



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

License for Diversion and Use of Water

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APPLICATION 28611

PERMIT 20113

LICENSE

13078

THIS IS TO CERTIFY, That

Russell S. Levy and Katherine Levy
3348 Atlas Peak Road
Napa, CA 94558

have made proof as of July 22, 1993 (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 Stream in Napa County

tributary to Milliken Creek thence Napa River thence San Pablo Bay

for the purpose of Irrigation, Recreational, Wildlife Enhancement, and Fire Protection uses

under Permit 20113 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 November 1, 1985 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 three and five-tenths (3.5) acre-feet per annum to be collected from October 15 of each year to May 15 of the succeeding year. The maximum withdrawal in any one year shall not exceed 3.5 acre-feet.

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(000005)

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

South 1,700 feet and East 1,700 feet from NW corner of Section 6, T6N, R3W, MDB&M, being within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 6.

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

Recreational, wildlife enhancement, and fire protection uses at reservoir and irrigation of 3 acres, all within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T6N, R3W, MDB&M, as shown on map on file with State Water Resources Control Board.

Licensee shall install and 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 which is not authorized for appropriation under this license may be released.

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Licensee shall maintain in the reservoir a staff gage meeting the approval of the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.

Licensee shall record the staff gage reading verified by a designated representative of the City of Napa, on or about November 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next Report of Licensee submitted to the Board by licensee.

Licensee shall allow a designated representative of the City of Napa reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0070047)

(0100047)

Licensee shall comply with the following provisions which are derived from the agreement between licensee and City of Napa, executed on August 21, 1986 and filed with the State Water Resources Control Board:

1. Licensee shall not withdraw for use any water impounded in the reservoir from November 1 to March 31 of each storage season until the prior rights and obligations of the City of Napa under License 5208 (Application 3172) and Permit 18448 (Application 25712) are fully satisfied pursuant to paragraphs (2) through (5) below.
2. For the protection of fish and wildlife, upon request by the City of Napa, licensee shall make the following releases from the reservoir:
 - (a) When, on the last day of the month preceding the request, the water surface of Milliken Reservoir was at or below 873 feet, an amount which, when combined with the amount of inflow to Milliken Reservoir during the preceding month, would have been produced by a continuous flow of 0.5 cubic foot per second measured at the Milliken Reservoir gage; provided, however, that licensee shall not be required to release water impounded prior to the first day of the preceding month.
 - (b) When, on the last day of the month preceding the request, the water surface of Milliken Reservoir was above 873 feet, an amount which, when combined with the inflow to Milliken Reservoir during the preceding month, would have been produced by a continuous flow of 5 cubic feet per second measured at the Milliken Reservoir gage; provided, however, that licensee shall not be required to release water impounded prior to the first day of the preceding month.
- (3) Upon request by the City of Napa, licensee shall release from the reservoir an amount of water which, when measured at the Milliken Reservoir gage, is equal to the amounts of water withdrawn from storage and released by the City of Napa from Milliken Reservoir during the preceding month for redirection at its diversion dam downstream; provided, however, that licensee shall not be required to release water impounded prior to the first day of the preceding month.
- (4) If, on March 31 of any year Milliken Reservoir has not spilled, upon request by the City of Napa, licensee shall release from the reservoir an amount of water sufficient to fill Milliken Reservoir up to the amount of water which licensee has impounded in the reservoir since November 1 of that storage year. In no event shall licensee be obligated to release water below the previous November 1 staff gage reading.
- (5) All releases provided for in paragraphs (2), (3) and (4) above shall, except by prior agreement of the parties to the contrary, be made by the 5th day of the month and shall be made at the maximum practicable rate. Licensee shall notify the City of Napa or its designated representative at least 12 hours in advance of the timing of such releases.

Inclusion in the license of certain provisions of the referenced 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.

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

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

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 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.

This 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 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 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, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

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.

JULY 18 1994

Dated:

STATE WATER RESOURCES CONTROL BOARD

David R. Bevington
for Chief, Division of Water Rights

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