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 18949 PERMIT 12287 LICENSE 7430

THIS IS TO CERTIFY, That Flora Springs Winery
1978 W. Zinfandel Lane
St. Helena, CA 94574

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the licensee have met the following requirements for Change Petition approval: (a) the change will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; (c) the petition does not constitute the initiation of a new right; and (d) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346], 658 P.2d 709.)

The amended license is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057). Therefore, an amended license on **Application 18949** filed on **August 28, 1959,** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended license.

Licensee has the right to the use of the waters of an **Unnamed Stream** in **Napa County** tributary to **Duvall Lake thence Pope Creek thence Lake Berryessa** for the purpose of **Irrigation, Frost Protection, Heat Control and Recreational** uses.

Amended License 7430 supersedes the license originally issued on **September 1, 1965**, which was perfected in accordance with the laws of California, the Regulations of the State Water Board, or its predecessor, terms of **Permit 12287**, and all subsequent orders. The priority of this right dates from **August 28, 1959**. Proof of maximum beneficial use of water under this license was made as of **April 9, 1964** (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 **45 acre-feet per annum to be collected from about October 1 of each year to about April 1 of the succeeding year.** The maximum withdrawal under this license shall not exceed **43 acre-feet per year**.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 2, North 1,995,726 feet and East 6,426,069 feet, being within NW ¼ of SE ¼ of Section 12, T9N, R6W, MDB&M.

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

34 acres within NE ¼ of SW ¼ of Section 7, T9N, R5W, MDB&M
2 acres within NW ¼ of SE ¼ of Section 7, T9N, R5W, MDB&M
30 acres within NW ¼ of SW ¼ of Section 7, T9N, R5W, MDB&M
17 acres within SE ¼ of NW ¼ of Section 7, T9N, R5W, MDB&M
34 acres within SE ¼ of SW ¼ of Section 7, T9N, R5W, MDB&M
1 acre within SW ¼ of NE ¼ of Section 7, T9N, R5W, MDB&M
2 acres within SW ¼ of SE ¼ of Section 7, T9N, R5W, MDB&M
24 acres within SW ¼ of NW ¼ of Section 7, T9N, R5W, MDB&M
27 acres within SW ¼ of SW ¼ of Section 7, T9N, R5W, MDB&M
10 acres within NE ¼ of NE ¼ of Section 12, T9N, R6W, MDB&M
30 acres within NE ¼ of SE ¼ of Section 12, T9N, R6W, MDB&M
15 acres within NE ¼ of SW ¼ of Section 12, T9N, R6W, MDB&M
14 acres within NW ¼ of SE ¼ of Section 12, T9N, R6W, MDB&M
29 acres within SE ¼ of NE ¼ of Section 12, T9N, R6W, MDB&M
2 acres within SE ¼ of SE ¼ of Section 12, T9N, R6W, MDB&M
6 acres within SE ¼ of SW ¼ of Section 12, T9N, R6W, MDB&M
3 acres within SW ¼ of NE ¼ of Section 12, T9N, R6W, MDB&M
15 acres within SW ¼ of SE ¼ of Section 12, T9N, R6W, MDB&M
1 acre within NW ¼ of NE ¼ of Section 13, T9N, R6W, MDB&M

296 acres total, as shown on map dated June 24, 2009, on file with the State Water Board.

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) Diversion of water under this license shall be subject to the watermaster appointed by the court to enforce the terms 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 shall measure reservoir storage at the beginning and end of the Accumulation Season. The licensee shall pay for the cost of installing and maintaining any water level measuring device required by the State Water Board.

(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 and the amount of water diverted directly for use under this license. Such annual reports shall be made in writing on forms approved by the watermaster.

(6) Licensee shall allow the watermaster reasonable access to the project covered by this license to inspect measuring equipment and to verify compliance to terms and conditions of the Agreement, 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: (a) 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 diversions; or (b) 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 the 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 Board 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 State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

THE FOLLOWING TERMS AND CONDITIONS ARE RELATED TO EXPANSION OF THE PLACE OF USE AS IDENTIFIED IN THE OCTOBER 2010 INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE PALISADES RANCH WATER RIGHTS PROJECT:

Licensee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the Bay Area Air Quality Management District (BAAQMD). Prior to the start of construction or diversion or use of water under this license on the remaining acres to be developed in the place of use, licensee shall submit documentation to the Deputy Director for Water Rights showing that the BAAQMD has approved the licensee's Dust Control and Mitigation Plan. On the date of issuance of this amended license, 17 acres remained to be developed. Licensee shall report the number of acres remaining to be developed on the Report of Licensee until the place of use is fully developed.

