

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21037

Application 29740 of **John Scully – SPO Partners**
591 Redwood Highway
Mill Valley, CA 94941

filed on **May 7, 1990**, has been approved by the State Water Resources Control Board (SWRCB)
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 of water

<u>Source</u> Unnamed Stream	<u>Tributary to</u> Montgomery Creek thence Dry Creek thence
Unnamed Stream	Napa River thence San Pablo Bay
	Dry Creek thence Napa River thence
	San Pablo Bay

within the County of Napa

2. Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POD 1 and PORD 1; North 266,700 feet and East 1,874,150 feet	SE¼ of NW¼	05	6N	5W	MD
POD 2 and PORD 2; North 266,800 feet and East 1,876,400 feet	NW¼ of NE¼	05	6N	5W	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Irrigation	NW¼ of NE¼	05	6N	5W	MD	16
	SW¼ of NE¼	05	6N	5W	MD	9
	NE¼ of NW¼	05	6N	5W	MD	10

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 30 acre-feet per annum to be collected to storage from December 15 of each year to March 31 of the succeeding year. The maximum storage capacity at each of the two reservoirs shall not exceed 15 acre-feet.

(000005D)

6. 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)

7. Complete application of the water to the authorized use shall be made by December 31, 2010.

(000009)

8. For the protection of fish and wildlife, permittee shall during the period from December 15 through March 31 bypass a minimum of 0.1 cubic feet per second (45 gallons per minute) at POD#1, and 8 gallons per minute at POD#2. The total streamflow shall be bypassed whenever it is less than the designated amount. The bypass system shall be a passive system, which will divert the bypass flow from the stream channel above the reservoir, convey it through a pipeline around the reservoir, and return it to the stream channel within 50 feet downstream of the dam. Prior to making any diversions under this permit, the permittee shall submit plans of the bypass system to the Chief, Division of Water Rights for approval (permit term 60 modified).

(0140060M)

9. 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, or provide other means satisfactory to the SWRCB, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe (or alternative facility) to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence, which substantiates that the outlet pipe (or alternative facility) has been installed in the dam. Evidence shall include photographs showing the completed works or certification by a registered Civil Engineer.

(0050043AM)

10. Permittee shall install and properly maintain in the reservoirs staff gages, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about October 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

Permittee shall allow E. E. Trefethen, Jr., or a designated representative, reasonable access to the reservoirs for the purpose of verifying staff gage readings and determining water levels in the reservoirs.

(0100047)

11. Whenever the prior storage rights of E. E. Trefethen, Jr. under Permit 16187C issued pursuant to Application 23333C are not satisfied by April 15 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release water in the reservoir(s) below the previous October 1 staff gage reading unless permittee has withdrawn water from the reservoir(s) for consumptive purposes since October 1.

Whenever the prior storage rights of E. E. Trefethen, Jr. under Permit 18387A issued pursuant to Application 24693A are not satisfied by May 15 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release water in the reservoir(s) below the previous October 1 staff gage reading unless permittee has withdrawn water from the reservoir(s) for consumptive purposes since October 1.

(0000051)

12. In accordance with section 1601, 1603, and 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream alteration agreement with the California 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 the permittee.

(0000063M)

13. Prior to construction of Reservoir No.1 on the unnamed stream tributary to Montgomery Creek and Reservoir No.2 on the unnamed stream tributary to Dry Creek, permittee shall consult with the appropriate Regional Water Quality Control Board. If required by the Regional Board, permittee shall comply with requirements of the NPDES Storm Water Discharge Permitting Program.

(0400500)

14. Around the perimeter of the proposed reservoir at POD #1, permittee shall plant an average of one shrub of one-gallon size or larger for every ten feet of shoreline, assuming the reservoir is at full pool. The shrubs shall be planted in the area between the high water level and the existing woodland. The shrubs shall be planted in groups but shall not be planted closer than five feet apart. Shrubs shall include species native to the Montgomery Creek watershed. A revegetation plan shall be developed and approved by the Department of Fish and Game prior to planting. If a second reservoir is developed at POD #2, a revegetation plan shall be submitted for Department approval and shall include both tree and shrub species. All plantings shall be maintained for a minimum of three years or until established.

(0400500)

15. The permittee shall implement, on an ongoing basis, the erosion control measures described in the Lundstrom Vineyard Development Project Erosion Control and Water Quality Protection Plan (August 1990, prepared by the Napa County Resource Conservation District, USDA Soil Conservation Service).

(0400500)

16. Prior to reservoir construction or clearing of additional acreage, trenching, or other heavy earth moving activities, permittee will obtain a Grading Permit from the Napa County Conservation, Development and Planning Department. Prior to any grading on slopes greater than 5%, permittee shall submit to the Chief of the Division of Water Rights, an Erosion Control Plan approved by the County of Napa and a copy of the grading permit granted by that authority.

(0400500)

17. Permittee acknowledges the prior rights of William M. and Kathleen Crowley or assignee as identified in License 7095 on file with the State Water Resources Control Board, Division of Water Rights and agrees not to interfere with those rights.

(000000TM)

18. Permittee acknowledges the prior rights of E. E. Trefethen, Jr., or successor in interest as identified in Permits 11738B01, 11738B02, 16187A, 16187B, 16187C, 18387A, 18387B, (Applications 18104B01, 18104B02, 23333A, 23333B, 23333C, 24693A, 24693B, respectively) on file with the State Water Resources Control Board and agrees not to interfere with those rights.

(000000TM)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- (A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- (B) The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- (D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- (E) 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 SWRCB 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 SWRCB 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 SWRCB

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 SWRCB 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 SWRCB 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.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB 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 SWRCB 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.

(G) 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.

(H) Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. 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.

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

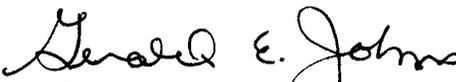
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

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 24 2000

STATE WATER RESOURCES CONTROL BOARD


For Chief, Division of Water Rights