

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

DIVISION OF WATER RIGHTS

Order WR 2009-0022-DWR

In the Matter of Permit 16861 (Application 24297)
Langtry Farms LLC and Guenoc Winery, Inc.

**ORDER DENYING PETITIONS FOR EXTENSION OF TIME
AND APPROVING PETITION FOR CHANGE**

SOURCE: (1) Unnamed Stream tributary to Cassidy Creek thence Bucksnot Creek, and (2)
Bucksnot Creek tributary to Putah Creek

COUNTY: Lake

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 16861 to Magoon Estate Limited on January 21, 1977 pursuant to Application 24297. Permit 16861 authorizes storage of 3,000 acre-feet per annum (afa) in Cassidy Dam, Detert Dam and Ink Reservoir located on Butcherknife Creek. The Cassidy Transfer Pump is also an authorized point of diversion. The maximum rate of diversion to offstream storage is 20 cubic feet per second (cfs). The permit authorizes irrigation of a net acreage of 2,760 acres. The purposes of use are domestic, irrigation, frost protection, heat control, industrial, fire protection and recreation.
2. During the 1970s, the State Water Board commenced adding conditions to permits in the Upper Putah Creek watershed which stated, in part:

"Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision 869."

This was referred to as Condition 12 in the permits. Permit 16861 includes Condition 12.
3. Permit 24297 originally required that construction work be completed by December 1, 1980, and that the water be applied to the authorized use by December 1, 1981.
4. The Permittee requested, and on December 28, 1982, received an extension of time to complete construction by December 31, 1985 and complete full beneficial use by December 31, 1986.
5. The Permittee requested, and on April 28, 1988, received an extension of time to complete construction by December 31, 1989 and complete full beneficial use by December 31, 1990.

6. The Permittee requested, and on January 13, 1992, received an extension of time to complete construction by December 31, 1994 and complete full beneficial use by December 31, 1995.
7. On June 20, 1996, the Division received a Petition for Extension of Time, seeking a 10-year extension. The petition states that the uncertainty of the availability of water remaining for appropriation under the Condition 12 watershed reservation, on which a lawsuit was filed by Solano County Water Agency et al. in 1990 (which was not resolved until March 1996) created uncertainty about the feasibility of proceeding with the project. The proposed Ink Reservoir would provide water for irrigation of an additional 786 acres. The petition states that Detert Reservoir was enlarged in 1979 to its present capacity of 3,220 af. Cassidy Reservoir was constructed in 1992 and has a capacity of 525 af.
8. On August 27, 1996, the Division inspected the project covered by Permit 16861. The Permittee had requested that the permit be divided in such manner that the finished portions of the project be considered for licensing. The inspection report documents that only Cassidy Dam had been built under the permit. Detert Reservoir is an existing facility authorized by other permits. Pursuant to Permit 16861, the Permittee had planned to add storage capacity to the existing facility, but had not done so. A continuation permit was recommended for the facilities that had not yet been built. The unused portion of Permit 16861 was 1,790 af and diversion to offstream storage at a rate of 20 cfs.
9. On April 23, 1997, the Permittee petitioned to change the project. The Permittee proposed to construct a 2,500 af Buckhorn Flat Reservoir. Water would be redistributed from the proposed Ink Reservoir, which would be abandoned under this right. This permit would provide 809.5 af of storage in Buckhorn Flat Reservoir. The place of use would decrease from 2,760 acres to 1,768 acres pursuant to the petition.
10. On July 24, 1997, the Permittee's agent signed a request for license for the 560 af storage in Cassidy Reservoir and a request for a continuation permit for the remaining 1,790 af and diversion to offstream storage at a rate of 20 cfs because the water had not been put to beneficial use.
11. On August 2, 1999, the Permittee's agent informed the Division that under the continuation permit storage would occur in the proposed Buckhorn Flat Reservoir and by additional diversion to storage in the existing Detert Reservoir.
12. In a petition dated May 17, 2000, the Permittee increased the proposed place of use to 6,847 acres. The petition states that Ink Reservoir will be abandoned under this right. Of the 1,790 af undeveloped under the permit, 805 af would be assigned to the proposed Buckhorn Flat Reservoir and 985 af would be assigned to Detert Reservoir.
13. The Division issued a notice of change and time extension petitions for Permit 16861 on March 16, 2001.
14. The Department of Fish and Game (DFG) protested the petitions. On May 31, 2001, the Division accepted the protest insofar as it related to construction of the new Buckhorn Flat Reservoir and storage of additional water in Detert Reservoir.
15. On July 9, 2001, the Division advised all Permittees in the Upper Putah Creek watershed that pursuant to the March 10, 1995 Agreement, there is a limited quantity of water remaining for assignment to new applications. The Division needs to maintain accurate data on the quantity of unappropriated water that is available for the new applications. Accordingly, we are evaluating whether projects have been timely developed under existing permits. Any water that is not required to meet the needs of existing permittees may be available for other uses. The Division advised the permittees that it intended to limit future time extensions to five years in this watershed. The Division provided opportunity to object to the proposed five-year extension limit

