

DETERMINATION: The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has determined that the above-proposed project will have a less-than-significant effect on the environment for the reasons specified in the attached Initial Study.

PERMIT CONDITIONS: Water to be appropriated from Kreuse Creek tributary to Tulucay Creek, thence Napa River in Napa County. Point of Diversion #1 will continue to be located South 1,100 feet and West 1,700 feet from the NE corner of Projected Section 13, Township 5N, Range 4W, MDB&M. Offstream storage at POD #4 will be located South 300 feet and West 2,300 feet from the NE corner of projected Section 13, being within the NW ¼ of the NW ¼, Section 13, T5N, R4W, MDB&M. Water will be collected to storage in the offstream reservoir during the period of December 1 through April 15 of the succeeding year. The storage amount and total project use shall not exceed 35 acre-feet of water per annum (afa). The purpose of use is irrigation only. The irrigated place of use will be 75 acres of vineyard, located within Section 13, Township 5N, Range 4W, MDB&M, located within the County of Napa.

PERMIT TERMS:

STANDARD TERMS

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year.
2. This Permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
3. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2010.
4. No water shall be diverted under this Permit until Permittee has installed a device, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of this Permit. Said measuring device shall be properly maintained. In order to insure full compliance with this requirement, Permittee shall implement all provisions of the Permit 20428 (Application 29351) flow bypass compliance plan dated July 19, 2006 on file with the State Water Board.
5. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the rate and quantity of water diverted into the reservoir from Kreuse Creek (POD#1) and the Unnamed Stream (POD #3).
6. The Permittee shall obtain all necessary federal (including U.S. Army Corps of Engineers Section 404), state and local agency Permits required by other agencies prior to construction and diversion of water. Copies of such Permits and approvals shall be forwarded to the Chief, Division of Water Rights.
7. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with 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 Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of Water Rights 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 Chief of the Division of Water Rights.

8. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has not been used on the place of use. Therefore, consistent with this term, permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this information may be updated, and permittee may use water under basis of riparian on the authorized place of use, provided that permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.
9. If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources 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 to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed.
10. Construction of the offstream reservoir shall not begin until the Napa County Engineer, the United States Natural Resource Conservation Service, or a civil engineer registered by the State of California has approved the plans and specifications for the reservoir. Construction of the reservoir shall be under the direction of said approving party.
11. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
12. Prior to and during construction of the dam and reservoir and initial filling of the reservoir, Permittee shall take the following actions to ensure that construction of the dam and reservoir and initial filling of the reservoir shall not harm sensitive species that may be present at or near the reservoir site:
 - a) Hire a qualified biologist, acceptable to DFG and the U. S. Fish and Wildlife Service (USFWS) to:
 - i) Conduct a pre-construction biological survey of the construction site and surrounding environs to determine if sensitive species, including Northwestern Pond Turtle and California Red-Legged Frog, and/or their habitats may be present;
 - ii) Conduct a training session for construction field crews to inform them of the possible presence of sensitive species, their appearance and explain actions to be taken if they are encountered during construction of the reservoir;
 - iii) Monitor dam and reservoir construction and initial reservoir filling activities to ensure that harm to sensitive species encountered is avoided, and if it is determined that

specific individual species encountered must be physically captured and relocated, ensure that such capture and relocation activities are performed only by a qualified collection biologist duly certified by the DFG and the USFWS; and

- b) Stop all dam and reservoir construction activities if sensitive species are encountered and refrain from resuming construction activities until the biologist hired under part a) above declares that individual species encountered have either safely left the work area or have been safely removed and relocated by a qualified collection biologist duly certified by the DFG and the USFWS.

SPECIAL TERMS

The following special terms, substantially as written, are added in accordance with the protest dismissal agreement between Petitioner, NMFS, DFG and EDEN dated September 30, 2005:

13. The maximum rate of diversion to offstream storage from either POD #1 or POD #3, shall not exceed 0.8 cubic feet per second.
14. Permittee shall not divert water at POD #1 unless there is at least a minimum bypass flow of 1.0 cubic feet per second at said POD.
15. Permittee shall install an infiltration gallery for the diversion of water from POD# 1. The infiltration gallery shall meet United States Fish and Wildlife Service recommendations to avoid impacts on fish passage, and shall include an automated float switch within Kreuse Creek above POD #1, for turning the pumps on and off.
16. Permittee shall install flow meters at POD #1 and POD #3 (one at each location), and these flow meters shall record flow data and diversion information to an automated data logger. This flow and diversion data shall be submitted to the Division of Water Rights and DFG within 30 days upon request.
17. Before starting construction and installation of any of the improvements related to the diversion, rediversion or storage of water under this Permit, Permittee shall submit plans and specifications to the Chief of the Division of Water Rights for approval, prior to the diversion of water.
18. Permittee shall develop a water management plan that will set priorities for the use of water from the offstream storage reservoir during the irrigation season, and will include a plan for avoiding the use of Permittee's groundwater supplies during the period of July 1 through September 30. A copy of the plan shall be submitted to the Chief, Division of Water Rights. Notwithstanding this condition, it is acknowledged that Permittee reserves any and all of its claims to groundwater rights, and this condition shall not be construed as establishing any jurisdiction over Permittee's water supplies that are legally classified as percolating groundwater.
19. An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Chief, Division of Water Rights, prior to starting construction. The erosion control plan shall be incorporated into the terms and conditions of any lake or streambed alteration agreement between Permittee and the department of Fish and Game for the diversion works identified in this Permit. Before storing water in the reservoir, Permittee shall furnish evidence, which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.
20. Permittee shall allow representatives of the State Water Resources Control Board and the Department of Fish and Game reasonable access to the project works to determine compliance with

the terms of this Permit.

MANDATORY TERMS

21. The amount authorized for appropriation may be reduced in the license if investigation warrants.
22. Progress reports shall be submitted promptly by Permittee when requested by the State Water Resources Control Board until a license is issued.
23. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said State Water Resources Control Board, reasonable access to project works to determine compliance with the terms of this permit.
24. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Resources Control Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Resources Control Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Resources Control Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Resources Control Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

25. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the Permittee and an opportunity for hearing, the State Water Resources Control Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Resources Control Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

