

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 16860C (Application 24296C)
Langtry Farms LLC and Guenoc Winery, Inc.

**ORDER APPROVING PETITIONS FOR EXTENSION OF TIME
AND CHANGE**

SOURCE: (1) Butcherknife Creek tributary to Putah Creek, and
(2) Bucksnot Creek tributary to Putah Creek
COUNTY: Lake

BY THE EXECUTIVE DIRECTOR:

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 16860 to Magoon Estate Limited (Magoon) on January 21, 1977 pursuant to Application 24296.
2. During the 1970s, the State Water Board commenced adding a condition (referred to as Condition 12) to permits in the Upper Putah Creek watershed, including Permit 24296. Condition 12 states, in part:

"Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision 869."

3. Permit 24296 originally required that construction work be completed by December 1, 1980, and that the water be applied to the authorized use by December 1, 1981. Magoon requested and received three extensions of time on December 28, 1982, April 28, 1988, and January 13, 1992. The time to complete construction was extended to December 31, 1994 and the time to complete full beneficial use was extended to December 31, 1995.
4. On September 20, 1994, the Division split Permit 16860 into three parts, Permits 16860A, 16860B, and 16860C. Permit 16860C authorizes storage of 5,350 acre-feet per annum (afa) in Ink Reservoir located on Butcherknife Creek. The maximum rate of diversion from Bucksnot Creek to offstream storage is 20 cubic feet per second (cfs). The permit authorizes irrigation of a net acreage of 1,380 acres. The purposes of use are domestic, irrigation, frost protection and heat control. This order addresses only the petitions for time extension and change on Permit 16860C.
5. On June 20, 1996, the Division received a Petition for Extension of Time, seeking a 10-year extension. The petition states that the uncertainty of the availability of water remaining for appropriation under the Condition 12 watershed reservation and related litigation initiated by

Solano County Water Agency et al in 1990 (which was not resolved until March 1996) created uncertainty about the feasibility of proceeding with the project.

6. The Division issued a notice of change and time extension petitions for Permit 16860C on March 16, 2001. The Department of Fish and Game (DFG) protested the petitions.
7. On February 9, 2005, Magoon filed another Petition for Extension of Time seeking a time extension of eight years from the date of issuance of an Order on the change petitions. The petition states that no construction was completed and no water was used under Permit 16860C during the last extension period due to the fact that the Division had not yet approved the petitions for time extension and change.
8. On March 24, 2006, the Division issued notice of the 2005 petition for extension of time and a re-notice of the change petition. Magoon sought the right to redistribute 1,660 af from the previously proposed Ink Reservoir to Upper Bohn Reservoir storage, add one point of diversion and two points of rediversion, and expand the place of use to 4,611 acres.
9. On December 15, 2008, Magoon changed the ownership of the project to Langtry Farms LLC and Guenoc Winery, Inc. (Permittee).
10. On March 20, 2009, the Division issued a Notice of Determination for the Guenoc Water Rights Modification Project Environmental Impact Report (EIR) for 11 water rights held by Permittee, including Permit 16860C. The EIR resulted in new permit conditions.
11. The DFG protest was resolved in 2011. Protest resolution resulted in new permit conditions.
12. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.
13. Permittee points to uncertainty regarding water availability pursuant to Condition 12 as a basis for failing to construct Ink Reservoir. Permittee also offers the litigation from 1990 through 1996 as a reason for failing to timely construct Ink Reservoir. Permittee asserts that it was risky to construct the facility while the litigation was pending and the ultimate availability of water was uncertain. The Progress Reports by Permittee have documented that there has been no water diversion and use because the Permittee was awaiting approval of petitions for extension of time and change. Accordingly, failure to comply with previous time requirements was occasioned by obstacles that could not be reasonably avoided.
14. Permittee has shown that satisfactory progress will be made if a time extension is granted. Permittee has informed the Division that funding is available for the project, provided the expansion in place of use is approved. This order approves the expanded place of use.
15. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions determined to be in the public interest. The adjudication placed restrictions on future water development in the upper Putah Creek watershed.¹ The April 2011 15th Annual Watermaster Report for the Upper Putah

□

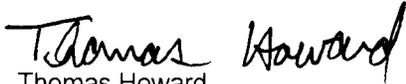
¹ The signatories to the Agreement have agreed that the right to develop water under existing Condition 12 terminated on December 31, 1995; however, the U.S. Bureau of Reclamation has agreed to subordinate its prior

Creek Watershed for water year 2009/2010 documents that only 296 af of water remains in the reservation for assignment to new applications in Napa County and 2,707.6 af for municipal and industrial use and 17.5 af for private use in Lake County. Due to the restricted water supply, Permittee is forewarned that failure to timely develop during the extension period approved herein may result in a finding of non-diligence in development of any non-developed elements of the permit.

16. Approval of the change petition: (a) will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; and (c) the petition does not constitute the initiation of a new right.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD HEREBY APPROVES THE PETITIONS FOR EXTENSION OF TIME AND CHANGE SUBJECT TO THE CONDITIONS OF THE ATTACHED AMENDED PERMIT.

STATE WATER RESOURCES CONTROL BOARD


Thomas Howard
Director

Attachment

Dated: FEB 22 2012

rights under Solano Project permits for up to 12,668 afa of additional depletion in upper Putah Creek after December 31, 1995. (Order 96-002, p. 7.) Once the reservation is exhausted, there will be no more water for assignment to new water rights or further development of undeveloped rights, in Lake and Napa Counties upstream of Lake Berryessa.