and required that any objections be accompanied by information to support a finding that a longer time extension is appropriate. The Permittee did not respond to the notification, did not file an objection and did not provide a showing that a longer extension was appropriate.

16. On July 27, 2001, Division staff advised the Permittee that only Cassidy Reservoir had been built since permit issuance in 1977. The Permittee was requested to document how an additional 985 af would be stored in Detert Reservoir. The Permittee was advised of the need to document diligence by proceeding with preparation of a California Environmental Quality Act (CEQA) document. A work plan was requested by September 25, 2001 with the following: (a) a timeline for completing the CEQA document, (b) a timeline for obtaining the county grading and use permits for reservoir construction and vineyard planting, (c) a timeline for completion of the development and construction activities, including: (i) documentation of total project cost and evidence that project funding has been obtained, (ii) the date when clearance from the Department of Water Resources, Division of Safety of Dams for Buckhorn Flat Reservoir had been obtained, and (iii) the date when construction contracts will be signed; (d) a timeline for obtaining a streambed alteration agreement from DFG; and (e) a timeline for obtaining an Army Corps of Engineers (ACOE) section 404 permit, or information to document that a 404 permit is not needed. The Permittee was warned that failure to provide the documentation would be considered a lack of due diligence, and a license may be issued for Cassidy Reservoir based on existing uses and the unused portion of the permit would be subject to revocation.
17. The October 23, 2001 response states that construction of Buckhorn Flat Reservoir is no longer contemplated. The project now consists of a request to allow 985 af of additional withdrawal from storage in the existing Detert Reservoir. Since the Buckhorn Flat Reservoir would not be built, the Permittee informed the Division that the CEQA lead agency would switch from Lake County to the State Water Board. A streambed alteration agreement and most other permits would not be obtained until the CEQA document was completed. There was no estimate when construction contracts would be signed.
18. The Permittee's January 12, 2004 letter states that, with the requested time extension to December 31, 2005 the permits are expiring at the end of the calendar year, it is obvious that even if approved by the Division, there would be no time to complete the work involved and put the additional water to beneficial use. The Permittee requires at least five additional years after approval of the time extension petition to put water to beneficial use.
19. The Division's May 12, 2004 letter advised the Permittee that the original time to complete use ended on December 1, 1981. The permit authorizes storage of 2,400 af in Cassidy and Ink Reservoirs and 600 af in Detert Reservoir. The Permittee abandoned Ink Reservoir, as documented in an April 23, 1997 letter. The Permittee seeks to split the permit into two filings, Permits 16861A and 16861B and obtain a license for storage in Cassidy Reservoir under Permit 16861A. No water has been used under the portion of the permit the Permittee wants assigned to Permit 16861B. The Division has not split this permit due to outstanding Petitions for Change and Extension of Time. If the Petition for Extension of Time is denied, the Division may issue a license for the portion of the project developed by December 31, 1995, the end of the time to complete full beneficial use pursuant to the permit.

The Permittee has petitioned for change to increase the place of use and time extensions to increase withdrawal from storage in Detert Reservoir by 985 af in order to preserve the portion of the permit that the Permittee wants assigned to Permit 16861. No new construction would occur. Pursuant to the Change Petition, the place of use would increase from 1,538 acres to 6,847 acres. The Permittee has received three time extensions and has submitted a petition for a fourth time extension.

The May 12 letter responds to the following contention from the Permittee's February 17, 2004 submittal:

“Magoon Estate, Limited, has exercised as much diligence as was possible under the unusual circumstances in the upper Putah watershed...It would be a clear abuse of discretion for the Board to deny the Magoon petitions upon the basis of lack of diligence.”

