L10734

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 15154A Permit 9399A License 10734

AMENDING LICENSE BY CORRECTING THE DESCRIPTIONS OF THE POINT OF DIVERSION AND PLACE OF USE AND BY ADDING REVISED LICENSE TERMS

WHEREAS:

1. License 10734 was issued pursuant to permitted Application 15154A to Elaine Henderson and Estate of Mary B. Carter on October 5, 1976, and subsequently recorded with the County Recorder of Napa County on October 7, 1976, in Volume 1011, Page 617.

2. License 10734 was subsequently assigned to Marvin R. Poston and Arlene R. Poston on December 26, 1978.

3. License 9834 and License 10734 cover the same on-stream reservoir.

4. The Division of Water Rights (Division) conducted an inspection of the projected covered by License 10734 on April 25, 2000. This inspection found that the place of use being served has been reduced from a 12-acre pasture to an 8.5-acre vineyard. The inspection also found that the description of the point of diversion requires correction.

5. The State Water Resources Control Board (SWRCB) will add its standard continuing authority and water quality objective terms and a term to prevent any act which results in the taking of a threatened or endangered species that has been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The description of the point of diversion authorized by this license is corrected as follows:

   By California Coordinate System of 1927, Zone 2, North 341,995 feet and East 1,822,351 feet, being within NE¼ of NW¼ of projected Section 27, T9N, R7W, MDB&M.

2. The description of the place of use authorized by this license is corrected as follows:

   8.5 acres within E½ of NW¼ of projected Section 27, T9N, R7W, MDB&M, as shown on map on file with the SWRCB.

3. The SWRCB continuing authority condition is added to this license as follows:

   Pursuant to California 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.

4. The SWRCB water quality objectives condition is added to this license as follows:

   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 California 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.

5. The SWRCB endangered species term is added to this license as follows:

   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 (California 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.

Dated: OCT 3 1 2000

Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 15154A PERMIT 9399A LICENSE 10734

over

THIS IS TO CERTIFY, *That* ELAINE HENDERSON AND ESTATE OF MARY B. CARTER C/O ELAINE HENDERSON, 56 MARS STREET, SAN FRANCISCO, CALIFORNIA 94114

HAVE *made proof as of* OCTOBER 1, 1973 *(the date of inspection) to the satisfaction of the State Water Resources Control Board of a right to the use of the water of* AN UNNAMED CREEK IN NAPA COUNTY

tributary to BLOSSOM CREEK THENCE NAPA RIVER THENCE SAN PABLO BAY

for the purpose of IRRIGATION USE *under Permit* 9399A *of the Board and that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the Board and the permit terms; that the priority of this right dates from* JANUARY 13, 1953 *and that 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* TWENTY AND FOUR-TENTHS (20.4) ACRE-FEET PER ANNUM, TO BE COLLECTED FROM OCTOBER 15 OF EACH YEAR TO JUNE 30 OF THE SUCCEEDING YEAR. THE MAXIMUM WITHDRAWAL UNDER THIS LICENSE SHALL NOT EXCEED 20.4 ACRE-FEET PER YEAR.

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED SEASON TO OFFSET EVAPORATION AND SEEPAGE OR FOR ANY OTHER PURPOSE.

THE TOTAL QUANTITY OF WATER STORED UNDER THIS LICENSE AND THE LICENSE ISSUED PURSUANT TO PERMIT 9399B SHALL NOT EXCEED 27.2 ACRE-FEET PER ANNUM.

CONSUMPTIVE USE OF THE WATER STORED UNDER THIS LICENSE IS LIMITED TO THAT VOLUME OF WATER ABOVE A DEPTH OF 3.5 FEET IN THE RESERVOIR AND LICENSEE SHALL PROVIDE SOME MEANS SATISFACTORY TO THE STATE WATER RESOURCES CONTROL BOARD OF GAGING THIS DEPTH.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

NORTH 675 FEET AND EAST 40 FEET FROM SW CORNER OF NW1/4 OF NE1/4 OF PROJECTED SECTION 27, T9N, R7W, MDB&M, BEING WITHIN NW1/4 OF NE1/4 OF SAID SECTION 27.

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

12 ACRES WITHIN E1/2 OF NW1/4 OF PROJECTED SECTION 27, T9N, R7W, MDB&M.

THIS LICENSE IS SUBJECT TO THE JUDGMENT OF THE SUPERIOR COURT OF NAPA COUNTY IN CORSETTI V JENSSEN (NO. 17333).

LICENSEE SHALL MAINTAIN AN OUTLET PIPE OF ADEQUATE CAPACITY IN HIS DAM AS NEAR AS PRACTICABLE TO THE BOTTOM OF THE NATURAL STREAM CHANNEL, OR PROVIDE OTHER MEANS SATISFACTORY TO THE STATE WATER RESOURCES CONTROL BOARD, IN ORDER THAT WATER ENTERING THE RESERVOIR OR COLLECTED IN THE RESERVOIR DURING AND AFTER THE CURRENT STORAGE SEASON MAY BE RELEASED INTO THE DOWNSTREAM CHANNEL TO THE EXTENT NECESSARY TO SATISFY DOWNSTREAM PRIOR RIGHTS.

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

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 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 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: OCT 5 1976

STATE WATER RESOURCES CONTROL BOARD

R. L. Rosenberger

Chief, Division of Water Rights

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12.26.78 asgd to Marvin R. & Arlene R. Poston

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