

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 19281 (Application 27499)

**Norman G. Alumbaugh**

**ORDER APPROVING EXTENSION OF TIME  
AND AMENDING THE PERMIT**

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SOURCE: Unnamed Stream Tributary to Burton Creek

COUNTY: Napa

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**WHEREAS:**

1. Permit 19281 was issued to Norman G. Alumbaugh on August 3, 1984, pursuant to Application 27499.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board (SWRCB) on September 13, 1994.
3. The permittee has proceeded with diligence and good cause has been shown for an extension of time. Public notice of the request for an extension of time was issued on October 7, 1994 and the petition was re-noticed on March 16, 2001. Protest issues have been resolved through inclusion of the permit conditions specified in SWRCB Order WR 96-002 in the order approving time extension.
4. The SWRCB has determined that the petition for an extension of time does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the permittee aware of possible obligations resulting from these acts.
6. There is the possibility that buried archeological deposits may be present and accidental discovery could occur. In compliance with the California Environmental Quality Act, which states that a Lead Agency is required to make a provision for historical or unique archeological resources accidentally discovered during construction or operation of projects, a condition should be included in the permit requiring notification of the Chief of the Division of Water Rights if project activities uncover any buried archeological materials.
7. Approval of the petition for time extension is exempt from the California Environmental Quality Act. On the date of approval of the petition, the Division of Water Rights issued a Notice of Exemption for the petition.

**NOW, THEREFORE, IT IS ORDERED THAT PERMIT 19281 IS AMENDED TO READ AS FOLLOWS:**

1. Condition 8 of the permit be deleted and condition 9 be amended to read:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2003.

(0000009)

2. Permit 19281 is amended to include the following Endangered Species condition:

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the 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 applicable Endangered Species Act for the project authorized under this permit.

(0000014)

3. Permit 19281 is amended to include the following archeological condition:

Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; 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; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0000215)

4. Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) and Order WR 96-002 pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) 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.
- (2) 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.
- (3) 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 SWRCB.

- (4) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the SWRCB, for the purpose of determining water levels in the reservoir. 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.
- (5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- (6) 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.
- (7) 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.
- (8) 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:
  - a. 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.
  - b. 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.
  - c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- (9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa:
  - 1) does not drop below 640,000 acre-feet in storage as of May 1, 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.

- (10) 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.
- (11) 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.
- (12) 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.
- (13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 49 acre-feet per annum 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.

(0000024)

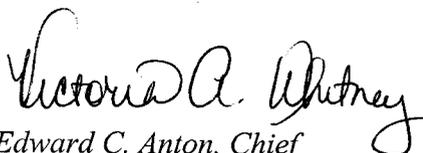
The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement 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 SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

(0220087)

5. All other conditions of Permit 19281 are still applicable.

STATE WATER RESOURCES CONTROL BOARD



for Edward C. Anton, Chief  
Division of Water Rights

**MAR 17 2003**

Dated:

19281

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

**ORDER**

APPLICATION 27499 PERMIT 19281 LICENSE \_\_\_\_\_

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,  
AND AMENDING THE PERMIT

**WHEREAS:**

1. Permit 19281 was issued to Norman G. Alumbaugh on August 3, 1984 pursuant to Application 27499.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
3. The permittee has proceeded with diligence and good cause has been shown for the extension of time.
4. Permit Condition 12 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Condition 8 of the permit be amended to read:
 

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE	December 31, 1991	(0000008)
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2. Condition 9 of the permit be amended to read:
 

COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE	December 31, 1993	(0000009)
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3. Condition 12 of the permit be amended to read:

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. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.

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. (000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (000007)

8. Construction work shall be completed by December 1, 1987. (000008)

9. Complete application of the water to the authorized use shall be made by December 1, 1988. (000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (000010)

11. 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. (000011)

12. Pursuant to California Water Code Sections 100 and 275, and the 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, 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 minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (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) to 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 takes into account the public interest and is necessary to protect public trust uses. All such actions shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution. (000012)

13. 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. (000013)

14. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. (0050043)

15. For the protection of fish and wildlife, permittee shall during the period from November 1 through April 30 bypass a minimum of 0.5 cubic foot per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period. (0140060)

16. The edge of the pit reservoir shall be planted with native riparian species such as willows. (0400500)

17. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

18. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee. (0000063)

19. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)

20. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board. (0000100)

21. The archeological site identified as CA-NAP-243, in the Cultural Resources Field Report, shall not be impacted by any of the developments proposed in Application 27499. There shall be no surface or subsurface disturbances of any type as a result of reservoir construction, installation of the proposed water distribution system, or the planting and maintenance of the proposed vineyard.

Future developments of this type, at the aforementioned site shall only be permitted following investigations by a qualified archeologist (approved by the Division of Water Rights) and the implementation of any recommendations resulting from such investigations. (0380500)

22. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this 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)

**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, 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).

AUGUST 3 1984

Dated:

STATE WATER RESOURCES CONTROL BOARD

*Raymond Wash*

Chief, Division of Water Rights