(0450300)

No construction shall commence and no water shall be diverted or used under this right on the remaining acreage to be developed within the expanded place of use until all necessary federal, state and local approvals have been obtained for this acreage.

(0450300)

In order to prevent degradation of the quality of water during and after construction of the project, licensee shall file a report pursuant to Water Code section 13260 prior to commencement of construction and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Board.

(0000100)

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.

(0000208)

Construction avoidance measures shall be incorporated into any future vineyard development plans to avoid all elderberry shrubs. A 100-foot (or wider) buffer shall be established and maintained around the elderberry shrubs (*Sambucus mexicana)* for complete avoidance of adverse impacts. The buffer shall consist of fencing and flagging; contractors and construction crews shall be briefed on the purpose of the buffer, the need for protection, areas to avoid and reporting measures to carry out if an impact occurs. Buffer areas shall be maintained during the duration of construction. In areas where existing vineyard development has encroached within the 100-foot buffer, all remaining portions of the existing riparian corridor (defined by extant riparian vegetation) shall be maintained. Photographs and a map indicating the location(s) of all elderberry shrubs and established buffers at the project site in proximity to any new vineyard development in the place of use should be submitted to the Deputy Director for Water Rights 30 days prior to the development.

(0600500)

If construction activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-construction survey for the purpose of identifying nesting bird species. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed construction areas. The survey shall be conducted no more than 14 days prior to the beginning of construction activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the licensee shall notify the Department of Fish and Game. If an active raptor nest is found during the pre-construction survey, a 500-foot no-disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.

(0400500)

For the protection of riparian habitat, licensee shall establish a setback as shown in Figure 5, Riparian Corridors, of the Initial Study/Mitigated Negative Declaration. The setback shall be at least 45 feet wide along the intermittent drainages and swales adjacent to the expanded place of use as measured from the top of the bank on both sides of the stream. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of occasional equipment access reasonably necessary for continued operation of the vineyard. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available.

Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area is allowed. Licensee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this license.

(0000206M)

The vernal pool that occurs in the southern portion of the expanded place of use and the adjacent stand of valley oaks (Figure 5, Initial Study/Mitigated Negative Declaration) shall be preserved. Invasive weeds shall be removed from the vernal pool area biannually for five years. Photographs shall be taken prior to and after each vernal pool weed removal and submitted annually to the Deputy Director for Water Rights with Reports of Licensee. The dirt harvest road that bisects the remaining portion of the vernal pool shall be permanently taken out of service to facilitate natural vernal pool recovery as long as water is being diverted under this license.

(0400500)

The 0.12 acre of wetland habitat assumed to be impacted by the project shall be mitigated through creation/restoration of wetlands at a ratio of 1.5 to 1 (restored to impacted) wetland acreage. No less than 0.18 acre of wetland shall be enhanced to support wetland plants similar to those previously found at the impacted wetland, such as prickly coyote-thistle (*Eryngium armatum*), oniongrass (*Melica bulbosa*), curly dock (*Rumex crispus*), common yellow monkeyflower (*Mimulus guttatus*), irisleaf rush (*Juncus xiphioides*), spotted-throat downingia (*Downingia concolor*), and Douglas' Pogogyne (*Pogogyne douglasii*). The plants used for wetland mitigation shall be approved by the Department of Fish and Game prior to mitigation implementation. The mitigation shall occur on the project site, in the vicinity of the wetland swale in the northeastern portion of the expanded place of use (Figure 5, Initial Study/Mitigated Negative Declaration), or in a comparable onsite location that would support the hydrology and wetland plants similar to those previously found at the impacted wetland.

A minimum setback of 50 feet shall be maintained from the edge of the mitigated wetland. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. Planting, maintenance, and irrigation of wetland vegetation within the setback area are allowed.

The mitigation site shall be monitored annually for five years by a biologist whose qualifications are acceptable to the Deputy Director for Water Rights to assess the success of the wetland vegetation. Photograph locations will be established along the mitigation site. During the annual monitoring visit, photographs will be taken and the success of the vegetation will be documented. Reports shall include photo documentation of the mitigation site. Monitoring reports shall be submitted annually to the Deputy Director for Water Rights and the Department of Fish and Game for the five monitoring years (as-built report at the completion of restoration/creation of wetlands plus reports for four monitoring years thereafter) or until mitigation has been deemed successful. The mitigation will be considered successful if, at the end of the five-year monitoring period, the mitigation site has achieved an overall 80 percent cover. If the survival of the vegetation is determined to be below 80 percent after any of the annual monitoring events, additional wetland plants will be planted in order to achieve success.