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

DIVISION OF WATER RIGHTS

AMENDED PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 24296C

PERMIT 16860C

Permittee: Langtry Farms LLC and Guenoc Winery, Inc.
21000 Butts Canyon Road
Middletown, CA 9561

The amended permit is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057.) Therefore, an amended permit on **Application 24296C** filed on **February 1, 1973** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Tributary to:

Unnamed Stream

Putah Creek

Routan Creek

Butts Creek thence

Putah Creek

Lake Berryessa

Lake Berryessa

within the Counties of Lake and Napa

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Upper Bohn Dam No. 1: North 2,029,775 feet and East 6,436,585 feet	SE ¼ of SW ¼	5	10N	5W	MD
Upper Bohn Dam No. 2: North 2,028,152 feet and East 6,435,665 feet	SW ¼ of NW ¼	8	10N	5W	MD
Diversion to Offstream Storage, Putah Creek Pump No. 2: North 2,034,864 feet and East 6,444,406 feet	NE ¼ of NE ¼	4	10N	5W	MD

Location of points of rediversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Upper Bohn Dam No. 1: North 2,029,775 feet and East 6,436,585 feet	SE ¼ of SW ¼	5	10N	5W	MD
Upper Bohn Dam No. 2: North 2,028,152 feet and East 6,435,665 feet	SW ¼ of NW ¼	8	10N	5W	MD

Location of places of storage

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Upper Bohn Dam No. 1: North 2,029,775 feet and East 6,436,585 feet	SE ¼ of SW ¼	5	10N	5W	MD
Upper Bohn Dam No. 2: North 2,028,152 feet and East 6,435,665 feet	SW ¼ of NW ¼	8	10N	5W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Domestic						
Frost Protection						
Heat Control						
Irrigation		3	10N	5W	MD	177
		4	10N	5W	MD	463
		5	10N	5W	MD	631
		6	10N	5W	MD	482
		7	10N	5W	MD	149
		8	10N	5W	MD	427
		9	10N	5W	MD	105
		10	10N	5W	MD	101
		1	10N	6W	MD	261
		1*	10N	6W	MD	3
2*	10N	6W	MD	1		

		11*	10N	6W	MD	18
		12	10N	6W	MD	161
		12*	10N	6W	MD	18
		30	11N	5W	MD	33
		31	11N	5W	MD	400
		32	11N	5W	MD	187
		33	11N	5W	MD	246
		34	11N	5W	MD	68
		24	11N	6W	MD	31
		25	11N	6W	MD	211
		26	11N	6W	MD	104
		26*	11N	6W	MD	10
		35	11N	6W	MD	41
		35*	11N	6W	MD	19
		36	11N	6W	MD	<u>264</u>
					Total	4,611

The place of use is shown on map dated March 2000 filed with the State Water Board. This permit does not authorize use of water within the mitigation areas shown on Water Rights Modification Project Final Environmental Impact Report Figure 2-4 that lie within the above described place of use.

The following acronyms are used in the permit terms.

- Department of Fish and Game – DFG
- Division of Water Rights – Division
- Regional Water Quality Control Board – RWQCB or Regional Board
- State Water Resources Control Board – State Water Board
- U.S. Army Corps of Engineers – ACOE
- U.S. Fish and Wildlife Service – USFWS
- Water Rights Modification Project Final Environmental Impact Report - FEIR

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **1,660** acre-feet per annum to be collected from **October 1** of each year to **April 30** of the succeeding year. This permit does not authorize direct diversion for beneficial use.

The capacity of Upper Bohn Reservoir shall not exceed **3,760 acre-feet** under all bases of right.

(0000005C)

6. The maximum rate of diversion to offstream storage shall not exceed 20 cubic feet per second (cfs) from the Putah Creek point of diversion. The combined maximum rate of diversion to storage under this permit, Permit 16860A (Application 24296A), and License 13414 (Application 24296B) shall not exceed 20 cfs. This permit does not authorize direct diversion for beneficial use.

(0000005J)

7. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (00000051)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2020. (0000009)
9. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoirs which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipes, or alternative facility, to the Deputy Director for Water Rights for approval. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the outlet pipes have been installed in each dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043AP)
10. Storage of water shall not be commenced until the Department of Water Resources has approved the plans and specifications for the dam. (0130049)
11. In accordance with the requirements of Water Code section 1393, permittee shall clear the area covered by the proposed reservoir enlargement(s) of all structures, trees, and other vegetation which would interfere with the use of the reservoir(s) for water storage and recreational purposes. (0120050B)
12. Permittee 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:
 - A) Permittee 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 permit for noncompliance with the terms of the Agreement.
 - B) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
 - C) Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the State Water Board.
 - D) Permittee shall install and properly maintain in each reservoir a staff gage, satisfactory to the watermaster and the State Water Board, for the purpose of determining water levels in the reservoir(s). Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the permittee.
 - E) Permittee shall install and maintain a device, satisfactory to the State Water Board, capable of measuring water diverted to storage under this permit. Satisfactory devices shall include: For Pumping Stations: (1) In-line flow meter having instantaneous and total flow reading capability,

or (2) Proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump. For Gravity Diversions: A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements.

- F) Permittee shall maintain monthly records of diversion to offstream storage from October 1 of each year to April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.
- G) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- H) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.
- I) Permittee is hereby put on notice that there may be years when diversion of water under this permit 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 permit, and that releases of stored water may be required.
- J) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:
 - 1) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.
 - 2) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.
 - 3) All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- K) 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, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.
- L) Permittee 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.
- M) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.

- N) Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.
- O) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 230 acre-feet per annum (afa) in Lake County and 1,430 afa in Napa County as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit 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 permit.

(000024)

13. 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 permit 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.

(000012)

(0220087)

14. No water shall be used under this permit until permittee has filed a report of waste discharge with the Regional Board, North Coast Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Water Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- A) the Regional Board issues a waiver pursuant to Section 13269, or
- B) the Regional Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

15. The maximum withdrawal from storage for domestic uses under any permits issued pursuant to Applications 24296C and 24297 shall not exceed 1,000 acre-feet per annum by storage.

(0000114)

16. The total amount of water diverted to storage under this permit, together with that diverted under Licenses 9939 and 13414 and under permits issued pursuant to Applications 24296A and 24297 shall not exceed 7,620 acre-feet per annum by storage.

(0000114)

17. Permittee shall allow representatives of DFG reasonable access to the project works to determine compliance with the terms of the permit, provided that such representatives make a reasonable effort to contact permittee's designated representative upon arrival for said inspection. It is agreed that permittee's representative may accompany DFG personnel during the inspection. (000011)
18. Prior to making a request for license or before license action will be considered by the State Water Board, permittee shall consult with the Division and perform an irrigation system evaluation. A report on the evaluation shall be prepared by a person trained or experienced in irrigation system design and management and shall be submitted to the Board for approval.

