

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 29637 Permit 20665 License

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,
ADDING ENDANGERED OR THREATENED SPECIES TERM,
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20665 was issued to Gamma Development Co, A Ltd Partnership on May 18, 1993 pursuant to Application 29637.
2. A petition for an extension of time in which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board on July 13, 1998.
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.
4. Fish and wildlife species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

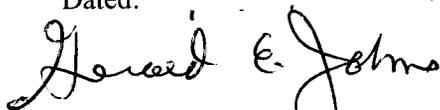
1. A new development schedule is approved as follows:

Complete application of the water to the proposed use shall be made by
December 31, 2007. (0000009)

2. The addition of paragraph 28 to the permit to read as follows:

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 5131 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit. (0000014)

Dated: **MARCH 2 1999**



for Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20665

Application 29637 of Gamma Development Co., A Limited Partnership

10 Maoli Drive, San Rafael, CA 94903

filed on January 8, 1990, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

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

- | 1. Source: | Tributary to: |
|--------------------------------------|---------------------------|
| <u>1) and (2A-2B) Unnamed Stream</u> | <u>Tolay Creek thence</u> |
| | <u>San Pablo Bay</u> |
| <u>3) Unnamed Stream</u> | <u>Tolay Creek</u> |
| | |
| | |

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section *	Town- ship	Range	Base and Meridian
STORAGE AND REDIVERSION 1) RESERVOIR #1 - BY CALIFORNIA COORDINATE SYSTEM, ZONE 2 NORTH 174,200 FEET AND EAST 1,872,150 FEET	SE $\frac{1}{4}$ OF SE $\frac{1}{4}$	31	4N	5W	MD
CONTINUOUS POINT OF DIVERSION TO OFFSTREAM STORAGE A COLLECTOR DITCH SPANNING BETWEEN LIMITS AS FOLLOWS, BY CALIFORNIA COORDINATE SYSTEM, ZONE 2:					
2A) NORTH 173,700 FEET AND EAST 1,870,000 FEET	NW $\frac{1}{4}$ OF NE $\frac{1}{4}$	6	3N	5W	MD
2B) NORTH 172,150 FEET AND EAST 1,871,600 FEET	SE $\frac{1}{4}$ OF NE $\frac{1}{4}$	6	3N	5W	MD
DIVERSION TO OFFSTREAM STORAGE 3) BY CALIFORNIA COORDINATE SYSTEM, ZONE 2 NORTH 176,300 FEET AND 1,871,700 FEET	NE $\frac{1}{4}$ OF SE $\frac{1}{4}$	31	4N	5W	MD

County of Sonoma * projected

3. Purpose of use:	4. Place of use:	Section *	Town- ship	Range	Base and Meridian	Acres
RECREATION	RESERVOIR #1 WITHIN S $\frac{1}{2}$ OF SE $\frac{1}{4}$	31	4N	5W	MD	
FROST PROTECTION						
HEAT CONTROL						
IRRIGATION	A NET AREA OF 185 ACRES WITHIN A GROSS AREA OF 244 ACRES LOCATED WITHIN THE FOLLOWING PROJECTED SECTIONS:					
	E $\frac{1}{2}$ OF SW $\frac{1}{4}$	31	4N	5W	MD	
	S $\frac{1}{2}$ OF NE $\frac{1}{4}$	31	4N	5W	MD	
	SE $\frac{1}{4}$	31	4N	5W	MD	
	W $\frac{1}{2}$ OF SW $\frac{1}{4}$	32	4N	5W	MD	
	NW $\frac{1}{4}$ OF NW $\frac{1}{4}$	5	3N	5W	MD	
	NE $\frac{1}{4}$	6	3N	5W	MD	

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 370 acre-feet per annum to be collected from October 1 of each year to May 1 of the succeeding year. (0000005)

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. 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. (0000007)

8. Construction work shall be completed by December 31, 1996. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1997. (0000009)

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

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. (0000011)

12. 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)

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. (0000013)

14. 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)

15. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. (0050043)

16. For the purposes of determining the amounts of water diverted and used under this permit, permittee shall install and maintain devices satisfactory to the State Water Resources Control Board necessary to quantify the amounts of water collected to storage and used. Permittee shall keep records of said diversion and use of water under this permit. Each year, permittee shall summarize the amounts of water collected to storage and used under this permit in the annual Progress Report by Permittee. (0060046)

17. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until the Department has approved the plans and specifications for the dam. (0360048)

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

19. Permittee shall enclose within a barbed-wire or deer fence the two areas identified as dwarf peppergrass (*Lepidium latipes*) preserves and shown on the "Areas for Wetland Enhancement and Plant Preservation" map, dated December 1992, on file with the State Water Resources Control Board to protect the preserves from grazing by livestock and from agricultural development. The *Lepidium latipes* preserves shall be excluded from the place of use designated in this permit. (0400500)

