division.

(0380500)

24. The vineyard manager and the laborers that actually cause, direct, or are responsible for earth disturbing activities shall complete a training session conducted by a qualified archeologist in both English and Spanish that shall be designed to enable them to recognize possible archaeological site indicators, prior to any earth disturbing activities. The training session shall take place within one to two weeks of the commencement of ground disturbing activities.

(0380500)

25. Should any buried archeological 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 chipped stone tools; bedrock outcrops and boulders w/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 of the Division shall be notified of the discovery and a professional archeologist shall be retained by the Licensee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director of the Division 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 of the Division.

(0000215)

26. If human remains are encountered, then the Licensee 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 disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission within 24 hours to identify the most-likely descendants of the deceased Native Americans. The most-likely descendant may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. 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 of the Division.

(0380500)

27. Decision 869 established a reservation of water in the upper Putah Creek watershed upstream of Lake Berryessa. Pursuant to the Condition 12 Settlement Agreement (Settlement Agreement), the remaining reservation of water was apportioned between Napa and Lake Counties. The Licensee is a signatory of the Settlement Agreement. Nothing in this Order or the license authorizes re-distribution of water in a manner that affects the remaining depletions established for Napa and Lake Counties. Prior to serving the expanded place of use, Licensee shall comply with any limitations on the place of use established by the Watermaster to comply with the Settlement Agreement.

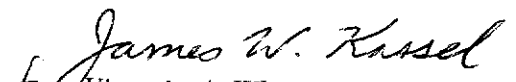
Licensee is not authorized to serve any area outside the place of use specified in Permit 16861 until all construction related license terms are complied with. Licensee shall submit documentation with the triennial Report of Licensee of annual compliance with license requirements. Said documentation shall include a description of the mitigation measures employed for each license condition, date of compliance with the mitigation measures, and shall identify the start and end dates for any monitoring requirements. Licensee is not required to continue submitting construction compliance reports once full compliance with all construction related license conditions is achieved.

(0000063)

28. If it is determined after license issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, licensee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director of the Division.

(0000030)

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney  
Deputy Director for Water Rights

Dated: **MAR 20 2009**