The response states that petitions for extension of time “will be granted only upon such conditions that the board determines to be in the public interest and upon showing to the board’s satisfaction that diligence has been exercised. (tit. 23, CCR § 844.) When evaluating the diligence issue, the State Water Board will evaluate all relevant information including an evaluation of the diversion and storage facilities built or enlarged pursuant to the Permittee’s rights during the time interval covered by Permit 16861. The Permittee was requested to document whether (1) it had a need for additional water supplies to serve the authorized place of use for the permit, after taking into consideration all other rights held by the Permittee, and (b) the additional quantity of water needed to serve the authorized place of use for the permit. To determine the extent of use that occurred on or before December 31, 1995, the Permittee was requested to submit information covering the development period under the right.

The May 12 letter also advised the Permittee that the petitions could not be addressed until a CEQA document was completed. Moreover, the Permittee was advised that the State Water Board would consider all pertinent facts, including the issue of whether granting the petitions would be in the public interest, and whether the petitioner has made a showing that they have exercised due diligence pursuant to Cal. Code of Regs. Section 844. The upper Putah Creek adjudication placed severe restrictions on future water development in the upper Putah Creek watershed. The Division stated that allowing the Permittee to proceed would substantially reduce the amount of water available for appropriation by others and could mean that pending applications or requests for continuation permits would have to be denied. We intend to address the issue of whether it is appropriate and in the public interest to afford the Permittee, which has not developed its project pursuant to Permit 16861, a priority over other applicants and permittees with unperfected rights.

20. On July 7, 2004, the Permittee responded to the Division’s request for information on additional water supplies needed to serve the existing place of use. The authorized place of use is 2,760 acres. Of this acreage, 1,538 acres are not covered by other water rights of Magoon. The remaining place of use is 1,222 acres (281 acres in Lower Bohn Valley and an additional 941 acres not yet developed). The amount of water that the Permittee seeks to utilize under Permit 16861 is 985 af stored at Detert Reservoir. A license is sought for 560 af in Cassidy Reservoir, with a maximum annual withdrawal of 480 af upon the basis that water was applied to beneficial use on the 1,538 acres. The Permittee contends that the intended use was pasture when the permit was issued. The Permittee stated that the water requirement for the 1,222 acres of pasture is 4.5 af per acre, resulting in an additional demand for 5,499 afa to develop the permitted place of use. The response ignored the fact that the Permittee has already developed 367 acres of vineyard within the authorized place of use. (Draft Environmental Impact Report (DEIR), July 2006, p. 1-1.) Vineyard has a water duty of 1.23 af per acre (0.76 af per acre for irrigation and 0.47 af per acre for frost protection). (Tenth Annual Report of the Upper Putah Creek Watershed Watermaster.) Moreover, the water duty for pasture in this watershed is 3.07 af per acre. (ibid.) Consequently, the response did not provide accurate information for the Division to consider.
21. The requested ten-year time extension ended in 2005, prior to resolution of the protest on the 1995 time extension petition and 1997 and 2000 change petitions. At that time, a CEQA document had not yet been completed.
22. On February 10, 2005, the Permittee filed another petition for extension of time. The petition states that Cassidy Reservoir was constructed during the last extension period. All construction work is complete. A time extension of eight years after issuance of an Order on the change petitions was requested. 475 af of water has been used under the permit.