All cost-effective water conservation measures identified in the irrigation system evaluation report shall be implemented prior to issuance of a license. (0000029C)
19. For the mitigation of habitat losses and for the protection of fish and wildlife involved, permittee shall: During the period from October 1 through April 30 bypass a minimum of 40 cubic feet per second at the Putah Creek point of diversion. The total streamflow shall be bypassed whenever it is less than the designated amount. The permittee shall submit a compliance plan, satisfactory to the Deputy Director for Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. (0140060)
20. For the mitigation of habitat losses and for the protection of fish and wildlife involved, permittee shall: During the period from October 1 through April 30 bypass a minimum of 1.1 cubic feet per second, below Upper Bohn Reservoir. The total streamflow shall be bypassed whenever it is less than the designated amount. The bypass shall be divided as follows (or into the appropriate ratios if the bypass is less than the designated amount): 0.36 cfs to the unnamed stream below the north dam and 0.74 cfs to Routan Creek below the south dam. The permittee shall submit a compliance plan, satisfactory to the Deputy Director for Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. (0140060)
21. For the mitigation of habitat losses and for the protection of fish and wildlife involved, permittee shall: During the period from May 1 through September 30 the total streamflow shall be bypassed at all times when natural inflow is measured. The bypass shall be divided as follows: 33 percent of the flow to the unnamed stream below the north dam and 67 percent of the flow to Routan Creek below the south dam. The permittee shall submit a compliance plan, satisfactory to the Deputy Director for Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. (0140060)
22. Prior to diversion under this permit, the Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate continuous compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
 - A) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - B) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
 - C) A time schedule for the installation of these facilities.

- D) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- E) An operation and maintenance plan that will be used to maintain all facilities in good condition.
- F) A description of the events that will trigger recalibration of the monitoring devices and the process that will be used to recalibrate.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all facilities used to monitor the rate and quantity of water diverted into the reservoir, and reservoir storage levels described in the Compliance Plan.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Deputy Director for Water Rights within 15 days upon request by the State Water Board, the Deputy Director for Water Rights, or other authorized designee of the State Water Board.

Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

23. Permittee shall prepare, for approval by DFG, a wetland mitigation plan for the expansion of Upper Bohn Reservoir consistent with the FEIR. The mitigation shall include the enhancement of a length of watercourse, within the same watershed as the area of impact, of not less than 2:1 for each linear foot of impact to Waters of the State that are inundated by the Upper Bohn Reservoir. The mitigation for impacts to wetlands shall include mitigation within the same watershed as the area of the impact at a ratio of not less than 2:1. Permittee shall provide a copy of the approved plan to the State Water Board, prior to the start of construction.

(0400599)

24. Permittee shall submit final construction documents for the pipeline from the Putah Creek point of diversion to Upper Bohn Reservoir to the State Water Board for review. The pipeline shall be routed as generally identified in the FEIR approved by the State Water Board. The route shall avoid all impacts to wetlands and their respective 50-foot buffer zone. Water crossings shall comply with the FEIR and any Lake and Streambed Alteration Agreement issued for the project. In the event the pipeline route changes during construction, the permittee shall immediately notify the State Water Board and DFG in writing of the revised pipeline route. The Permittee shall provide the State Water Board and DFG seasonally appropriate surveys of the revised route to evaluate impacts to sensitive species. The State Water Board or DFG may require additional mitigation measures if the pipeline route changes from the route identified in the final construction documents submitted.

(0400599)

25. No water shall be diverted at the Putah Creek point of diversion under this Permit until permittee has constructed a fish screen at the Putah Creek point of diversion or has proposed and constructed an alternative. Any alternative must comply with the DFG criteria and receive their written approval. Permittee shall submit a copy of DFG's written approval of the plans and design calculations to the Division within 30 days from the date of the approval. Construction, operation, and maintenance of any required facility are the responsibility of the permittee. If the fish screen or any alternative is rendered inoperative for any reason, the permittee shall notify the Deputy Director for Water Rights immediately and shall restore the equipment to service as soon as possible.

(0000213)

26. Permittee shall prepare and submit an exotic species control plan for DFG approval. The plan shall provide measures to manage invasive species and bullfrog populations to avoid adverse impacts to sensitive amphibian habitat. The plan shall prohibit the planting of fish in the stream behind the dam at Upper Bohn Reservoir. The permittee shall provide a copy of the approved plan to the State Water Board, prior to diverting water under this permit. (0400599)
27. Permittee shall prepare and submit a mitigation monitoring and reporting plan for the replacement of fish and/or wildlife resources for DFG approval, prior to the start of construction. The plan shall include, but not be limited to, species or habitats listed in the California Natural Diversity Database. The plan shall include a survey quantifying the losses of resources as a result of the construction of Upper Bohn Reservoir or the construction of the pipeline from the Putah Creek point of diversion to Upper Bohn Reservoir. The plan shall specify measures taken to offset impacts to resources and outline specific mitigation and monitoring plans. The permittee shall provide a copy of the approved plan to the State Water Board prior to the start of construction. (0400599)
28. Prior to conducting any construction activities, Permittee shall obtain coverage from the North Coast Regional Water Quality Control Board under the General Permit for Storm Water Discharges associated with construction and land disturbance activities. (0290300)
29. 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)
30. The Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights. (0000203)
31. Prior to commencement of construction activities, the Permittee shall obtain grading permits and approval of Erosion and Sedimentation Control Plans prepared in accordance with Napa County's Conservation Regulations from the County of Napa. The Napa County Erosion Control Plans shall be consistent with the Napa County use requirements in areas with greater than 5% slope. The Permittee shall also obtain grading permits and approval of Erosion and Sedimentation Control Plans from the County of Lake. The grading permits and Erosion Control Plans for Lake and Napa counties shall include all areas proposed for vineyard conversion. The project shall not develop on hillsides with slopes greater than 30%. Copies of the approved grading permits and Erosion Control Plans from the counties of Lake and Napa shall be submitted to the Deputy Director of the Division for approval, prior to starting construction.

