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

DIVISION OF WATER RIGHTS

In the Matter of License 3684 (Application 12509)

New West, LLC

ORDER ISSUING AMENDED LICENSE

SOURCE: Unnamed Stream tributary to Salmon Creek

COUNTY: Sonoma

WHEREAS:

1. License 3684 was issued pursuant to permitted Application 12509 on February 27, 1953.

2. The Division of Water Rights (Division) record of ownership for License 3684 shows the current holder of the license as New West, LLC.

3. A petition to change the point of diversion and place of use was filed with the State Water Resources Control Board (SWRCB) on April 9, 2001 and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on September 21, 2001 and protest issues have been resolved.

4. The State Water Resources Control Board (SWRCB) has determined that the license shall be amended to include the following specific corrections or changes:

   a. The Place of Use shall be deleted and amended to read:

      1 acre within SW¼ of SW¼ of Section 1, T6N, R10W, MDB&M.
      1 acre within SW¼ of SE¼ of Section 1, T6N,R10W, MDB&M.
      5 acres within NW¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
      5 acres within NE¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
      1 acre within SW¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
      16 acres within SE¼ of NW¼ of Section 12, T6N, R10W, MDB&M.
      26 acres within NW¼ of NE¼ of Section 12, T6N, R10W, MDB&M.
      1 acre within NE¼ of NE¼, Section 12, T6N, R10W, MDB&M.
      5 acres within SW¼ of NE¼, Section 12, T6N, R10W, MDB&M.

      61 acres total as shown on map dated May 1997, on file with the SWRCB.

   b. The Point of Diversion shall be deleted and amended to read:

      By California Coordinate System of 1927, Zone 2, North 263,727 feet and East 1,737,915 feet being within SW¼ of SE¼ of said Section 1, T6N, R10W, MDB&M.

5. The SWRCB standard license terms pertaining to continuing authority, cultural resources, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game stream alteration agreement shall be updated or added to the amended license.

6. The SWRCB has determined the amended license does not constitute an initiation of a new right, and does not injure prior rights or the public trust resources of the State.

THEREFORE, IT IS ORDERED:

The attached Amended License 3684 is issued, superseding former License 3684 issued on February 27, 1953.

STATE WATER RESOURCES CONTROL BOARD

Steven Herrera for

Victoria A. Whitney, Chief
Division of Water Rights

Dated: AUG 23 2004

MAILING LIST

REGULAR MAIL

New West, LLC
c/o Paula J. Whealen
444 North Third Street, Suite 325
Sacramento, CA 95814-0228

County Recorder
County of Sonoma
P.O. Box 6124
Santa Rosa, CA 95406-0124

bcc: MSM, Field File

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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 12509 PERMIT 7398 LICENSE 3684

THIS IS TO CERTIFY, That

New West, LLC
200 Tapin Road
St. Helena, CA 94574

has the right to the use of the waters of an **Unnamed Stream** in **Sonoma County**

tributary to **Salmon Creek**

for the purpose of **Irrigation use.**

Amended License 3684 supersedes the license originally issued on **February 27, 1953**, 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 7398**. The priority of this right dates from **May 13, 1948**. Proof of maximum beneficial use of water under this license was made as of **October 19, 1951 and October 24, 2000** (dates 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 **fifty-five thousandths (0.055) cubic foot per second to be diverted from May 1 to September 30 of each year. The maximum amount diverted under this license shall not exceed 17.0 acre-feet per year.**

The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and 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 263,727 feet and East 1,737,915 feet, being within SW¼ of SE¼ of said Section 1, T6N, R10W, MDB&M.

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

1 acre within SW¼ of SW¼ of Section 1, T6N, R10W, MDB&M.
1 acre within SW¼ of SE¼ of Section 1, T6N,R10W, MDB&M.
5 acres within NW¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
5 acres within NE¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
1 acre within SW¼ of NW¼ of Section 12, T6N,R10W, MDB&M.
16 acres within SE¼ of NW¼ of Section 12, T6N, R10W, MDB&M.

26 acres within NW¼ of NE¼ of Section 12, T6N, R10W, MDB&M.
1 acre within NE¼ of NE¼, Section 12, T6N, R10W, MDB&M.
5 acres within SW¼ of NE¼, Section 12, T6N, R10W, MDB&M.

61 acres total as shown on map dated March, 2001, on file with the SWRCB.

Licensee shall at all times bypass a minimum of ten (10) gallons per minute, or the natural flow of the stream whenever it is less than ten (10) gallons per minute at the point of diversion, to maintain fish life.

Permittee shall install a permanent siphon consisting of a 2-inch diameter pipe with a valve on the downstream end. The siphon will provide a continuous 10-gpm discharge to the unnamed stream during the diversion season May 1 through September 30 as required by the conditions of this permit. Said measuring device shall be properly maintained.

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: AUG 23 2004