



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 25765
Page 1 of 8

PERMIT 17941

LICENSE **13860**

THIS IS TO CERTIFY, That

Berglund Family Vineyards
P.O. Box 2089
Napa, CA 94558

has made proof as of **November 7, 1995** (the date of inspection) to the satisfaction of the State Water Resources Control Board (State Water Board) of a right to the use of the waters of an **Unnamed Stream** in **Napa County**

tributary to **Burton Creek thence Maxwell Creek thence Pope Creek thence Putah Creek thence Yolo Bypass**

for the purpose of **Irrigation, Frost Protection and Heat Control uses**

under Permit **17941** of the State Water Board; that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the State Water Board, and the permit terms; that the priority of this right dates from **June 20, 1978**; 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 98 acre-feet per annum to be collected from November 1 of each year to May 15 of the succeeding year as follows: (1) 49 acre-feet per annum in Upper Reservoir; and (2) 49 acre-feet per annum in Lower Reservoir. The maximum withdrawal in any one year shall not exceed 92 acre-feet from both reservoirs.**

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.

The total quantity of water collected to storage in Upper Reservoir under this license and License 5806 (Application 15281) shall not exceed 49 acre-feet per year.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

- 1) Upper Reservoir – By California Coordinate System of 1983, Zone 2, North 1,985,568 feet and East 6,440,708 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M.

THE POINT OF DIVERSION AND REDIVERSION OF SUCH WATER IS LOCATED:

- 2) Lower Reservoir – By California Coordinate System of 1983, Zone 2, North 1,986,377 feet and East 6,440,632 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 21, T9N, R5W, MDB&M.

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

Irrigation, Frost Protection and Heat Control of 68 acres net within a gross area as follows:

26.0 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M
7.0 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M
6.0 acres within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M
29.0 acres within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M
9.0 acres within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M
6.0 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 21, T9N, R5W, MDB&M

83.0 acres total, as shown on map on file with the State Water Board.

For the protection of fish and wildlife in Burton Creek, licensee shall during the period:

- (a) from December 1 through February 28, bypass a minimum of 4 cfs¹;
- (b) from March 1 through April 30, bypass a minimum of 1 cfs;
- (c) from May 1 through May 15, and November 1 through November 30 bypass a minimum of 0.5 cfs.

The total streamflow shall be bypassed whenever it is less than the designated amount for that period.
(0140060)

No water shall be diverted under this license unless licensee has installed a device on Burton Creek, satisfactory to the State Water Board, which is capable of measuring the flows required by the conditions of this license. In lieu of installing a measuring device, licensee may satisfy this requirement through use of a USGS stream gage. Should the USGS stream gage device be abandoned or discontinued in the future, licensee shall notify the Deputy Director for Water Rights within seven days of the discontinuance, and within 180 days of the discontinuance, licensee shall either identify an alternative USGS stream gage device for use, or install and maintain a measuring device on Burton Creek.

(0140204M)

The bypass may be measured at the U.S. Geological Survey (USGS) stream gage located on Putah Creek near Guenoc (USGS 11453500). If this measurement site is utilized, the gage shall read as follows to document compliance with the above bypass requirement:

- (a) 96.7 cfs from December 1 through February 28 (4 cfs in Burton Creek);
- (b) 24.2 cfs from March 1 through April 30 (1 cfs in Burton Creek);
- (c) 12.1 cfs from May 1 through May 15, and November 1 through November 30 (0.5 cfs in Burton Creek).

To verify the accuracy of using the Guenoc gage, within 180 days of issuance of the amended water right, (a) licensee shall take measurements to compare real-time site-specific data to the Guenoc gage data. A minimum of two measurements shall be taken below the confluence of the Unnamed Stream (source of point of diversion) on Burton Creek to make this comparison, and (b) licensee shall document that the substitute gage provides accurate information for this site. Any future correlations must be completed within 30 days of request by Division of Water Rights staff.

In the absence of such documentation, licensee shall measure bypass below the confluence of the Unnamed Stream (source of point of diversion) on Burton Creek.

