

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21049

Application 30490 of **Heitz Wine Cellars**
500 Taplin Road
St. Helena, CA 94574

filed on **October 11, 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 Unnamed Stream	Tributary to 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 (Projected)	Township	Range	Base and Meridian
POD #1; North 304,600 feet and East 1,881,050 feet	SW¼ of NE¼	33	8N	5W	MD
POD #2; North 305,500 feet and East 1,880,550 feet	SW¼ of NE¼	33	8N	5W	MD

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
Irrigation	SW¼ of NE¼	33	8N	5W	MD	1
Frost Protection	NW¼ of SE¼	33	8N	5W	MD	6
Heat Control	NE¼ of SE¼	33	8N	5W	MD	28
Stockwatering						
Fire Protection						
Recreational						

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 49 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year.

(0000005C)

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.

(0000005I)

7. The maximum rate of diversion to offstream storage shall not exceed 2.99 cubic feet per second.

(0000005J)

8. The total combined amount of water taken by direct diversion and collected to storage under this permit and Permit (Application 30491) shall not exceed 70 acre-feet per annum.

(0000005L)

9. The capacity of the reservoir covered under this permit shall not exceed 49 acre-feet.

(0000005N)

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

(0000009)

11. 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)

12. Permittee, when required by the State Water Resources Control Board, 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 Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Chief of the Division of Water Rights for approval within six months of the date upon which the Board issues notice that an outlet is required. Permittee shall furnish evidence which substantiates that the outlet pipe or alternative facility has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050044)

13. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the rate and quantity of water diverted into the reservoir from Unnamed Stream tributary to Napa River, and water released from or flowing out of the reservoir.

(0060046)

14. During the period between March 15 and March 31 water may be collected to storage under this permit only when there are no restrictions imposed by the watermaster on diversions from the Napa River.

(0000085B)

15. This permit is specifically subject to the prior rights of Lillian Disney of Walsh Vineyard Management, under appropriation issued pursuant to Applications 23308, 24018 and 27444; the prior rights of Heublein Inc., under Applications 23887 and 23888; the prior rights of Round Pond, under Applications 23754B, 24433A-2, 24433B-2, 25440A-2 and 25440B-2; the prior rights of Alfred and Diane Wilsey, under Applications 23754A, 24433A-1, 24433B-1, 25440A-1 and 25440B-1; the prior rights of Beringer Wine Estates under Application 631, 25447 and 25448; the prior rights of Cakebread Cellars, under Applications 29237 and 29238; the prior rights of Robert Mondavi Vineyards, under Application 30102.

(000-000T)

16. For the protection of fishery resources, permittee shall, during the prescribed collection season of December 15 through March 31, bypass a minimum of 0.05 cubic-feet per second (equivalent to 23 gallons per minute) at Point of Diversion #2. The total streamflow shall be bypassed when ever it is less than the designated rate. No diversion shall take place under this

permit if the flow in the unnamed stream is, or would be reduced by such a diversion, below the designated rate.

(014-0400)

17. No water shall be diverted under this permit until the Permittee has installed a structure in the Unnamed Stream, satisfactory to the State Water Resources Control Board, which is capable of passively bypassing the flow required by the conditions of this permit at Point of Diversion #2. The plans for the bypass structure shall be reviewed and must be satisfactory to the Chief, Division of Water Rights, before any construction is undertaken. Permittee shall, within sixty (60) days from the date of approval of the water right permit, furnish evidence which substantiates that the bypass structure has been installed. If the bypass structure is rendered inoperative for any reason, all diversions shall cease until such time as it is restored to service. Said bypass structure shall be properly calibrated, operated, and maintained by the Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to this application.

(050-0401)

18. Permittee shall allow representatives of the State Water Resources Control Board, California Department of Fish and Game, and other parties, as may be authorized from time to time by said Board or Department, reasonable access to project works to determine compliance with the terms of this permit.

(048-0000)

19. For the protection of the State-listed Threatened Clara Hunt's Milkvetch (*Astragalus clarianus*) population identified on the map included in the *Rare Plant Survey of Heitz Wine Cellars* made by Jake A. Ruygt, Napa Botanical Survey Services, dated May 7, 1997, the following conditions shall apply to any activities authorized under a permit issued pursuant to this application:

- a. Permittee shall not allow any land disturbance or spraying with any agricultural chemicals within 100 feet of the specified threatened plant population; and
- b. Permittee shall permanently identify the plant population by surrounding the site with flagged construction stakes to be spaced and maintained at a maximum distance of 50 feet apart or with some other method of fencing to prevent disturbance of the population.
- c. Permittee shall restrict cattle or other domestic stock access to the plant population

(060-0500)

**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.

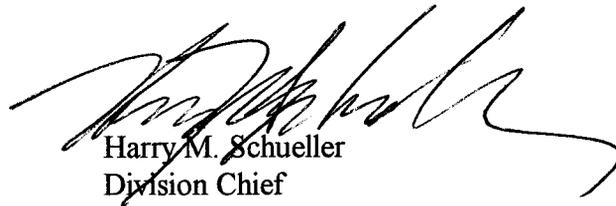
Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

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: **JUL 3 2000**

STATE WATER RESOURCES CONTROL BOARD



Harry M. Schueller
Division Chief