The project shall incorporate DFG fencing standards, which shall be reflected in the final plans for the grading permit and Erosion Control Plan approved by Lake and Napa counties. DFG fencing standards are listed in the 2009 Mitigation Monitoring and Reporting Plan. Wildlife corridors and streams shall not be fenced. (0400500)

32. A minimum 50-foot stream buffer along all intermittent and perennial drainages measured from the top of the bank on both sides of the stream shall be maintained within the place of use. Napa County Stream Setbacks may require an additional buffer beyond the 50-foot stream buffer. The buffers are reflected in the boundaries of the place of use (FEIR Figure 2-4) and shall be formally incorporated in the Erosion Control Plans for the project. The buffers shall be staked prior to construction by a biologist, whose qualifications are acceptable to Deputy Director of the Division, maintained throughout construction, and permanently avoided. No activity shall occur within the buffer zones, including, but not limited to removal of existing riparian vegetation, grading, disking, road construction, fencing, herbicide spraying, roads, and use or construction of storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. Planting, maintenance, and irrigation of native wetland vegetation within the setback area are allowed. Copies of the approved grading permits and Erosion Control Plans from the County of Napa, which incorporate the stream setbacks, shall be submitted to the Deputy Director of the Division, prior to starting construction.

A copy of the formal wetland delineation map verified by the ACOE shall be submitted to the Deputy Director of the Division and DFG within 30 days of verification by ACOE. No work shall commence and no discharge of any dredged or fill material within waters of the U.S. shall occur until the appropriate Department of the Army permit is obtained from ACOE and a Streambed Alteration Agreement is obtained from DFG. Stream impacts shall be mitigated by preservation and enhancement of existing streams at a ratio of 2:1 preserved and enhanced versus impacted streams, mitigation would occur onsite adjacent to the area of impact, to the extent feasible, contingent on final approval from the ACOE. Copies of all permits issued by ACOE and DFG shall be submitted to the Division within 180 days of issuance.

(0400500)

33. No work shall commence on vegetation removal, soil disturbance, or other construction activities until State Water Quality Certification (Clean Water Act section 401) and a General Construction National Pollution Discharge Elimination System (NPDES) Permit is obtained from the RWQCB or State Water Board and filed with the Deputy Director of the Division. Compliance with the terms and conditions of the certification is the responsibility of the Permittee. If agreements are not necessary for the project, the Permittee shall provide a copy of any waiver issued for the NPDES permit to the Deputy Director of the Division.

(0400500)

34. Construction activities within 100 feet of drainages shall occur between April and October to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. In addition, Best Management Practices (BMPs) to control erosion shall be implemented during construction activities. The BMPs may include, but are not limited to the following: placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) shall be prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. The project operator shall be responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation (usually the first growing season). Upon DFG determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation will be halted until effective DFG approved control devices are installed, or abatement procedures are initiated. Permittee shall submit a copy of DFG approved changes to sediment control devices.

All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of construction activities shall be restored to their natural state by seeding with a blend of native and non-native erosion control grass seeds. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeded areas shall be covered with broadcast straw, anchored jute netting, coconut fiber blanket, or similar erosion control blanket. Supplemental watering may be required to establish plant growth. Permittee shall provide documentation that re-vegetation has been completed, seeded areas have been covered with straw, and anchored jute netting, coconut fiber blanket, or similar erosion control blanket within 180 days after construction of each vineyard block has been completed.

Sediment control measures shall be in place prior to the onset of construction and shall be monitored by a construction superintendent and/or inspector and maintained until construction activities have ceased. (0400500)

35. The Permittee shall implement the following dust control practices during construction:
- A) All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, or vegetative ground cover;
 - B) Replace ground cover in disturbed areas quickly;
 - C) Cover all stock piles with tarps;
 - D) All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
 - E) All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled for fugitive dust emissions utilizing application of water or by presoaking.
 - F) When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
 - G) Limit traffic speeds on unpaved roads to 15 mph. (0400500)
36. Permittee shall avoid adverse impacts to special-status plant species. Prior to construction activities, the perimeters of the special-status plant locations, including the northern interior cypress forest sensitive habitat, shall be marked off with posts and construction fencing by a qualified biologist approved by the Deputy Director of the Division to avoid direct or indirect impacts to the species. A 100-foot no-disturbance buffer shall be established around all special-status species. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. All special-status plant locations and buffers shall be permanently avoided. No activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. Borrow sites and staging areas shall be located within the place of use, outside of buffer areas established to protect sensitive resources.

A biologist, whose qualifications are acceptable to the Division, shall conduct pre -construction surveys for small-flowered calycadenia and Jepson's leptosiphon during their bloom period, April to May and June to September, respectively, prior to any ground moving or construction activities. The results of the surveys shall be submitted for approval of the Deputy Director of the Division and DFG. If any small-flowered calycadenia or Jepson's leptosiphon are found during the pre-construction surveys, the above measures shall apply. This includes the establishment of a 100-foot no-disturbance buffer around the species' locations to avoid direct or indirect impacts. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. In addition, the buffers shall be permanently avoided and no activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

Permittee shall document compliance with this condition, subject to the approval of the Deputy Director of the Division, prior to construction and within 180 days of completion of construction of each vineyard block.

(0400500)

37. Grubbing and grading activities should be conducted outside of the nesting season. The nesting season for resident and migratory birds is considered to be mid-February through mid-September. If grubbing or grading activities are to occur during the nesting season, a biologist, whose qualifications are acceptable to the Deputy Director of the Division, shall conduct a pre-construction survey for the purpose of identifying nesting bird species within proposed vegetation removal areas, including a 500-foot buffer from construction activities. The survey shall be conducted no more than two to ten days prior to grubbing or grading activities. If more than ten days occur between performance of the pre-construction survey and the start of vegetation removal, the survey shall be re-conducted. The results of the pre-construction surveys shall be submitted to the Deputy Director of the Division prior to construction.

