

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

ORDER

Application 29328 Permit 20532 License _____

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20532 was issued to Atlas Peak Vineyards on June 17, 1991 pursuant to Application 29328.
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 (SWRCB).
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 7 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 2006

(000008)

Dated: **SEPTEMBER 4 1996**


Edward C. Anton, Chief
Division of Water Rights

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
RECREATION	FOSS VALLEY RESERVOIR WITHIN W _{1/2} OF NW _{1/4} AND	26	7N	4W	MD	
	E _{1/2} OF NE _{1/4}	27	7N	4W	MD	
	EAST POND WITHIN NE _{1/4} OF SE _{1/4}	26	7N	4W	MD	
FROST PROTECTION						
HEAT CONTROL						
IRRIGATION	SE _{1/4} OF SE _{1/4}	22	7N	4W	MD	37
	SE _{1/4} OF SE _{1/4}	23	7N	4W	MD	14
	SW _{1/4} OF SE _{1/4}	23	7N	4W	MD	37
	SE _{1/4} OF SW _{1/4}	23	7N	4W	MD	40
	SW _{1/4} OF SW _{1/4}	23	7N	4W	MD	40
	NW _{1/4} OF SW _{1/4}	25	7N	4W	MD	15
	NW _{1/4} OF NW _{1/4}	26	7N	4W	MD	40
	NE _{1/4} OF NW _{1/4}	26	7N	4W	MD	27
	SE _{1/4} OF NW _{1/4}	26	7N	4W	MD	40
	SW _{1/4} OF NW _{1/4}	26	7N	4W	MD	14
	NW _{1/4} OF NE _{1/4}	26	7N	4W	MD	40
	NE _{1/4} OF NE _{1/4}	26	7N	4W	MD	40
	SE _{1/4} OF NE _{1/4}	26	7N	4W	MD	35
	SW _{1/4} OF NE _{1/4}	26	7N	4W	MD	40
	NW _{1/4} OF SE _{1/4}	26	7N	4W	MD	40
	NE _{1/4} OF SE _{1/4}	26	7N	4W	MD	37
	NE _{1/4} OF SW _{1/4}	26	7N	4W	MD	19
	NW _{1/4} OF NE _{1/4}	27	7N	4W	MD	40
	NE _{1/4} OF NE _{1/4}	27	7N	4W	MD	40
	SW _{1/4} OF NE _{1/4}	27	7N	4W	MD	35
	SE _{1/4} OF NE _{1/4}	27	7N	4W	MD	30
					TOTAL	700

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 210 acre-feet per annum to be collected from October 15 of each year to April 30 of the succeeding year as follows: 161 acre-feet per annum in Foss Valley Reservoir and 49 acre-feet per annum in East Pond. (000005)

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. (000005I)

The maximum rate of diversion to offstream storage shall not exceed 20 cubic feet per second. (000005J)

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, 1995. (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 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. (000020)

13. Permittee shall comply with the following provisions which are derived from the agreement between permittee and City of Napa executed on June 21, 1983 and filed with the State Water Resources Control Board:

(1) Permittee shall install and maintain outlet pipes of at least 18-inches in diameter in its dams 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 reservoirs which is not authorized for appropriation, or diverted or regulated for riparian uses, may be released. (0050043)

(2) Permittee shall install and maintain in each of its reservoirs a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoirs.

Permittee shall supply a staff gage reading for each reservoir on or about October 15 of each year, verified by the City of Napa, to the State Water Resources Control Board. (0070047)

(3) Permittee shall install measuring devices, satisfactory to the City of Napa and the State Water Resources Control Board, at its points of diversion to storage and points of withdrawal from storage, to provide the following information: (1) the amounts of water diverted to storage in each of permittee's reservoirs; and (2) the amounts of water withdrawn from storage for beneficial use. (0060300)

(4) For each period indicated, permittee shall maintain records of the following measurements and shall provide them to the City of Napa by the tenth of each month following the month for which they were recorded:

- a) Staff gage readings at each reservoir on or about the last day of each month; October 1 - April 30.
- b) Amounts diverted to storage; October 15 - April 30.
- c) Amounts withdrawn from water stored during the current storage season; March 1 - April 30.
- d) Amounts diverted from the Milliken Creek watershed and/or reservoirs to the Rector Creek watershed; October 15 - April 30.
- e) Amounts withdrawn from carryover storage; October 15 - April 30. (0100700)

