



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

License for Diversion and Use of Water

APPLICATION 29224
Page 1 of 6

PERMIT 20618

LICENSE **13416**

THIS IS TO CERTIFY, That

Phyllis Pieper
19824 Bear Valley Road
Middletown, CA 95461-8302

has made proof as of June 4, 1997 (the date of inspection) to the satisfaction of the State Water Resources Control Board of a right to the use of the waters of an Unnamed Stream in Lake County

tributary to Jericho Creek thence Hunting Creek thence Putah Creek thence Lake Berryessa

for the purpose of Irrigation, Stockwatering, Recreational, and Fire Protection uses

under Permit 20618 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 April 14, 1988 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 a total of eighteen and one-tenth (18.1) acre-feet per annum to be collected from November 15 of each year to March 15 of the succeeding year as follows: (1) 17 acre-feet per annum in Upper Reservoir, and (2) 1.1 acre-feet per annum in Lower Reservoir. The maximum withdrawal in any one year from Upper Reservoir shall not exceed 17 acre-feet.

The capacities of Upper Reservoir and of Lower Reservoir covered by this license shall not exceed 17 acre-feet and 1.1 acre-feet, respectively.

After the initial filling of Lower Reservoir, licensee's right under this license extends only to water necessary to keep the storage reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

(0000041)

THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

- (1) Upper Reservoir - South 350 feet and East 350 feet from NW corner of Section 9, T11N, R5W, MDB&M, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 9, and
- (2) Lower Reservoir - Due East 350 feet from NW corner of Section 9, T11N, R5W, MDB&M, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 9.

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

Stockwatering, recreational, and fire protection uses at Upper and Lower Reservoirs and irrigation of 2 acres of pasture, all within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T11N, R5W, MDB&M, as shown on map on file with State Water Resources Control Board.

This license is conditioned upon full compliance with Sections 1601, 1603, and/or Section 6100 of the Fish and Game Code.

(0000063)

Licensee shall comply with the following provisions which are derived from the agreement between licensee and Department of Fish and Game executed on August 30 and 31, 1991 and further agreed on December 9th and filed with the State Water Resources Control Board:

- (a) For the protection of fish and wildlife and the maintenance of riparian habitat, licensee shall bypass the total streamflow from March 16 through November 14 of each year.

No water shall be diverted under this license until licensee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the inflow into Upper Reservoir and the outflow below Lower Reservoir as required by the conditions of this license. Said measuring devices shall be properly maintained.

- (b) Licensee shall perform all earthwork construction operations to the dams, reservoirs and access roads between June 15 and October 15 of each year.

Licensee shall not allow heavy construction equipment within the dripline of existing trees.

Licensee shall only allow the clearing of existing vegetation from the immediate area of the access road, dam, and reservoir sites.

- (c) The archaeological site identified as Pieper 1 in the cultural resources report prepared in October 1990 by Archaeological Services, Inc. shall not be impacted by any developments relative to or resulting from the proposed water diversion, storage or use. Such developments would include all surface and subsurface disturbances related to construction of the earthfill dams or reservoir basins. Heavy equipment shall not be allowed on the archaeological site.

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)

Licensee shall install and properly maintain in Upper Reservoir a staff gage, satisfactory to the State Water Resources Control Board (SWRCB), for the purpose of determining water levels in the reservoir.

Licensee shall record the staff gage reading(s) on or about October 1 of each year. Such readings shall be supplied to the SWRCB with the next Report of Licensee submitted to the SWRCB by licensee.

The SWRCB may require the release of water which cannot be verified as having been collected to storage prior to October 1 of each year.

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(0100047)

Whenever the prior storage rights of Magoon Estate Limited (under Permit 16860 issued pursuant to Application 24296) are not satisfied by March 15 of any year, water collected to storage under this license during the current collection season shall be immediately released at the maximum practicable rate to satisfy said prior downstream storage rights. Licensee shall not be obligated to release water in the reservoir below the previous October 1 staff gage reading, unless licensee has withdrawn water from the reservoir for consumptive purposes since October 1.

(0000051)

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 which is not authorized for appropriation under this license may be released.

(0050043)

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 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) 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: (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 diversions; or (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)

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 requirement for the authorized project. No action will be taken pursuant to this 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.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code Sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

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.

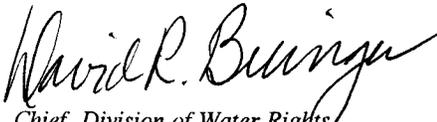
Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the 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: **FEBRUARY 9 1999**

STATE WATER RESOURCES CONTROL BOARD

for 
Chief, Division of Water Rights