If an active raptor or migratory bird nest is found during the pre-construction survey, the Permittee shall notify DFG and a 500-foot no disturbance buffer shall be established and maintained around the nest until all young have fledged. If a bald eagle is determined to be nesting within 500 feet of the project areas, the USFWS and DFG shall be consulted on impact avoidance measures; mitigation will involve having a biological monitor present during clearing activities to assure no impact to nesting behavior. No active nests shall be disturbed without a permit or other authorization from USFWS and DFG, with a copy provided to the Deputy Director of the Division. If active nests are identified during the survey, a minimum 500-foot buffer shall be established around the nests to prevent abandonment of the nests and nest failure. If more than two weeks take place between completion of grubbing activities and start of construction during the time period of mid-February through mid-September, a pre-construction survey shall be conducted within the adjacent areas for nesting birds.

A biologist, whose qualifications are acceptable to the Division, shall conduct a pre-construction survey for the purpose of identifying burrowing owls during both the wintering and nesting season (unless the species is detected on the first survey) prior to issuance of grading permits to establish the status of this species on the project site. If possible, the winter survey shall be conducted between December 1 and January 31 (when wintering owls are most likely to be present) and the nesting season survey should be conducted between April 15 and July 15 (peak breeding seasons). If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site shall be resurveyed. Surveys conducted from two hours before sunset to one hour after, or from one hour before to two hours after sunrise, are preferable. The survey techniques shall be consistent with the *Burrowing Owl Survey Protocol and Mitigation Guidelines* prepared by the California Burrowing Owl Consortium in April 1993 and shall include a 250-foot-wide buffer zone surrounding the project site. If no burrowing owls are detected during pre-construction surveys, then no further mitigation is required. The results of the pre-construction survey shall be submitted to the Division for review and approval.

The DFG burrowing owl specialist for the area shall be contacted for specific guidance regarding any activities affecting active burrowing owl burrows identified within 500 feet of the construction site. Documentation that DFG has been contacted and all required mitigations have been implemented shall be submitted to the Deputy Director of the Division within 30 days of identification of any active burrows.

If active burrowing owl burrows are identified within 500 feet of the construction site, project activities shall not disturb the burrow during the nesting season, February 1 to August 31 or until a qualified biologist has determined that the young have fledged or the burrow has been abandoned. A no-disturbance buffer zone of 160 feet is required to be established around each burrow with an active nest until the young have fledged the burrow as monitored by a qualified biologist.

If destruction of the occupied burrow is unavoidable during the non-breeding season, September 1 to January 31, passive relocation of the burrowing owl may be conducted. Passive relocation involves installing a one-way door at the burrow entrance, encouraging owls to move from the occupied burrow. No permit is required to conduct passive relocation; however, this process shall be conducted by a qualified biologist and in accordance with DFG mitigation measures. To offset the loss of foraging habitat (calculated as a 300 foot foraging radius around the burrow - per pair or unpaired resident bird), additional land shall be preserved on site and permanently protected at a location acceptable to DFG.

(0400500)

38. Permittee shall conduct construction activities near intermittent drainages during non-rainy or no-flow periods to reduce the likelihood of the presence of special status reptiles and amphibians and the associated impacts. If a special-status reptile or amphibian is encountered during construction, Permittee shall cease construction and ground-disturbing activities in the area until a biologist whose qualifications are acceptable to the Division, has been consulted and appropriate corrective measures have been implemented or it has been determined that the animal will not be harmed. In the event that any species with State or Federal status are injured or harmed, DFG or the USFWS, respectively, and the Deputy Director of the Division shall be contacted immediately.

(0400500)

39. A biologist, whose qualifications are acceptable to the Division shall conduct a pre-construction survey for American badger dens within the project areas. The results of the pre-construction surveys shall be submitted to the Deputy Director of the Division and DFG prior to construction. If found, dens should be avoided with a minimum of a 500-foot no-disturbance buffer and DFG should be contacted for guidance.

(0400500)

40. A biologist, whose qualifications are acceptable to the Division, shall conduct pre-construction surveys for elderberry shrubs (*Sambucus* spp.) prior to any ground moving or construction activities in order to avoid any elderberry shrubs that may have sprouted since the previous biological surveys. Surveys should include the proposed disturbance area and all areas within 100 feet of the disturbance area. The results of the surveys shall be submitted to the Deputy Director of the Division and USFWS. A permanent 100-foot no-disturbance buffer shall be established around all identified shrubs for complete avoidance of potential impacts to the federally listed valley elderberry longhorn beetle. Construction avoidance measures shall be incorporated into final plans, with copies to the Deputy Director of the Division, to avoid all elderberry shrubs according to the USFWS guidelines. 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. At the discretion of the USFWS, permanent fencing may be installed around the elderberry shrubs. If construction-related disturbance will occur within 100-feet of elderberry shrubs, the USFWS shall be consulted to determine if an impact will occur. If Valley Elderberry Longhorn beetles are determined to occupy the site, no activities determined to have a potential to adversely affect the shrubs or beetles shall be conducted without a Biological Opinion, Incidental Take Permit, or other authorization from the USFWS, and findings and compliance plan shall be submitted for the approval of the Deputy Director of the Division. Weeds and other invasive plants

shall be removed at least once a year, or at the discretion of the USFWS and DFG (USFWS, 1999). Mechanical removal of the plants shall be used; herbicides will not be used.

