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

DIVISION OF WATER RIGHTS

In the Matter of License 5517 (Application 11638)

Ellen MacVeagh

ORDER ISSUING AMENDED LICENSE

SOURCE: Unnamed Stream tributary to Conn Creek thence Napa River

COUNTY: Napa

WHEREAS:

1. License 5517 was issued pursuant to permitted Application 11638 on March 24, 1959 and was recorded with the County Recorder of Napa County on March 24, 1959. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.

2. The Division of Water Rights (Division) record of ownership for License 5517 shows the current holder of the license as Ellen MacVeagh.

3. A petition to change the place of use and point of diversion, and add domestic use was filed with the State Water Resources Control Board (SWRCB) on August 4, 1998. A petition to add frost protection use was filed with the SWRCB on September 12, 2000. The SWRCB has determined that good cause for such changes has been shown. Public notices of the changes were issued on April 16, 1999 and March 15, 2002, respectively, and no protests were received.

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:

      2.8 acres within the SW¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
      10.8 acres within the SE¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
      3.2 acres within the NW¼ of SE¼ of Section 28, T8N,R5W, MDB&M.
      8.2 acres within the NE¼ of SE¼ of Section 28, T8N, R5W, MDB&M.
      2.5 acres within the NW¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
      1.4 acres within the NE¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
      6.1 acres within the SW¼ of NE¼, Section 28, T8N, R5W, MDB&M.
      10.0 acres within the SE¼ of NE¼, Section 28, T8N, R5W, MDB&M.
      45 acres total, as shown on map dated May 1997, on file with the SWRCB.

   b. The Purpose of Use shall be deleted and amended to read: Irrigation, Frost Protection, Domestic Use and Stockwatering.

   c. The Point of Diversion shall be deleted and amended to read: South one thousand five hundred (1,500) feet and West one thousand eight hundred (1,800) feet from the NE corner of Section 28, T8N R5W MDB&M, being within the NW¼ of NE¼ of said Section 28.

d. The following term shall be added:

The prehistoric sites identified as MacVeagh 1 and 2 in the cultural resource report titled A Cultural Resources Report for the MacVeagh Project, Napa County, California, prepared by Robert Douglass and Tom Origer, shall not be affected by any project-related activities. These activities would include developments and uses related to the water diversion, storage, and distribution facilities. No further ripping or grading shall be allowed in the area identified as MacVeagh 2. However, on-going vineyard maintenance activities may continue to occur at this location. Future developments at these locations may be permitted only if a qualified archeologist is retained by the licensee to design and undertake investigations to determine site significance and, if necessary, an appropriate mitigation plan, which plan must be approved by the Chief of the Division of Water Rights prior to activities related to the new development.

4. 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.

5. 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 5517 is issued, superseding former License 5517 issued on March 24, 1959.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney

Victoria A. Whitney, Chief
Division of Water Rights

Dated: MAR 3 0 2004

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 11638 PERMIT 6766 LICENSE 5517

THIS IS TO CERTIFY, That

Ellen MacVeagh
970 Conn Valley Road
St. Helena, CA 94574

Has the right to the use of the waters of **Unnamed Stream tributary to Conn Creek thence Napa River** in **Napa County**

for the purposes of **irrigation and stockwatering uses.**

Amended License 5517 supersedes the license originally issued on **March 24, 1959**, 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 6766**. The priority of this right dates from **December 2, 1946**. Proof of maximum beneficial use of water under this license was made as of July 28, 1958.

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 **105 acre-feet to be collected from about November 1 of each year to about April 1 of the succeeding year. The maximum withdrawal in any one year has been sixty-four (64) acre-feet.**

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 PURPOSES OF USE ARE: Irrigation, Stockwatering, Domestic and Frost Protection.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

South 1500 feet and West 1800 feet from NE corner of Section 28, T8N, R5W, MDB&M, being within NW¼ of NE¼ of said Section 28.

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

2.8 acres within the SW¼ of NE¼ of Section 28, T8N,R5W, MDB&M.
10.8 acres within the SE¼ of NE¼ of Section 28, T8N,R5W, MDB&M.
3.2 acres within the NW¼ of SE¼ of Section 28, T8N,R5W, MDB&M.
8.2 acres within the NE¼ of SE¼ of Section 28, T8N,R5W, MDB&M.
2.5 acres within the NW¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
1.4 acres within the NE¼ of NE¼ of Section 28, T8N, R5W, MDB&M.
6.1 acres within the SW¼ of NE¼, Section 28, T8N, R5W, MDB&M.
10.0 acres within the SE¼ of NE¼, Section 28, T8N, R5W, MDB&M.
45 acres total, as shown on map dated May 1997, on file with the SWRCB.

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.

The prehistoric sites identified as MacVeagh 1 and 2 in the cultural resource report titled A Cultural Resources Report for the MacVeagh Project, Napa County, California, prepared by Robert Douglass and Tom Origer, shall not be affected by any project-related activities. These activities would include developments and uses related to the water diversion, storage, and distribution facilities. No further ripping or grading shall be allowed in the area identified as MacVeagh 2. However, on-going vineyard maintenance activities may continue to occur at this location. Future developments at these locations may be permitted only if a qualified archeologist is retained by the licensee to design and undertake investigations to determine site significance and, if necessary, an appropriate mitigation plan, which plan must be approved by the Chief of the Division of Water Rights prior to activities related to the new development.

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 flackes and chipped stone tools; bedrock outcrops and boulders with mortar cups; 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, old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery, and a professional archeologist shall be retained by the licensee to evaluate the find and recommend appropriate mitigation. Project-related activities in the area of the find shall resume only after completion of the recommended mitigation, as approved by 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

Victoria A. Whitney

Victoria A. Whitney, Chief
Division of Water Rights

Dated: MAR 3 0 2004