23. On March 4, 2005, the Division advised the Permittee that the petition was not acceptable because the \$850 DFG fee had not been submitted, the petition had not been served on DFG and the Environmental Questionnaire had not been submitted.
24. On March 15, 2005, the Permittee disagreed with the Division's March 4, 2005 findings.
25. The Division's August 17, 2005 letter addressed the disputed items, but also required that the Permittee state the length of time extension requested and identify the year when full beneficial use will occur.
26. On October 17, 2005, the Permittee filed an amended Petition for Extension of Time. The estimated date for completion of construction and full beneficial use of water in the amended petition is December 31, 2015. The petition confirmed that water use has not begun and attributes the non-use to the fact that the change and time extension petitions have not been approved.
27. On March 24, 2006, public notice of the 2005 petition for extension of time and renote of change petitions was issued. The Petitioner sought to split the permit into two filings, Permits 24297A and 24297B and obtain a license for storage in Cassidy Reservoir under Permit 24297A. The Permittee sought to enlarge the place of use for both elements of the permit from 1,538 acres to 6,847 acres. Under Permit 24297B, the Permittee petitioned to redistribute storage and store 985 af in the existing Detert Reservoir. Under Permit 24297B, the Permittee sought an extension to December 31, 2015 to complete construction and beneficial use of water.
28. DFG protested the petitions and the protest has not been resolved. Although the environmental elements of the DFG protest are addressed in the FEIR prepared for the petitions and could potentially be dismissed (Wat. Code § 1335.), the issue of whether the Permittee exercised due diligence in development of its project is an unresolved protest issue. Specifically, DFG states that a key requirement for granting an extension of time is a showing that the "failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided. (tit. 23 CCR, § 844.) However, the petitioner does not allege unavoidable obstacles to explain why water has not yet been put to full beneficial use. Inasmuch as the protest has not been resolved, the time extension petition cannot be approved.
29. The 2006 DEIR, Alternative 2, evaluates development if the petitions for change and time extension were denied and finds that there is sufficient water currently available to convert the 1,452 acres of pasture already developed within the existing place of use to a different crop because vineyard require less water than irrigated pasture.
30. The Permittee's July 17, 2006 response to protest states that the Permittee had previously addressed the due diligence issue in its report on diligence to the State Water Board. The July 17 letter does not identify the date of the report on diligence to the State Water Board although it appears that this may be a reference to the Permittee's February 17, 2004 submittal.
31. On August 14, 2007, Division staff met with the Permittee's representatives who advised the Division that the financing that was previously in place for this project expired in June 2006. The market for grapes is low right now. Magoon plans to pull the non-popular grapes and replant with \$12.99 to \$39.99 a bottle varieties. Magoon currently had no money for the project. The expansion in place of use was needed in order to get funding, which had been lined up with a different entity. Loan maturation for the new financing is in April 2009.
32. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably

avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.

33. Permittee has not shown that due diligence has been exercised. Permittee indicated that uncertainty regarding water available pursuant to Condition 12 precluded development of Ink Reservoir. Condition 12 reserves 33,000 af of water for development in the upper Putah Creek watershed, provided that projects were developed prior to licensing of the water rights for the Solano Project of U.S. Bureau of Reclamation.

Permittee stated that there was adjudication litigation from 1990 through 1996 concerning Condition 12. The adjudication does not explain the failure to commence construction prior to 1990. Moreover, despite the ongoing adjudication, Magoon constructed the 200 af capacity Big Basin Reservoir (License 13414) in 1990 and the 560 af capacity Cassidy Reservoir (Permit 16861) in 1992.

In Order WR 96-002, the State Water Board stated that Condition 12 has been in effect for 39 years. Upstream permittees have had a reasonable time in which to develop and put water to reasonable beneficial use. (Order WR 96-002, fn. 14.) Since the State Water Board has determined that adequate time was provided to construct facilities, failure to timely construct is construed as lack of due diligence. The Division notes that the State Water Board finding resulted from information and findings in the adjudication.

34. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. The Permittee offers the adjudication and pending litigation as the basis for failing to construct facilities. As noted previously, Permittee constructed Big Basin and Cassidy Reservoirs during the time period when the litigation was pending. Moreover, Order WR 96-002 did not find the adjudication to be an impediment to development. To the contrary, the Order states that Permittees have had a reasonable time in which to develop and put water to reasonable beneficial use. (Order WR 96-002, fn. 14.)
35. Permittee has not shown that satisfactory progress will be made if a time extension is granted. In prior petitions, Permittee estimated that it would complete construction in 1988, and then in 1994. In its 1996 petitions, Permittee states that it would complete construction in 2004. In its 2005 petition, Permittee states that construction will be completed in 2015.

Permittee was previously granted three time extensions and has yet to complete the project, and has not shown any change in circumstances that could facilitate action toward completion of the permitted project. The permit authorizes storage in three reservoirs: Cassidy Reservoir, Ink Reservoir and Detert Reservoir. Permittee is seeking a license for storage in Cassidy Reservoir. Ink Reservoir is abandoned. Detert Reservoir was built in 1928. In 1978, Detert Dam was added to the permit as a point of diversion. In 1996, the Division inspected most water rights in the upper Putah Creek watershed, including this right. The 1996 inspection occurred 18 years after Permit 16861 was issued. The inspection report documents that although water was diverted and rediverted at Detert Reservoir, water was not stored in Detert Reservoir pursuant to the permit.¹ This situation was unchanged in 2001. As documented in the Division's July 27, 2001 letter, water has not been stored in Detert Reservoir pursuant to Permit 16861. Water is stored in Detert Reservoir under Licenses 2141, 2142, 6334, 9939, and 10422.