20. Permittee shall promote the enhancement of wetland habitat within designated areas shown on the "Areas for Wetland Enhancement and Plant Preservation" map, dated December 1992, on file with the State Water Resources Control Board. Within two years of the date of this permit, permittee shall furnish and plant within the designated areas woody species of willow, roses, snowberry, native species of *Ribes*, or other species approved by the California Department of Fish and Game (Department). Plantings shall be at densities and spacings approved by the Department. Permittee shall retain records of the species and numbers planted. Permittee shall not clear vegetation within the designated areas, except as necessary to promote the development of wetland habitat or to comply with Federal, State or local ordinances and restrictions. Permittee shall isolate the designated areas from grazing by livestock and from agricultural development. At the end of two years, permittee shall provide to the State Water Resources Control Board, a written statement from the Department confirming that the measures taken meet with Department approval and restoration goals have been attained. Permittee shall not be obligated to comply with the provisions of this condition on lands not owned by permittee. (0400500)

21. Permittee shall provide access for wildlife to Reservoir #1 by a passage corridor at least 50-feet in width between the shoreline of Reservoir #1 and the outer boundary of the gross place of use designated in this permit. Access shall be provided for wildlife to at least 250 feet of shoreline. Barbed-wire and deer fencing shall not be used within the passage corridor. (0400500)

22. Permittee shall allow any naturally occurring vegetation which establishes itself within a 50-foot distance above the high water shoreline of Reservoir #1 to remain undisturbed with the exception of vegetation which must be cleared to satisfy the requirements of the Division of Safety of Dams or California Water Code Section 1393. Permittee may selectively clear invasive non-native species. (0400500)

23. 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)

24. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable San Francisco Bay Conservation and Development Commission requirements. (0000300)
(000J001)

25. No vineyard development shall occur in the erosion hazard area, identified in the Initial Study prepared for Applications 29636 and 29637, until an erosion control plan, approved by the Chief, Division of Water Rights, State Water Resources Control Board, has been prepared. The plan shall be implemented and, at a minimum, contain the following information:

- a) The nature and purpose of the land disturbing activity and the amount of grading involved.
- b) General description of existing site conditions, including topography, vegetation, and soils.
- c) Natural features onsite including streams, lakes, reservoirs, roads, drainage, and other areas that may be affected by the proposed activity.
- d) Soil types/soil series identified in the Soil Conservation Service Sonoma County Soil Survey.
- e) Critical areas, if any, within the development site that have serious erosion potential or problems.
- f) Proposed erosion control methods including:
 - 1) All drainage systems and facilities, walls, cribbing or other erosion control devices to be constructed with, or as a part of the proposed work.
 - 2) Proposed vegetation erosion control measures including location, type and quantity of seed, mulch, fertilizer and irrigation; timing and methods of planting, mulching and maintenance of plant material and slopes until a specific percentage of plant coverage is uniformly established.
- g) Stormwater stabilization measures if the development of the site will result in increased peak rate of runoff that may cause flooding or channel degradation downstream.
- h) An implementation schedule showing the following:
 - 1) The proposed clearing, grading and or construction schedule.
 - 2) The proposed schedule for winterizing the site (generally by October 15 of each year).
 - 3) The proposed schedule of installation of all interim erosion and sediment control measures, including the state of completion of such devices at the end of the grading season (generally October 15) of each year.

- 4) The schedule for installation of permanent erosion and sediment control devices where required.

The erosion control plan shall be prepared only by one or more of the following persons:

- 1) A certified professional soil erosion and sediment control specialist (CPSESCS) or a Soil Conservation Service employee working under the direction of a CPSESCS; or,
- 2) A licensed civil engineer; or,
- 3) A registered professional forester; or,
- 4) A licensed landscape architect; or,
- 5) A certified engineering geologist; or,
- 6) The permittee or permittee's designee, provided that the plan is reviewed and approved in writing by one of the above. (0490500)

26. The archaeological site identified as CA-SON-207 in the Cultural Resource Survey report of Gamma Development Co. property shall not be impacted by any of the water developments proposed under Applications 29636 and 29637. CA-SON-207 shall be enclosed within barbed wire or deer fence and excluded from the area to be developed (i.e. vineyards) by permittee. (0380999)

27. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 29636, shall not exceed 370 acre-feet per annum. (0000114)

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.

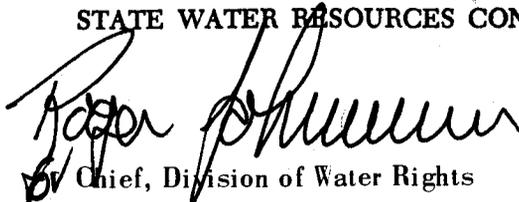
Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

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:

MAY 18 1993

STATE WATER RESOURCES CONTROL BOARD


 Chief, Division of Water Rights