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

DIVISION OF WATER RIGHTS

# PERMIT FOR DIVERSION AND USE OF WATER

## PERMIT 21044

Application **30486** of **California Wine Company-Gilson**
**155 Cherry Creek Road**
**Cloverdale, CA 95425**

filed on **September 29, 1995**, 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

| Source | Tributary to |
|---|---|
| **Sage Creek** | **Conn Creek thence** |
| | **Napa River** |

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 | Projected Section | Township | Range | Base and Meridian |
|---|---|---|---|---|---|
| **Point of Direct Diversion North 305,600 feet and East 1,915,500 feet** | **NE¼ of NW¼** | **34** | **8N** | **4W** | **MD** |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| 3. Purpose of use | 4. Place of use | Projected Section | Township | Range | Base and Meridian | Acres |
|---|---|---|---|---|---|---|
| **Frost Protection**<br>**Heat Control** | **SE¼ of SE¼** | **27** | **8N** | **4W** | **MD** | **2** |
| | **SW¼ of SE¼** | **27** | **8N** | **4W** | **MD** | **23** |
| | **NE¼ of SE¼** | **27** | **8N** | **4W** | **MD** | **2** |
| | **NW¼ of SE¼** | **27** | **8N** | **4W** | **MD** | **6** |
| | **SE¼ of SW¼** | **27** | **8N** | **4W** | **MD** | **7** |
| | **NE¼ of NW¼** | **34** | **8N** | **4W** | **MD** | **12** |
| | **NW¼ of NW¼** | **34** | **8N** | **4W** | **MD** | **8** |
| | | | | | **Total** | **60** |

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 1 cubic feet per second to be diverted from March 15 to May 1 of each year. The maximum amount diverted under this permit shall not exceed 25 acre-feet per year.

(0000005)

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

(0000009)

7. The SWRCB reserves jurisdiction to impose conditions to conform this permit to SWRCB policy on use of water for frost protection. Action by the SWRCB will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

8. Whenever the prior storage rights of the City of Napa under Permit 6990 issued pursuant to Application 10990 are not satisfied by May 1 of any year, water directly diverted under this permit shall be released, upon request of the City of Napa, from storage under Application 30485 at the maximum practicable rate and to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release water in the reservoir below the

previous October 1 staff gage reading except to the extent permittee has directly diverted water or withdrawn water from the reservoir for consumptive purposes since then. Appropriate devices, satisfactory to the Chief of the Division of Water Rights, shall be installed to measure the amounts of water directly diverted for frost protection.

(0000051)

9. For the protection of fish and wildlife, permittee shall during the period from March 15 through May 1 bypass a minimum of 0.68 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount.

The permittee shall submit a Compliance Plan, satisfactory to the Chief of the Division of Water Rights, which describes how the bypass flows required by the conditions of this permit will be measured and maintained. Once the Compliance Plan has been reviewed, modified, if necessary, and accepted, it shall be implemented by the permittee. The Plan shall include measuring locations, monitoring devices, data collection frequency and reporting schedules. The Plan shall provide the means for promptly notifying the Chief of the Division of Water Rights of any violations of the terms of this permit. All monitoring devices and flow bypass facilities shall be kept in good working order. The Compliance Plan may be updated as necessary upon approval by or direction of the Chief of the Division of Water Rights.

(0140060)

10. In order to protect the four archeological sites identified as CA-Nap-216, CA-Nap-217, the Flynn Site, and the Sage Fork Site in the report, "An Investigation of Prehistoric Resources Along Sage Creek and Elder Valley Creeks, Lower Chiles Valley, Napa County, California" by Thomas M. Origer (November 16, 1999), Permittee shall be subject to the following restrictions involving any replanting of vines and other ongoing agricultural operations on the deposits of the archeological site(s) in the Place of Use for this application:

A. Vine removal shall be done, as non-invasively as possible, by pulling the vines as demonstrated in the video accompanying the above report, titled "Vine Removal at California Wine Company Vineyards";

B. No trenching or other mechanical disturbance below the plow zone shall be allowed.

C. No ripping or grading shall be allowed.

D. Cultivation (discing) is allowed for weed control and general vineyard maintenance.

E. Vineyard workers should be discouraged from removing artifacts or other materials from these sites, especially fragments of bone, as human remains have been identified at both CA-Nap-216 and CA-Nap-217.

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 to 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.

(0380215)

**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.

***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:** JUN 2 3 2000 STATE WATER RESOURCES CONTROL BOARD

Gerald E. Johns

For Chief, Division of Water Rights