(040500)

No work shall commence and no water shall be diverted and used on the remaining acres to be developed in the expanded place of use under this license until a signed copy of a Streambed Alteration Agreement between the California Department of Fish and Game and the licensee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the licensee. If a Streambed Alteration Agreement is not necessary for this licensed project, the licensee shall provide the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.

(000063M)

Prior to the start of construction, or diversion and use of water on the remaining acres to be developed in the expanded place of use under this license, licensee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with the Division of Water Rights. If a permit from the USACE is not necessary for this licensed project, the licensee shall provide the Division of Water Rights with a letter from the USACE affirming that a permit is not needed.

(0450300)

Prior to the start of construction, or diversion and use of water on the remaining acres to be developed in the expanded place of use under this license, licensee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Board or the San Francisco Bay Regional Water Quality Control Board unless the certification is waived by the U.S. Army Corps of Engineers.

(0450300)

No oak trees shall be removed until an Oak Tree Mitigation Plan is approved by the Deputy Director for Water Rights. Tree replacement shall be conducted consistent with the Tree Mitigation Plan that has been submitted to the Division of Water Rights and tree mitigation shall occur in the areas depicted in Figure 4 of the Tree Mitigation Plan. The previously removed oak woodlands (approximately 2,711 trees within approximately 39 acres) and oak woodlands remaining within the 121 acre expanded place of use (if impacted, consisting of approximately 272 trees within two acres) shall be replaced in the approximately 41 undeveloped acres identified on site at a 1.5 to 1 ratio. Associative native shrub species shall also be planted along with the replacement trees at a 4:1 ratio (tree:shrub). The Tree Mitigation Plan includes planting specifications for replacement trees and shrubs, irrigation methods, maintenance and monitoring requirements, and success criteria for mitigation plantings. Failed plantings shall be replaced to achieve net success criteria of 80 percent survival after five years. Trees surviving five years shall be maintained in perpetuity. Photo documentation showing the results of the tree replacement shall be submitted to the Deputy Director for Water Rights when requested after five years. All photos shall be dated and the location of the photos shown on a drawing. After five years, any trees which die of natural causes shall be photographed and photos indicating the date the photo was taken and location of the tree(s) shall be submitted annually to the Deputy Director for Water Rights with Reports of Licensee.

(0400500)

The five notable trees (Figure 5, Initial Study/Mitigated Negative Declaration) shall also be avoided. To protect oak trees intended to remain undisturbed from project-related disturbance, construction fencing shall be installed as far as feasible outside the driplines of oak trees within the vicinity of construction areas. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. Where encroachment is necessary past the driplines, a certified arborist shall document compliance with the following: at least 12 inches of mulch will be temporarily placed to protect roots from compaction; any tree roots to be severed shall be the maximum feasible distance from the trunk; any roots over one-inch in diameter that are damaged as a result of construction activities shall be traced back and cleanly cut behind any damaged area; and exposed roots shall be kept moist or covered immediately. Documentation, including photographs that this mitigation measure has been completed shall be submitted to the Division of Water Rights within 30 days of installation of new vineyard blocks.

(0400500)

The cultural resource site, identified as CA-NAP-251 by Peter Banks in the report titled “An Archaeological Reconnaissance of the Komes-Edge Hill Farms Properties, Pope Valley, Napa County, California” dated July 25, 1983, shall not be impacted by the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, installation of pipelines; road improvements; and ripping, trenching, grading or planting related to both the conversion of land to agricultural use and maintenance of the place of use). CA-NAP-251 shall be protected by installing and maintaining a fence around the site