□

¹ See 1996 Inspection Report, page 1 identifying only Cassidy Dam for licensing. Detert Dam and Buckhorn Flat Reservoir were identified for continuation permit. In addition, the December 17, 1996 letter from James C. Hanson Engineers to Division states that no withdrawal from Detert Reservoir had been made under this permit.

36. Permittee has previously informed the Division that it lacks funding for any project that does not involve the requested expansion in the place of use.
37. Permittee has not shown good cause for the time extension. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions determined to be in the public interest. The adjudication placed severe restrictions on future water development in the upper Putah Creek watershed². The January 2008 12th Annual Watermaster Report for the Upper Putah Creek Watershed documents that only 246 af of water remains in the reservation for assignment to new applications in Napa County and 4,166 af in Lake County. The quantity of water remaining for assignment to new applications is based on the assigned depletion in each county, minus water assigned to existing filings. Thus, holding an unused portion of the depletion in existing permits and licenses directly affects pending applications. Allowing the Permittee to proceed would substantially reduce the amount of water available for appropriation and could mean that pending applications or requests for continuation permits would have to be denied.
38. The time extension petition should be denied, because the required findings cannot be made.
39. There is only one protest of the petitions. The DFG protest raises the issue of the impacts of increased diversions on aquatic resources. Permit 16861 includes bypass flows for protection of public trust resources, and no changes in the bypass flows are proposed. If the time extension is denied, the Permittee will be unable to develop any additional project elements. Consequently, water use will be limited to the quantities identified in the 1996 inspection report. Since increased diversion will not occur, this protest element has been addressed.
- The DFG protest states that there may be potential impacts associated with construction of the new Buckhorn Flat Reservoir. Since Buckhorn Flat Reservoir will not be built, no further consideration of this protest element is needed.
- The protest states that there may be impacts associated with adding points of diversion and/or rediversion. Since no new points of diversion or rediversion are being added, this protest element has been addressed.
- The final protest issue is impacts to terrestrial species associated with enlarging the place of use. Impacts to terrestrial species were evaluated in the Environmental Impact Report (EIR) (SCH # 2003042171 prepared for the project. A number of mitigation measures were developed to address this concern, and the mitigation measures are incorporated into the terms and conditions for approval of the change petition and are listed in the Order section. There is no substantial evidence in light of the whole record to support the allegations of harm to terrestrial species. (Wat. Code § 1335 (d)(2). Therefore, the protest is cancelled.
40. 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 reduced to 5,139 net acres within a gross area of 6,847 acres. The place of use is shown on engineered maps dated March 2000, but does not include the mitigation areas shown on Water Rights Modification Project Final Environmental Impact Report Figure 2-4. The Division proposes to issue a Notice of Determination within five days of issuance of this Order.

□

² The U.S. Bureau of Reclamation has agreed to subordinate its prior rights under Solano Project permits for up to 12,668 afa of additional depletion in upper Putah Creek after December 31, 1995. (Order 96-002, p. 7.) Once the reservation is exhausted, there will be no more water for assignment to new water rights in Lake and Napa Counties upstream of Lake Berryessa.

41. The mitigation measures are based on the Mitigation Monitoring Plan from the Water Rights Modification Project Final Environmental Impact Report and shall be included in any license issued on Permit 16861. These measures are listed in the Order below.
42. 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.
43. 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.
44. 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).
45. 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 DENIES THE PETITIONS FOR EXTENSION OF TIME AND APPROVES THE PETITION FOR CHANGE.

Permit 16861 shall be licensed in accordance with the provisions of this Order and shall include the terms included in the signed License Offer dated June 11, 1997 and the terms listed below. A Continuation Permit shall not be issued.

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.

(0400500)

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.

(0400500)

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 NPDES permit to the Deputy Director of the Division.

(0400500)

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.

(0400500)

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.

(0400500)

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.

(0400500)

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.

(0400500)

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.

(0400500)

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.

(0400500)

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-feet 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. 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.

(0000209)

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.

(0400500)

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.

(0400500)

13. 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.

(0400500)

14. A total of up to 2,765 acres shall be preserved consistent with the Open Space Preservation Plan in the FEIR (Appendix H).

(0400500)

15. 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.

(0400500)

16. 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.

(0380500)

17. 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.

(0380500)

18. 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.

(0380500)

19. 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)

20. 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)

21. 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)

22. 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)
23. 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)
24. 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)
25. 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)
26. 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.

27. 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

for James W. Kassel
Victoria A. Whitney
Deputy Director for Water Rights

Dated: **MAR 22 2009**