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

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 4597C | PERMIT 2232 | LICENSE 948C

THIS IS TO CERTIFY, That

Harlan G. MacPhee and Cheri L. Labadie
612 Sand Hill Circle
Menlo Park, CA 94025

have the right to the use of the waters of **Auburn Ravine** in **Placer County**

tributary to **Sacramento River.**

for the purpose of **Irrigation use.**

Amended License 948C supersedes the license originally issued on **January 2, 1931**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (SWRCB), or its predecessor, and the terms of **Permit 2232**. The priority of this right dates from **May 22, 1925**. Proof of maximum beneficial use of water under this license was made as of **August 30, 1929** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **three hundredths (0.03) cubic foot per second to be diverted from May 15 to October 15 of each year. The maximum amount diverted under this license shall not exceed 8.2 acre-feet per year.**

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time provided there be no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

Unless a change is approved by the SWRCB, water used under this license may be diverted, rediverted, stored and used only as specified below:

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1927, Zone 2, North 450,400 feet and East 2,226,600 feet, being within SE¼ of SW¼ of Section 9, T12N, R7E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

5 acres located within SE¼ of SW¼ of Section 9, T12N, R7E, MDB&M, as shown on map on file with the SWRCB, within Placer County Assessor's Parcel Number 031-292-046.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.

Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB 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 SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB 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 SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB 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.

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB 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 SWRCB 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.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

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.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

Steven Herrera for

Victoria A. Whitney, Chief
Division of Water Rights

Dated:

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

DIVISION OF WATER RIGHTS

In the Matter of License 948 Permit 2232 (Application 4597)
Craig Labadie and Debra Margolis

ORDER DIRECTING ISSUANCE OF SEPARATE LICENSES

SOURCE: Auburn Ravine tributary to Sacramento River

COUNTY: Placer

WHEREAS:

1. License 948 was issued to Ethel May Mulligan on January 2, 1931, pursuant to Application 4597 and subsequently assigned to: Chris R. and Marjorie P. Story, trustees of the Story Ranch Trust, and Roy E. and Shirley F. Story in 1981, then Roy E. Story in 1991, and finally Craig Labadie and Debra Margolis in 2001. License 948 was recorded with the County Recorder of Placer on January 20, 1931.

2. Requests for issuance of separate licenses were sent to the State Water Resources Control Board (SWRCB) by letters dated January 21, 2003, June 18, 2003, and June 26, 2003. The SWRCB has determined that good cause for such change has been shown.

3. The original license provided for the diversion of 0.15 cubic feet per second (cfs) to irrigate a 32-acre parcel of land. Division of Water Rights Order dated January 10, 1936 expanded the place of use to 48 acres. Mr. Labadie and Ms. Margolis (1) sold 10 acres to Michael P. Dowd and Laura A. Dowd, (2) sold 10 acres to Harlan G. MacPhee and Cheri L. Labadie, (3) retained a 12.85 acre parcel, and (4) sold 16.89 acres to Jean Labadie. Based on an inspection of the parcel maps, Division staff determined that the 16.89 acre parcel purchased by Jean Labadie is not part of the License 948 place of use. Division staff advised Ms. Labadie that she would need to submit a Change Petition to add this parcel to the License 948 place of use, by letter dated October 29, 2003. Ms. Labadie did not respond to the Division's October 29 letter. Accordingly, the Division is splitting the license three ways. The Division also notes that only 5 acres of the MacPhee parcel is within the authorized place of use. The Licensees confirmed that the License's 0.15 cfs should be assigned to (1), (2), and (3) above based on the proportion of their respective shares to the sum of the licensed acreage within the parcels, by letter dated June 26, 2003.

4. The license terms relating to the continuing authority and water quality objectives of the SWRCB should be updated to conform to section 780(a) and (b), Title 23 of the California Code of Regulations.

5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be added to the license making the licensee aware of possible obligations resulting from these acts.