perimeter. The placement of the fence inclusive of a buffer zone of 15 feet shall be determined by Tom Origer & Associates in consultation with the State Water Board. The fencing shall remain in place for as long as water is being diverted pursuant to any licenses. Weed growth within the fenced area may be controlled by mowing; however, herbicides shall not be used because they could alter the site's chemistry and adversely impact the archaeological deposit. Any future project-related activities or developments at the location of the above listed site may be allowed only if an archaeologist that has been approved by the California Historical Information System to work in the area, and that is acceptable to the Deputy Director for Water Rights is retained to determine the significance of the site. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. GPS coordinates shall be used to identify the boundary of the sensitive area and be submitted to the staff of the Division of Water Rights. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The cultural resource site, identified as CA-NAP-252 by Peter Banks in the report titled "An Archaeological Reconnaissance of the Komes-Edge Hill Farms Properties, Pope Valley, Napa County, California" dated July 25, 1983, shall not be impacted by the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, installation of pipelines; road improvements; and ripping, trenching, grading or planting related to both the conversion of land to agricultural use and maintenance of the place of use). Ongoing agricultural related impacts at CA-NAP-252 have occurred as a result of the previous location of equipment storage sheds, roads, and farm-related activities where CA-NAP-252 is located. In order to minimize any possible additional impacts to CA-NAP-252, the site shall be covered with a layer of gravel, the distribution of which is to be determined by Tom Origer & Associates in consultation with the State Water Board. Any future project-related activities or developments at the location of the above listed site may be allowed only if an archaeologist that has been approved by the California Historical Information System to work in the area, and that is acceptable to the Deputy Director for Water Rights is retained to determine the significance of the site. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. GPS coordinates shall be used to identify the boundary of the sensitive area and be submitted to the staff of the Division of Water Rights. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The cultural resource site identified as CA-NAP-314, by Peter Banks in the report titled "An Archaeological Reconnaissance of the Komes-Edge Hill Farms Properties, Pope Valley, Napa County, California" dated July 25, 1983, and again by Tom Origer & Associates in the report titled "Archaeological Investigations at Cypress and Palisades Ranches, Pope Valley, Napa County, California" dated January 2010, shall not be impacted by any subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Routine maintenance of existing vineyard, including shallow discing and weed mowing will continue to be allowed. When vine replacement is necessary, vine removal shall be done as non-invasively as possible, by pulling the vines vertically with a chain attached to the hydraulic system on a tractor. Vine removal shall occur only while the soil is moist down to six inches, and new vines shall be replanted in the same location as the vines which were removed. The licensee shall mark the location of CA-NAP-314 with permanent line stakes extending a minimum of two feet above the height of the existing line stakes. The delineation of the site area shall be determined by Tom Origer & Associates in consultation with the State Water Board. GPS coordinates shall be used to identify the boundary of the sensitive area and be submitted to the staff of the Division of Water Rights. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The location of the site previously identified as CA-NAP-670, by Peter Banks in the report titled "An Archaeological Reconnaissance of the Komes-Edge Hill Farms Properties, Pope Valley, Napa County, California" dated July 25, 1983, and again discussed by Tom Origer & Associates in the report titled "Archaeological Investigations at Cypress and Palisades Ranches, Pope Valley, Napa County, California" dated January 2010, may continue to be used as vineyard. Routine maintenance of the vineyard, including shallow discing and weed mowing will continue to be allowed with no limitations for ripping or replanting. If future ground disturbing activities should uncover possible archaeological specimens, work shall be halted until the Deputy Director for Water Rights is notified of the discovery and a professional archaeologist is retained by the licensee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The site identified as CA-NAP-672, by Peter Banks in the report titled "An Archaeological Reconnaissance of the Komes-Edge Hill Farms Properties, Pope Valley, Napa County, California" dated July 25, 1983, and again by Tom Origer & Associates in the report titled "Archaeological Investigations at Cypress and Palisades Ranches, Pope Valley, Napa County, California" dated January 2010, shall not be impacted by any subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Routine maintenance of the existing vineyard, including shallow discing and weed mowing will continue to be allowed. If vine replacement is necessary, vine removal shall be done as non-invasively as possible, by pulling the vines vertically with a chain attached to the hydraulic system on a tractor. Vine removal shall occur only while the soil is moist down to six inches, and new vines shall be replanted in the same location as the vines that were removed. The licensee shall mark the sensitive area of CA-NAP-672 with permanent line stakes extending a minimum of two feet above the height of the existing line stakes. The delineation of the sensitive area shall be determined by Tom Origer & Associates in consultation with the State Water Board. GPS coordinates shall be used to identify the boundary of the sensitive area and be submitted to the staff of the Division of Water Rights. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The site identified as CA-NAP-936, by Tom Origer & Associates in the report titled "Archaeological Investigations at Cypress and Palisades Ranches, Pope Valley, Napa County, California" dated January 2010 shall be excluded from the place of use and avoided during project construction, development, and operation. Existing vines will be cut off and treated to prevent re-growth when the licensee determines that production of the vines has decreased or disease requires removal of the vines. The vineyard infra-structure including line stakes, posts and the drip lines in the site area shall be removed at the same time. The existing vineyard road (avenue) bisecting the site will no longer be used and the road will be re-routed around the location of CA-NAP-936. An archaeologist, who has been approved by the California Historical Resources Information System to work in the area and who is acceptable to the Deputy Director for Water Rights, shall be present during the removal of the vineyard infrastructure including the stakes and posts and irrigation system to ensure minimal ground disturbance. The site area shall be protected from future use by erecting a permanent fence around the site perimeter. The fence shall be at least five-feet in height and set back 15 feet from the site edge to create a buffer. The placement of the fence shall be determined by the senior author of the 2010 Tom Origer & Associates report in consultation with the State Water Board. GPS shall be used to identify the boundary of the sensitive area and the GPS coordinates shall be submitted to the staff of the Division of Water Rights. Weed growth within the fenced area may be controlled by mowing; however, herbicides shall not be used because they could alter the site's chemistry and adversely impact the archaeological deposit. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The site identified as Flora Springs 4 (the hand dug stone lined well) by Tom Origer & Associates in the report titled “A Cultural Resource Study for the Flora Springs Water Rights Application Project, Pope Valley, Napa County, California” dated September 15, 1999 shall be filled and avoided during project construction, development, and operation. The site shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use-vineyards). Routine maintenance of the vineyard, including shallow discing and weed mowing will continue to be allowed. If future project-related activities or developments at the location of Flora Springs 4 are unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the staff of the Division of Water Rights shall determine the significance of the site. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The site identified as CA-NAP-938/H (Flora Springs 5), by Tom Origer & Associates in the report titled “A Cultural Resource Study for the Flora Springs Water Rights Application Project, Pope Valley, Napa County, California” dated September 15, 1999 shall be avoided during project construction, development, and operation. The site shall remain fenced and shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use-vineyards). If future project-related activities or developments at the location of CA-NAP-938/H (Flora Springs 5) are unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the staff of the Division of Water Rights shall determine the significance of the site. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