(0000209)

41. The boundaries of the mitigated place of use that avoid adverse impacts to wetlands and waters of the U.S are shown on FEIR Figure 2-4. The boundaries of the proposed vineyard were reduced to remove all acreage of intermittent and perennial drainages, vernal pools and other wetlands from vineyard development. Additionally, the boundaries reflect a minimum 50-foot no-disturbance buffer along all intermittent and perennial drainages measured from the top of the bank on both sides of the stream, and around all wetlands, that shall be permanently maintained. Napa County Stream Setbacks could require an additional buffer and uses permitted in the stream setbacks in both Lake and Napa counties shall be consistent with the Napa County Stream Setback requirements (see Table 4.2-1 in the Draft EIR for a list of Napa County required setbacks based on slope). No activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with ACOE, section 404 permit (33 U.S. C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. The buffers are shown on FEIR Figure 2-4 and shall be formally incorporated into the Erosion Control Plans, staked prior to construction by a biologist, whose qualifications are acceptable to the Division, maintained throughout construction, and permanently avoided. Copies of the approved grading permits and Erosion Control Plans from Lake and Napa counties shall be submitted to the Deputy Director of the Division, prior to starting construction. Work shall proceed according to the approved documents; modifications shall be approved by Lake and Napa counties as appropriate, and the Deputy Director of the Division shall be copied on all correspondence.

(0400500)

42. Development of the mitigated place of use requires the construction of 15 new road segments or the extension of existing roads outside of the mitigated proposed place of use. New roads shall be constructed to minimize grading and disturbance to trees and the areas have been selected to avoid impacts to wetlands, waters of the U.S. and other sensitive areas. No work shall commence on any project-related vegetation removal, soil disturbance, or other construction activities until a Streambed Alteration Agreement is approved by DFG and filed with the Deputy Director of the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If an agreement is not necessary for this project, the Permittee shall provide the Deputy Director of the Division with a copy of a waiver signed by DFG.

Construction activities should occur during non-rainy or no-flow periods and follow Best Management Practices and approved Erosion Control Plans from Lake and Napa counties to minimize project-related impacts to water resources.

Impacts to wetlands/waters of the U.S. outside of the place of use (those inside the place of use shall be avoided) that result from development of the stream crossings, shall be mitigated through wetland creation and riparian enhancement onsite. Improving the access roads will require installation of culverts or bridge sections at stream crossings and gravel-topping of the road surface on an as-needed basis throughout the project development. It is anticipated that seven existing road-stream crossings would require improvements to enable development of the place of use. Each stream crossing would require about 400 square feet of disturbance, for a total of about 2,800 square feet of disturbance.

(0400500)

43. Areas of high oak tree density, as shown in FEIR Figure 2-4, shall not be developed.

A count and identification of the trees in the proposed vineyard area shall be conducted by a biologist, whose qualifications are acceptable to the Division, prior to commencement of any construction activities. The tree count and identification shall be provided to the Division for review and approval within 30 days of completion. Direct impacts to native oak trees shall be mitigated by the following. An oak tree replacement program shall be implemented, which shall include the planting, irrigation,

monitoring, and maintenance of replacement native oak trees at a 1 for 1 ratio on the Guenoc Ranch in areas not included in the place of use. Tree replacement shall be conducted consistent with the Oak Tree Replacement Plan that has been submitted to the Division and tree mitigation shall occur in the areas depicted in FEIR, Figure 4-19 (Appendix G). A permit for removal of trees greater than six inches in diameter shall be obtained from Napa County prior to any tree removal activities, unless specifically waived by Napa County. A copy of the Napa County permit or waiver shall be submitted to the Deputy Director of the Division prior to the commencement of any construction activities or any oak tree removal. Pursuant to Napa County requirements, vegetation identified by Napa County for preservation that is removed (either advertently or inadvertently) or vegetation that is removed before any required permit from Napa County has been issued, shall be replaced with fifteen-gallon trees at a ratio of 2 to 1 at locations approved by Napa County, or replaced with smaller trees at a higher ratio to be determined by Napa County. Failed plantings shall be replaced to achieve net success criteria of 80% tree survival after 5 years. Trees surviving 5 years shall be maintained in perpetuity. Photo documentation showing the results of the tree replacement shall be submitted to the Deputy Director of the Division after the 5 years. All photos shall be dated and the location of the photos shown on a drawing.

To protect oak trees intended to remain undisturbed from construction-related disturbance, construction fencing shall be installed as far as feasible outside of 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 that this mitigation measure has been completed shall be submitted to the Division within 180 days of installation of each vineyard block.

(0400500)

44. A total of up to 2,765 acres shall be preserved consistent with the Open Space Preservation Plan in the FEIR (Appendix H).
(0400500)
45. If contaminated soil and/or groundwater are encountered or if suspected contamination is encountered during construction, work should be halted in the area, and the type and extent of the contamination shall be determined. A qualified professional, in consultation with appropriate regulatory agencies, should then develop an appropriate method to remediate the contamination. A copy of the remediation plan shall be submitted to the Deputy Director of the Division.
(0400500)
46. The cultural resource sites, identified in the letter report dated October 1, 2008 signed by Mike Taggart of Analytical Environmental Services and in the attached letter report to Jennifer Aranda dated September 12, 2008 signed by Tom Origer of Tom Origer & Associates, that may be impacted by the proposed project shall be protected via avoidance. These sites include and are identified as CA-LAK-231/408, -232, -397, -406, 411, CA-NAP-240, -319, GR-2, -4, -6 -8, GR2000-4, -5, -6, -7, -8, -9, -10, -12, -13, -14, -16, -19, -20, -22, -26, TOA-10. All of the sites shall be avoided during project construction, development, and operation activities. The sites 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 pipelines; stream crossings, roads or road improvements; and ripping, trenching, grading or planting related to both conversion of land to agricultural use and maintenance of the place of use). This shall be accomplished by establishing a buffer of 15 feet around the perimeter of the site and erecting a permanent fence and/or expanding nearby adjacent wetland and/or slope buffers to incorporate the site areas. The site boundaries, inclusive of buffer zones, shall be delineated by a qualified archaeologist. The fence shall be installed, with the Permittee's archeologist present, prior to

any ground disturbance in the proximity of the sites. The fencing shall remain in place for as long as water is being diverted pursuant to this permit. Avoidance by incorporation into proposed buffer zones for wetlands or oak woodlands would apply to sites CA-LAK-413H, GR-6, and GR2000-13. Any future project-related activities or developments at the location of any of the above listed sites 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 of the Division is retained to determine the significance of the sites. If mitigation is determined to be necessary, then the archeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director of the Division. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director of the Division prior to activities in the area of the site. Permittee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