(5) Upon twenty-four hours notice to the other party, each party shall have reasonable access to the reservoirs and points of diversion of the other party for the purposes of reading staff gages and measuring devices. (0480300)

(6) Permittee shall not withdraw for use any water impounded in its reservoirs from October 15 to March 1 of the current storage season until the City of Napa's prior vested rights and its obligations under License 5208 and Permit 18448 are fully satisfied pursuant to paragraphs 7 through 10 hereof. (0360800)

(7) Upon request by the City of Napa, permittee shall release from its reservoirs the following amounts of water:

a) When, on the last day of the month preceding the request, the water surface elevation of Lake Milliken was at or below 873 feet, an amount which, when combined with the amount of inflow to Lake Milliken during that preceding month, would have been produced by a 0.5 cfs continuous flow measured at the Lake Milliken gage, provided, however, that permittee shall not be required to release water impounded prior to the first day of the preceding month.

b) When, on the last day of the month preceding the request, the water surface elevation of Lake Milliken was above 873 feet, an amount which, when combined with the inflow to Lake Milliken during the preceding month, would have been produced by a 5 cfs continuous flow measured at the Lake Milliken gage, provided, however, that permittee shall not be required to release water impounded prior to the first day of the preceding month. (0350300)

(8) Upon request by the City of Napa, permittee shall release from its reservoirs an amount of water which, when measured at the Lake Milliken gage, is equal to the amounts of water withdrawn from storage and released by the City of Napa from Lake Milliken during the preceding month for redirection at its diversion dam downstream, provided, however, that permittee shall not be required to release water impounded prior to the first day of the preceding month. (0350300)

(9) If on March 31 of any year, Lake Milliken has not spilled, upon request by the City of Napa, permittee shall release from its reservoirs an amount of water sufficient to fill Lake Milliken up to the amount of water which permittee has in storage as of March 1, less any carryover storage. (0350700)

(10) All releases provided for in paragraphs 7, 8, and 9 above shall, except by prior agreement of the parties to the contrary, be made by the fifteenth of the month and shall be made at the maximum practicable rate. Permittee shall notify the City of Napa at least twelve hours in advance of the timing of such releases. (0350700)

(11) Because of the unknown magnitude of conveyance and related losses in the reach of the stream between permittee's point(s) of release and the City of Napa's Milliken Reservoir, the parties agree to study the timing, rates, and amount of releases made by permittee pursuant to this agreement, in order to identify more precisely the amounts required to be released by permittee in order to satisfy the prior rights of the City. Until such time as alternate or different release formulas may be agreed upon by the parties hereto, all amounts of water released shall be equivalent to water measured at the Lake Milliken gage. (0340600)

Inclusion in this permit of certain provisions of the referenced 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)

14. In accordance with the requirements of Water Code Section 1393, permittee shall clear the area of Foss Valley Reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)

15. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning protection of beneficial uses of water in San Francisco Bay. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing. (0000094)

16. The total quantity of water diverted to storage in Foss Valley Reservoir under this permit together with that diverted to storage in the same reservoir under permits issued pursuant to Applications 27295, 27296, and 28794 shall not exceed 960 acre-feet per annum. (0000114)

17. The archeological sites identified as 80-22-10 and 80-22-11 in the report entitled, "An Assessment of Impacts of Cultural Resources Within the Foss Valley Wine Company Property, Foss Valley, Napa County, California" by Peter Banks and dated May 11, 1983, shall be excluded from the place of use. No impacts relating to water developments shall be allowed on these sites. (0380500)

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

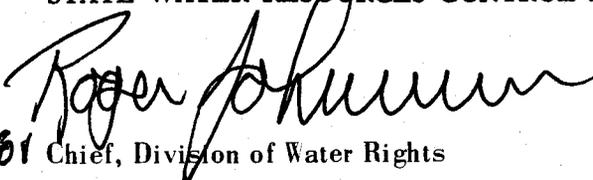
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

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: JUNE 17 1991

STATE WATER RESOURCES CONTROL BOARD


 Chief, Division of Water Rights