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

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 18119B-2 (Application 24433B-2)

**Round Pond, A California Corporation**

# ORDER REVOKING PERMIT

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SOURCE: Napa River

COUNTY: Napa

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**WHEREAS:**

1. Round Pond, A California Corporation (Permittee) is the water right holder of Permit 18119B-2.

2. On March 10, 2009, the Permittee requested that the State Water Resources Control Board (State Water Board), Division of Water Rights, revoke Permit 18119B-2.

3. By signing the voluntary request for revocation, Permittee waived the right to the hearing and notice requirements set forth in Water Code sections 1410 and 1410.1.

**THEREFORE:**

It is ordered that Permit 18119B-2 is hereby revoked by the State Water Board, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JOHN O'HAGAN FOR:

*Victoria A. Whitney, Chief*
*Division of Water Rights*

Dated: MAR 30 2009

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

# DIVISION OF WATER RIGHTS

# PERMIT FOR DIVERSION AND USE OF WATER

## PERMIT 18119B-2

Application 24433B-2 of Round Pond, A California Corporation

c/o Drew Aspegren, Napa Valley Vineyard Engineering, Inc., 176 Main Street, Suite B.

St. Helena, CA 94574

filed on August 6, 1973, has been approved by the State Water Resources Control Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

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

1. Source: Napa River

Tributary to: San Pablo Bay

| 2. Location of point of diversion: | 40-acre subdivision of public land survey or projection thereof | Section | Township | Range | Base and Meridian |
|---|---|---|---|---|---|
| DIVERSION TO OFFSTREAM STORAGE<br>South 16° 00' East 3,625 feet from NW corner of projected Section 15 | NW¼ of SW¼ | 15 | 7N | 5W | MD |
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County of Napa

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| 3. Purpose of use: | 4. Place of use: | Section | Township | Range | Base and Meridian | Acres |
|---|---|---|---|---|---|---|
| Frost Protection | S½ | 10 | 7N | 5W | MD | 82 |
| | N½ | 15 | 7N | 5W | MD | 166 |
| | | | | | TOTAL | 248 |
| | | | | | | |
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The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 3.9 cubic feet per second to be diverted from March 15 to May 15 of each year. The maximum amount diverted under this permit shall not exceed 222 acre-feet per year. (0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1999. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. 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 the State Water Resources Control 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 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 Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

13. This permit is subject to the agreement dated May 26, 1978 between permittee and City of Napa, to the extent such agreement covers matters within the Board's jurisdiction. (0000024)

14. For the protection of fish and wildlife, permittee shall during the period from March 15 through May 15 bypass a minimum of 10 cubic feet per second in Napa River. The total streamflow shall be bypassed whenever it is less than the designated amount. Streamflows shall be as measured at the nearest USGS Gaging Station on the Napa River or by a device acceptable to the State Water Resources Control Board at alternative locations which may be designated by the Watermaster administering the water distribution program. (0140060)

15. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversions. The construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

16. Diversion of water between March 15 and May 15 is subject to control under a water distribution program administered by the State Water Resources Control Board or by the Department of Water Resources. Whenever such a program is in effect at the project location, permittee shall comply with the following:

A. Diversion after March 15 is contingent upon participation in the water distribution program by permittee.

B. Diversion after March 15 shall be solely to replenish water stored prior to March 15 unless otherwise authorized by the Watermaster in charge of the distribution program.

C. Prior to making diversions after March 15, permittee shall install and maintain devices, satisfactory to the Watermaster, which are capable of measuring the instantaneous rate of diversion and the total amount of water diverted during participation in the distribution program.

D. Permittee's participation in any water distribution program required under the terms of this permit shall be evidenced by returning the information sheet distributed prior to the frost season and paying costs as apportioned at the end of the season.

E. The water distribution program required under this permit may be revised periodically by the State Water Resources Control Board provided that the program shall be substantially consistent with terms of any water distribution program imposed on similarly situated users by the Napa County Superior Court. (0000085)

17. The total quantity of water diverted under this permit, together with that diverted under permits issued pursuant to Applications 24433A-1, 24433A-2, 24433A-3, 24433B-1 and 24433B-3, shall not exceed 626 acre-feet per annum. (0000114)

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**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).

*Dated:* FEBRUARY 21 1996

STATE WATER RESOURCES CONTROL BOARD

Roger Johnson

for Chief, Division of Water Rights

WR 14-2 (6-94)