47. The thirteen prehistoric archaeological resources characterized as sparse lithic scatters, including twelve sites (GR2000-4, GR2000-5, GR2000-6, GR2000-7, GR2000-11, GR2000-12, GR2000-16, GR2000-19, GR-4, PA-88-5, PA-88-6, PA-88-7) and one additional site, GR-8 a lithic scatter with a stone alignment, are likely eligible for treatment under the California Archaeological Resource Identification and Data Acquisition Program for Sparse Lithic Scatters (CARIDAP). PA-88-5, PA-88-6, PA-88-7, GR2000-6 and -11 can be avoided by incorporating them into oak woodland or wetland buffer zones. If avoidance of the above listed sites is not feasible, then the above listed sites shall be treated under the CARIDAP program. In addition, the rock alignment associated with GR-8 must be formally recorded with measurements and photo documentation if the site cannot be avoided. 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 of the Division shall be present during installation of the fencing to prevent any inadvertent damage to the sites. The fencing shall remain in place for as long as water is being diverted pursuant to this permit. If this is not feasible then any of the sites not treated under the CARIDAP program shall be further evaluated in accordance with the criteria of the California Environmental Quality Act (CEQA) and the California Register of Historical Resources (CRHR) by an archaeologist. Any proposed mitigation measures shall be submitted to the Deputy Director of the Division for review and approval, prior to implementation of the measures. Any future project-related activities or developments at the location of the above listed sites that were not treated under the CARIDAP program may be allowed only if an archaeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the Deputy Director of the Division is retained to determine the significance of the sites. If mitigation is determined to be necessary, then the archeologist shall design, conduct, and complete an appropriate mitigation plan that must be approved by the Deputy Director of the Division prior to any activities related to any new developments. There will be no further treatment required for any sites that have been dealt with under the CARIDAP program. Permittee shall be responsible for all costs associated with the cultural resource related work. This mitigation measure shall be implemented prior to any ground disturbance in proximity to the applicable sites.

(0380500)

48. The prehistoric resource identified as GR-2 has been previously impacted by placement of a pipeline and a road that cause ongoing impacts to the site. In order to limit any additional project related impacts a qualified archaeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division shall provide recommendations and a plan for relocation of the pipeline and road. If this is not feasible, then the archaeologist shall conduct limited testing to provide information evaluating the areas impacted, the past impacts and the current status of the site. If it is determined necessary to continue using the road, then after the limited testing has been completed the Permittee shall use gravel to provide a protective cap on the site in the locations of the road and pipeline. An archeologist shall be present when the protective gravel is being positioned and shall determine the placement and depth of the gravel.

(0380500)

49. Five sites identified as (CA-LAK-394, CA-LAK-404, CA-NAP-241, GR2000-27, and GR-3) that may be subject to project-related impacts are located in vineyards that have previously been planted. These sites shall be avoided by all ground-disturbing activities that are beyond the historic layer of disturbance (i.e., the plow or disc zone). Maintenance shall be limited to the existing disk zone (~25cm below surface), and not include deep ground disturbance such as ripping. If vines are to be removed for replanting or changing to another crop then techniques for removal of vines in areas of the sites shall be restricted to using mechanical non-invasive techniques (i.e., pulling the vines with a chain attached to a backhoe, rather than excavation of vines) or cutting off the old vines at the surface level, leaving them in place and replanting in between the old vines. Vine removal shall be monitored by a qualified archeologist. In addition, maintenance work within the archaeological site boundaries shall be accomplished with hand tools; in cases where heavy equipment is necessary, such equipment shall be fitted with rubber tracks or tires to limit the amount of disturbance to the resources. If the use of heavy equipment is necessary it shall be accomplished when the soils are not muddy and would not be excessively disturbed using heavy equipment.

(0380500)

50. Five cultural resource sites identified as (CA-LAK-230, -391, -392, -409, and CA-NAP 318) are potentially located within the expanded place of use, and thus subject to impacts. However, in the report dated June 8, 2000 titled *A Cultural Resources Survey of Selected Portions of Guenoc Ranch Lake and Napa Counties, California*, Origer and Schroder and in the subsequent letter reports dated October 1, 2008 signed by Mike Taggart of Analytical Environmental Services and in the attached letter report to Jennifer Aranda dated September 12, 2008 signed by Tom Origer of Tom Origer & Associates, the archeologists were unable to identify any manifestation of the sites during their survey. Accordingly, all ground disturbance proposed in areas where these sites have been previously plotted shall be monitored by a qualified archeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the Deputy Director of the Division. In the event that site indicators are encountered, project-related activities shall cease and shall not resume within 100 feet of the find until an appropriate inadvertent discovery treatment plan has been completed and executed to the satisfaction of the Deputy Director of the Division.

(0380500)

51. The areas of isolated artifacts identified as IF-4 (A-E) and IF-5 (A-B), in the letter report to Jennifer Aranda dated September 12, 2008, documenting supplemental survey work signed by Tom Origer of Tom Origer & Associates, shall be monitored by a qualified archeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division, during any project related road improvements. If additional archeological specimens are uncovered, and if either of the locations is found to contain an archeological site, then an archeologist shall complete additional investigations to determine the significance of the site. If the site is determined to be significant, then any avoidance measures or mitigation measures deemed necessary shall be submitted to the Deputy Director of the Division for approval. If mitigation is determined to be necessary, then the archeologist shall design an appropriate mitigation plan that must be approved by the Deputy Director of the Division, and then conduct and complete mitigation prior to any activities in the areas. Permittee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