The site identified as CA-NAP-939H (Flora Springs 6), by Tom Origer & Associates in the report titled “A Cultural Resource Study for the Flora Springs Water Rights Application Project, Pope Valley, Napa County, California” dated September 15, 1999 shall be avoided during project construction, development, and operation. The site shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use-vineyards). If avoidance is infeasible, an archaeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the staff of the Division of Water Rights, shall monitor all ground disturbances, determine the boundaries of newly discovered features, and determine the significance of the site. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Licensee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes and flaked 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 Deputy Director for Water Rights shall be notified of the discovery and a professional archaeologist shall be retained by the Licensee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for 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 Deputy Director for Water Rights.

(0000215)

If human remains are encountered, then the licensee shall comply with Section 15064.5 (e)(1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the Napa 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 and evidence of completion has been submitted to the Deputy Director for Water Rights.

(0380500)

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 State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, 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 State Water 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 Board 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 State Water 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 Board 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 State Water 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.

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

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 2089) 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.

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 State Water 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 (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

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: DEC 15 2011

#7430

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 18949 PERMIT 12287 LICENSE 7430

ORDER ALLOWING CHANGE IN PLACE OF USE AND
CORRECTING THE DESCRIPTION OF THE POINT OF DIVERSION

WHEREAS:

1. License 7430 was issued to Franklin F. Offner and was filed with the County Recorder of Napa County on September 2, 1965.

2. A petition for change in the 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.

3. The Board has found that the point of diversion under this license is incorrectly shown on the USGS, 7½ minutes, Aetna Springs Quadrangle and it must be corrected.

4. The Board has determined that the petitioned change and requested correction 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 point of diversion under this license shall be as follows:

   N 1,700 feet and W 2,350 feet from SE corner of Section 12, T9N, R6W, MDB&M and being within NW¼ of SE¼ of said Section 12.