(0140060M)

¹ Abbreviation used in license conditions: cubic feet per second (cfs)

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 State Water Board 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: (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)

No water shall be diverted to storage under this license at any time when such diversion will prevent Jack and Margaret E. Peters, or their successors in interest, from obtaining water necessary for beneficial use under their valid prior water rights. This condition shall not be construed as in any way affecting the riparian claim of right or licensee's lands or licensee's right to divert water to storage under License 5806 (Application 15281).

(0160400)

Licensee shall install and maintain outlet pipes of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board in order that water entering the reservoirs, which is not authorized for appropriation under this license, may be released.

(0050043)

In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water authorized by this license is by means of a dam, licensee shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the California Department of Fish and Game, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.

(0140069)

Licensee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

Licensee shall be responsible for complying with all applicable regulations from the Napa County Agricultural Commissioner's Office for the use of soil stabilizers, pesticides, herbicides, and other regulated chemicals on the place of use.

(0400300)

Licensee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance to enter into or be placed where it may be washed by rainfall runoff into the waters of the State.

(0000208)

The licensee shall maintain a 50-foot-wide setback around the reservoirs as shown on Setback Map No. SB-01 dated March 13, 2008, on file with the Division of Water Rights. No new ground disturbing activities shall occur within the setback area, with the exception of occasional equipment access necessary for continued operation of the reservoirs. Equipment access within the setback area shall be limited to only activities necessary for the ongoing management of the setback area and operation of the reservoirs and shall incorporate best management practices to minimize disturbance to water, soils and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native riparian vegetation within the setback area is allowed.

(0400500)

The licensee shall obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Game prior to any future reservoir dredging operations. Licensee shall submit to the Deputy Director for Water Rights evidence of the agencies' approval prior to any future reservoir dredging operations. The licensee shall refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation.

(0400500)

No ground disturbing activities shall occur within the wetland area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. Planting, maintenance, and irrigation of native wetland vegetation within the setback area is allowed.

(0400500)

The archaeological sites CA-Nap-21, CA-Nap-387, CA-Nap-389, and CA-Nap-388 located in the reconnaissance report by Archaeological Consulting and Research Services, Inc. shall be excluded from the place of use. These sites shall not be otherwise impacted by any developments related to the proposed water storage, distribution and use. Such impacts would include dams, dikes, storage locations, pipelines, canals or ditches, and any other surface or subsurface disturbance related to the proposed water use.

(0400500)

The archaeological sites identified as CA-Nap-21, CA-Nap-387, CA-Nap-388, and CA-Nap-389 shall not be impacted by any subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Discing of the archaeological deposits will continue to be allowed. Further development of these archaeological sites may be allowed following the completion of a cultural resources mitigation program, the expense of which would be entirely borne by the licensee. The mitigation program would have to be designed and completed by a professional archaeologist and subject to approval by the Deputy Director for Water Rights.

(0380500)

In order to protect the three archaeological sites identified as CA-NAP-21, CA-NAP-387 and CA-NAP-389/803 in the report titled Limited Archaeological Investigations at the Berglund Property, Pope Valley, California by Eileen Barrow, B.A. and Thomas M. Origer, M.A. dated October 24, 2008, revised December 19, 2008, licensee shall be subject to the following restrictions for ongoing agricultural operations and any activities involving replanting of vines on the archaeological sites within the place of use pursuant to the license issued pursuant to Application 25765:

- i. Vine removal shall be done as non-invasively as possible, by pulling the vines either vertically or roughly horizontally using a tractor and chain, as demonstrated in the video titled *Vine Removal*, accompanying the above referenced report. Vine removal shall occur only while the soil is moist down to six inches, and vines shall be replanted in the same location as the vines, which were removed;
- ii. No trenching, or other mechanical disturbance, including ripping below the disc zone shall be allowed;
- iii. Cultivation (discing) is allowed for weed control and general vineyard maintenance; and
- iv. No artifacts or other materials shall be removed from the sites.

(0400500)

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 chipped 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.

(0400500)

If human remains are encountered, then the licensee shall comply with section 15064.5 (e)(1) of the California Environmental Quality Act 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 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.

(0400500)

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 therefore 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
PHILLIP CRADER FOR:

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: JUL 27 2012