52. The area recorded as IF-1, characterized as "historic stone fences/corrals", shall be protected by avoidance. IF-1 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 pipelines; stream crossings, roads or road improvements; and ripping, trenching, grading or planting related to both conversion and maintenance of the place of use). This shall be accomplished by establishing a buffer of 15 feet around the perimeter of the feature and erecting a permanent fence. If the feature cannot be avoided, then the rock alignments/corrals shall be formally recorded with measurements and photo documentation as determined appropriate by a qualified archaeologist that has been approved by the California Historical Information System to work in the area and that is acceptable to the Deputy Director of the Division. (0380500)
53. The vineyard manager and the laborers that actually cause, direct, or are responsible for earth disturbing activities shall complete a training session conducted by a qualified archeologist in both English and Spanish that shall be designed to enable them to recognize possible archaeological site indicators, prior to any earth disturbing activities. The training session shall take place within one to two weeks of the commencement of ground disturbing activities. (0380500)
54. Should any buried archeological 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 w/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 of the Division shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director of the Division 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 of the Division. (0000215)
55. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and Health and Safety Code Section 7050.5. All project-related ground disturbance 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 within 24 hours to identify the most-likely descendants of the deceased Native Americans. The most-likely descendant may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. 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 of the Division. (0380500)
56. Decision 869 established a reservation of water in the upper Putah Creek watershed upstream of Lake Berryessa. Pursuant to the Condition 12 Settlement Agreement (Settlement Agreement), the remaining reservation of water was apportioned between Napa and Lake Counties. The Permittee is a signatory of the Settlement Agreement. Nothing in this permit or the order authorizes re-distribution of water in a manner that affects the remaining depletions established for Napa and Lake Counties. Prior to serving the expanded place of use, Permittee shall comply with any limitations on the place of use established by the Watermaster to comply with the Settlement Agreement.

Permittee is not authorized to serve any area outside the place of use specified in Permit 16860C until all construction related permit terms are complied with. Permittee shall submit documentation with the triennial Report of Permittee of annual compliance with permit requirements. Said documentation shall include a description of the mitigation measures employed for each permit condition, date of compliance with the mitigation measures, and shall identify the start and end dates for any monitoring requirements. Permittee is not required to continue submitting construction compliance reports once full compliance with all construction related permit conditions is achieved.

(0000063)

57. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director of the Division.

(0000030)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (0000010)
- C. Permittee 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 permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee 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 permit 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 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 permittee 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.

(0000012)

E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee 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.

(0000013)

F. This permit does not authorize any act that results in the taking of a threatened or endangered species or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the state and federal Endangered Species Acts for the project authorized under this permit.

(0000014)

G. Permittee 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)

H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between DFG and the permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

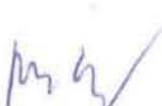
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit 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 1391. Every permit 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 permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, 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 permit 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 permittee 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 permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: FEB 22 2012

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2011-0004-EXEC

In the Matter of Petition for Reconsideration of
LANGTRY FARMS LLC AND GUENOC WINERY, INC.

Regarding Order Denying Petitions for Extension of Time and Change

ORDER GRANTING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:¹

On March 20, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued State Water Board Order (Order) WR 2009-0019-DWR, denying petitions for extension of time and change submitted by Magoon Estate Limited (Permittee) for Permit 16860C (Application 24296C). The petitions were denied for non-diligence. Permit 16860C has been transferred to Langtry Farms LLC and Guenoc Winery, Inc. (Petitioner), who filed a petition for reconsideration dated April 20, 2009. The State Water Board granted reconsideration by Order WR 2009-0052-EXEC, ordering that Order WR 2009-0019-DWR be set aside and remanding the issue to the Division. On December 21, 2009, the Division issued Order WR 2009-0064-DWR, again denying the petitions for extension of time and change. Petitioner filed a petition for reconsideration dated January 19, 2010. Petitioner requests that this matter be considered by the Board.

¹ State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration of an order denying change and time extension petitions falls within the scope of the authority delegated under Resolution No. 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider the petition for reconsideration, deny the petition, or set aside or modify the order.

An interested person may petition the State Water Resources Control Board (State Water Board) for reconsideration of a decision or order on any of the following grounds: (1) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (2) the decision or order is not supported by substantial evidence; (3) there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced; (4) error in law. (Cal. Code Regs., tit. 23, § 768.)

After review of the record, the State Water Board may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C); see also subd. (a)(1) [providing that State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues].) Before taking final action, the State Water Board has the discretion to hold a hearing for the purpose of oral argument, the receipt of additional evidence, or both. (*Id.*, § 770; Wat. Code, § 1123.)

Petitioner contends that Order WR 2009-0064-DWR fails to explicitly state the bases for its denial of the petitions for extension of time and change in violation of Order WR 2009-0052-EXEC. Order WR 2009-0052-EXEC directed the Division to explain “how the basic facts recited in its order relate to the ultimate conclusions regarding whether the requirements for an extension have been satisfied,” and to “address any factual disputes raised by the petition.” (*Id.*, p.13.) Likewise, there remains some dispute regarding the appropriate water duty for calculating Petitioner's needs.

Petitioner also takes issue with paragraph 31 of Order WR 2009-0064-DWR, suggesting that the Division is ignoring recently issued approvals for several change petitions Petitioner submitted for other water rights it holds. Petitioner suggests that these approvals increase the place of use for Petitioner's water rights, necessitating full use under Permit 16860C.

There still appears to be a dispute as to whether Permittee paid the required fees pursuant to the Condition 12 Settlement Agreement.

The State Water Board has not delegated to the Deputy Director for Water Rights the authority to grant an extension of time where there are outstanding protests or where the extension is for greater than ten years or the period of the extension in combination with all extensions

previously granted under delegated authority exceeds fifteen years. In light of the outstanding evidentiary issues, and due to the fact that there is an outstanding protest to these petitions, the State Water Board must conduct a public hearing on the time extension before approving Petitioner's petition for reconsideration. This grant of reconsideration does not reflect a determination as to whether the issues raised in Petitioner's petition for reconsideration are substantial and should not be construed as a judgment on the merits of those issues.

ORDER

IT IS ORDERED that Petitioner's petition for reconsideration of Order WR 2009-0094-DWR, which denies the time extension, is granted, subject to further action of the State Water Board after a hearing to receive evidence on whether the Division's order should be set aside, modified, or upheld, or other appropriate action should be taken. The portion of Order WR 2009-0064-DWR that denies an extension of time is suspended pending the State Water Board's issuance of an order after the hearing.

Dated: **JAN 31 2011**


Thomas Howard
Executive Director