STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION **13801** PERMIT **8518** LICENSE **5877**

THIS IS TO CERTIFY, That New Education Development Systems
C/o Joel Larson
1600 Aetna Springs Road
Pope Valley, CA 94567

Has the right to use waters of **Aetna Creek in Napa County** tributary to **Swartz Creek**

for the following purposes: **Irrigation, Recreation, Fire Protection, Wildlife Enhancement**

Amended **License 5877** supersedes the license originally issued **11/17/1959**, which was perfected in accordance with the laws of California, the regulations of the SWRCB or its predecessor, and the terms of **Permit 8518**. The priority of this right dates from **06/19/1950**. Proof of maximum beneficial use of water pursuant to **Application 13801** was made as of **07/07/1959** (the date of inspection).

The amount of water that may be used under this license is limited to the amount actually beneficially used for the stated purposes and shall not exceed **21 acre-feet per annum to be collected from about December 1 of each year to about April 1 of the succeeding year.**

Unless a change is approved by the State Water Resources Control Board (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:

North 800 feet and East 1,900 feet from SW corner of Section 1, T9N, R6W, MDB&M, being within SE¼ of SW¼ of said Section 1.

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

Irrigation and Fire Protection -

47.7 acres as follows: 1 acre in the SE¼ of NW¼ of Section 1, 11 acres in the SW¼ of NW¼ of Section 1, 17.2 acres in the NW¼ of SW¼ of Section 1, 15 acres in the SW¼ of SW¼ of Section 1, 3.5 acres in the SE¼ of SE¼ of Section 2, all within T9N, R6W, MDB&M.

Recreation and Wildlife Enhancement -

NW¼ of NW¼ of Section 1, T9N, R6W, MDB&M

Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

(1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the

parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.

(2) The Court has appointed a watermaster to implement the provisions of the Agreement. The licensee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.

(3) Licensee may employ existing methods or means of measurement (or alternatively any other standard means of measurement normally acceptable or satisfactory to the SWRCB in its administration of appropriative water rights) for determining the amount of water diverted to storage under this license, unless otherwise specified by the Agreement.

(4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.

(5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.

(6) The watermaster shall have the right to enter to inspect measuring equipment and to observe compliance with the terms and conditions of this license, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.

(7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.

(8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversion (2) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.

(10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.

(12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this license.

(0000024)

The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995 Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.
(0000012)

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 State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

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

This license is granted and 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.

Dated: OCT 2 7 2000

STATE WATER RESOURCES CONTROL SWRCB

Gerald E. Johns
for *Harry M. Schueller*
Chief, Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 13801 PERMIT 8518 LICENSE 5877

ORDER ALLOWING CHANGE IN PURPOSE OF USE AND POINT OF DIVERSION AND PLACE OF USE

WHEREAS:

1. License 5877 was issued to George B. Heibel and Ruth V. Heibel and was recorded with the County Recorder of Napa County on November 18, 1959 in Volume 602, Page 959.

2. License 5877 was subsequently assigned to New Education Development Systems, Inc..

3. A petition for change in purpose of use, point of diversion, and place of use has been filed with the State Water Resources Control Board and said Board has determined that good cause for such change has been shown.

4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

   Irrigation, Recreation, Wildlife Enhancement and Fire Protection

2. The point of diversion under this license shall be as follows:

   North 800 feet and East 1,900 feet from SW corner of Section 1, T9N, R6W, MDB&M, being within SE¼ of SW¼ of said Section 1.

3. The place of use under this license shall be as follows:

   Irrigation and Fire Protection

   47.7 acres as follows: 1 acre in the SE¼ of NW¼ of Section 1, 11 acres in the SW¼ of NW¼ of Section 1, 17.2 acres in the NW¼ of SW¼ of Section 1, 15 acres in the SW¼ of SW¼ of Section 1, 3.5 acres in the SE¼ of SE¼ of Section 2, all within T9N, R6W, MDB&M.

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Recreation and Wildlife Enhancement

NW¼ of NW¼ of Section 1, T9N, R6W, MDB&M.

Dated: DECEMBER 10 1984

L. D. Johnson
for Raymond Walsh, Chief
Division of Water Rights

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 13801 PERMIT 8518 LICENSE 5877

THIS IS TO CERTIFY, *That* George B. Heibel and Ruth V. Heibel
Aetna Springs
Pope Valley, California

Notice of Change (Over)

ha ve *made proof as of* July 7, 1959
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of

Aetna Creek in Napa County

tributary to Swartz Creek

for the purpose of irrigation and incidental stockwatering uses
under Permit 8518 *of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from* June 19, 1950
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed twenty-one (21) acre-feet per annum to be collected from about December 1 of each year to about April 1 of the succeeding year.

The point of diversion of such water is *located* :

North one thousand two hundred ninety (1290) feet and east one thousand two hundred forty (1240) feet from SW corner of Section 1, T9N, R6W, MDB&M, being within SW¼ of SW¼ of said Section 1.

A description of the lands or the place where such water is put to beneficial use is as follows:

18 acres within NW¼ of SW¼ of Section 1, T9N, R6W, MDB&M.

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 State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

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

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.

This license is granted and 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 board.

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 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.

Dated: NOV 17 1959

L. K. Hill
L. K. Hill
Executive Officer

12-18-74 RECEIVED NOTICE OF ASSIGNMENT TO E.S.I. Land Technology

2-25-75 assigned to Aetna Springs Resort Inc.

3/8/77 Asgd to New Education Development Systems, Inc.

LICENSE 5877
STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO George B. and Ruth V. Heibel

DATED NOV 17 1959

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