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

5	acres being within NE¼ of NE¼,	Sec. 12, T9N, R6W, MDB&M
17	acres being within SE¼ of NE¼,	Sec. 12, T9N, R6W, MDB&M
2	acres being within SW¼ of NE¼,	Sec. 12, T9N, R6W, MDB&M
17	acres being within NE¼ of SE¼,	Sec. 12, T9N, R6W, MDB&M
10	acres being within NW¼ of SE¼,	Sec. 12, T9N, R6W, MDB&M
6	acres being within NE¼ of SW¼,	Sec. 12, T9N, R6W, MDB&M
4.5	acres being within SE¼ of SW¼,	Sec. 12, T9N, R6W, MDB&M
17	acres being within NW¼ of NW¼,	Sec. 7, T9N, R5W, MDB&M
3	acres being within NE¼ of NW¼,	Sec. 7, T9N, R5W, MDB&M
11.5	acres being within SW¼ of NW¼,	Sec. 7, T9N, R5W, MDB&M
93	acres total	

Dated: MARCH 3 1981

Walter G. Pettit, Chief
Division of Water Rights

WRCB
133 (12-67)

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3. The paragraph pertaining to the continuing authority of the Board is replace with the following:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights privileges under this license 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 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 Board 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 permittee 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 requirements for the authorized project. No action will be taken pursuant to this paragraph unless the 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 Board 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 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.

Dated: NOVEMBER 19 1986

for Raymond Walsh, Chief
Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 18949 PERMIT 12287 LICENSE 7430

ORDER ALLOWING CHANGE IN PURPOSE OF USE,
PLACE OF USE AND AMENDING THE LICENSE

WHEREAS:

1. License 7430 was issued to Franklin F. Offner and was recorded with the County Recorder of Napa County on September 2, 1965 in Volume 730, Page 69.

2. License 7430 was subsequently assigned to Jerome W. Komes and Flora C. Komes.

3. An order allowing change in the place of use and a correction in the point of diversion was granted on March 31, 1981 and has been recorded with the County of Napa County on March 5, 1981 in Volume 1194, Page 724.

4. A petition for change in purpose of use, 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.

5. 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, Frost Protection, Heat Control and Recreation

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

   5 acres being within NE¼ of NE¼, Section 12, T9N, R6W, MDB&M
   30 acres being within SE¼ of NE¼, Section 12, T9N, R6W, MDB&M
   5 acres being within SW¼ of NE¼, Section 12, T9N, R6W, MDB&M
   6 acres being within NE¼ of SW¼, Section 12, T9N, R6W, MDB&M
   5 acres being within SE¼ of SW¼, Section 12, T9N, R6W, MDB&M
   22 acres being within NW¼ of SE¼, Section 12, T9N, R6W, MDB&M
   17 acres being within NE¼ of SE¼, Section 12, T9N, R6W, MDB&M
   20 acres being within SE¼ of SE¼, Section 12, T9N, R6W, MDB&M
   36 acres being within SW¼ of SE¼, Section 12, T9N, R6W, MDB&M
   3 acres being within SE¼ of NW¼, Section 7, T9N, R5W, MDB&M
   22 acres being within SW¼ of NW¼, Section 7, T9N, R5W, MDB&M
   18 acres being within NW¼ of SW¼, Section 7, T9N, R5W, MDB&M

   189 acres total

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

Notice of Assignment (Ov

License for Diversion and Use of Water

APPLICATION 18949 PERMIT 12287 LICENSE 7430

THIS IS TO CERTIFY, *That* Franklin F. Offner
Pope Valley, California

has made proof as of October 23, 1964,
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
an unnamed stream in Napa County
tributary to Duvall Lake thence Pope Creek thence Lake Berryessa

for the purpose of irrigation and stockwatering uses
under Permit 12287 *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* August 28, 1959,
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 forty-five (45) acre-feet per annum to be collected from about October 1 of each year to about April 1 of the succeeding year.

The maximum withdrawal has been 43 acre-feet per annum.

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

North two thousand one hundred fifty (2150) feet and west two thousand one hundred fifty (2150) feet from SE corner of Section 12, T9N, R6W, MDB&M, being within NW¼ of SE¼ of said Section 12.

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

Stockwatering at the reservoir within NW¼ of SE¼ of Section 12, T9N, R6W, MDB&M, and irrigation of:

25 acres within SE¼ of NE¼ of Section 12, T9N, R6W, MDB&M.
5 acres within SW¼ of NE¼ of Section 12, T9N, R6W, MDB&M.
30 acres total

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: SEP 1 1965

L. K. Hill
Executive Officer

5-23-66 Name of Janine Offner added

~~RECEIVED NOTICE OF ASSIGNMENT TO~~

1-20-82 asgd to Jerome W. + Flora C. Komes

LICENSE 7430

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE TO APPROPRIATE WATER

ISSUED TO Franklin F. Offner

DATED SEP 1 1965

47689 8-61 3M Ⓢ SPO

MAR 25 '65

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