6. An appropriative water right license can be reduced or revoked after five continuous years of nonuse, or due to noncompliance with license terms and conditions. To track the status and actual water use under the terms and conditions of the license, the SWRCB Division of Water Rights (Division) regularly distributes a pre-printed form, "Report of Licensee" at three-year intervals. Licensee is requested to expeditiously complete and return the reports to the Division.

NOW, THEREFORE, IT IS ORDERED THAT:

1. License 948 is hereby replaced and superseded upon the issuance of License 948A to Craig Labadie and Debra Margolis, License 948B to Michael Dowd and Laura Dowd, and License 948C to Cheri Labadie and Harlan MacPhee.

2. Separate licenses be issued as follows:

A.

License:	948A (Application 4597A)
Owner:	Craig Labadie and Debra Margolis 50 Tara Road Orinda, CA 94563
Source:	Auburn Ravine tributary to Sacramento River
Use:	Irrigation
Direct Diversion:	0.07 cfs
Maximum Amount:	21 acre-feet per annum
Season:	May 15 to October 15
Point of Diversion:	By California Coordinate System of 1927, Zone 2, North 450,400 feet and East 2,226,600 feet, being within SE¼ of SW¼ of Section 9, T12N, R7E, MDB&M
Place of Use:	12.8 acres located within the SW¼ of Section 9, T12N, R7E, MDB&M, as shown on map on file with the SWRCB.

B.

License:	948B (Application 4597B)
Owner:	Michael P. Dowd and Laura A. Dowd P.O Box 646 Penryn, CA 95663
Source:	Auburn Ravine tributary to Sacramento River
Use:	Irrigation
Direct Diversion:	0.05 cfs
Maximum Amount:	16.3 acre-feet per annum

	Season:	May 15 to October 15
	Point of Diversion:	By California Coordinate System of 1927, Zone 2, North 450,400 feet and East 2,226,600 feet, being within SE¼ of SW¼ of Section 9, T12N, R7E, MDB&M
	Place of Use:	10 acres located within the SW¼ of Section 9, T12N, R7E, MDB&M, as shown on map on file with the SWRCB
C.	License:	948C (Application 4597C)
	Owner:	Harlan G. MacPhee and Cheri L. Labadie 612 Sand Hill Circle Menlo Park, CA 94025
	Source:	Auburn Ravine tributary to Sacramento River
	Use:	Irrigation
	Direct Diversion:	0.03 cfs
	Maximum Amount:	8.2 acre-feet per annum
	Season:	May 15 to October 15
	Point of Diversion:	By California Coordinate System of 1927, Zone 2, North 450,400 feet and East 2,226,600 feet, being within SE¼ of SW¼ of Section 9, T12N, R7E, MDB&M
	Place of Use:	5 acres located within the SW¼ of Section 9, T12N, R7E, MDB&M, as shown on map on file with the SWRCB

3. License 948A, 948B, and 948C shall contain all other terms and conditions presently in License 948 or updated terms to reflect compliance with the SWRCB's policy.

STATE WATER RESOURCES CONTROL BOARD

Steven Herrera for

Victoria A. Whitney, Chief
Division of Water Rights

Dated: AUG 20 2004

MAILING LIST

REGULAR MAIL

Craig Labadie and Debra Margolis
50 Tara Road
Orinda, CA 94563

Michael P. Dowd and Laura A. Dowd
P.O. Box 646
Penryn, CA 95663

Harlan G. MacPhee and Cheri L. Labadie
612 Sand Hill Circle
Menlo Park, CA 94025

Roy E. Story and Shirley F. Story
10050 Willey Court
Granite Bay, CA 95746

County Recorder
County of Placer
175 Fulweiler Avenue, Room 101
Auburn, CA 95603

Ms. Gean Cain
Foothill Living Realty
2100 Auburn Folsom Road, Suite 303
Auburn, CA 95603

Bcc: Field File

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