

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

AMENDED PERMIT 21240

Application **30495** of

Kenneth W. and Janet L. Rosenthal
P.O. Box 763
Middletown, CA 95461-0763

filed on **November 27, 1995**, has been approved by the State Water Resources Control Board (State Water Board) 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:

- 1) Unnamed Stream** _____
- 2) Unnamed Stream** _____
- 3) Unnamed Stream** _____
- 4) Hoodoo Creek** _____

Tributary to:

- Hoodoo Creek thence Dry Creek** _____
- Dry Creek thence Putah Creek** _____
- Dry Creek thence Putah Creek** _____
- Dry Creek thence Putah Creek** _____

within the County of **Lake**

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
1) North 2,028,613 feet and East 6,380,531 feet	SE ¼ of NE ¼	9	10N	7W	MD
2) North 2,028,856 feet and East 6,380,439 feet	NE ¼ of NE ¼	9	10N	7W	MD
3) North 2,028,957 feet and East 6,380,758 feet	NE ¼ of NE ¼	9	10N	7W	MD
4) North 2,029,763 feet and East 6,381,595 feet	NE ¼ of NE ¼	9	10N	7W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Frost protection	SW ¼ of SW ¼	3	10N	7W	MD	20
	SE ¼ of SE ¼	4	10N	7W	MD	13
	NE ¼ of NE ¼	9	10N	7W	MD	14
					Total	47

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **2.99 cubic feet per second** by direct diversion from **March 15 to March 31** of each year for points of diversion 1, 2, and 3, and; **1 cubic foot per second** by direct diversion from **March 15 to March 31** of each year for point of diversion 4. The combined rate of diversion shall not exceed **2.99 cubic feet per second**. The maximum amount diverted under this permit for all uses shall not exceed **25 acre-feet per year**.

(000005B)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2019**.

(0000009)

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

(0000020)

8. Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- a) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.
- b) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. Permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- c) Permittee shall maintain a device, satisfactory to the State Water Board, which is capable of measuring water directly diverted under this permit. A satisfactory device includes:

For Pumping Stations: (1) In-line flow meter having instantaneous and total flow reading capability, or (2) Proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump.

For Gravity Diversions: A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements.

- d) Permittee shall maintain monthly records of direct diversion from March 1 to July 15 of each year, or such other period as may be specified with written notice to Permittee by the watermaster.
- e) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- f) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as Permittee may prescribe.
- g) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.
- h) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:
 - 1) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.
 - 2) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.
 - 3) All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- i) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa:
 - 1) does not drop below 640,000 acre-feet in storage as of May 1, Permittee shall have three years, starting in the next Accumulation Season, to make up or repay Permittee's excess diversions; or
 - 2) does not reach 640,000 acre-feet of storage as of May 1, Permittee shall have one year, starting in the next Accumulation Season, to make up or repay Permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, Permittee shall be excused from any further obligation for repayment of the overage.
- j) Permittee shall provide the watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- k) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.
- l) Permittee is hereby put on notice of Permittee's right, upon reasonable prior notice, to inspect and to copy, at Permittee's own expense, all records and reports of the watermaster.

- m) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is **23.1 acre-feet per annum** as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this 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)

9. The State Water Board shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(0000012)
(0220086)

10. For the protection of fisheries, wildlife, and other instream (and public trust) uses in Hoodoo Creek, diversions at point of diversion 4 on Hoodoo Creek under this permit shall be subject to maintenance of minimum bypass flow in Hoodoo Creek of **1.88 cubic foot per second**.

No water shall be diverted from Point of Diversion 4 (Hoodoo Creek) under this permit until Permittee has installed a device in Hoodoo Creek, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of this permit. Permittee shall submit plans and specifications of the streamflow measuring device to the Deputy Director for Water Rights, within six-months of the date the permit is issued. The device and the location of the monitoring station shall be reviewed and must be satisfactory to the Deputy Director for Water Rights, before any construction at Point of Diversion 4 is undertaken. Permittee shall furnish evidence which substantiates that the streamflow measuring device has been installed, within one year from the date of approval of the plans and specifications for the device. If the measuring device is rendered inoperative for any reason, all diversions shall cease until such time as the device is restored to service. Said measuring device shall be properly calibrated, operated, and maintained by Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 30495.

(0140200)

11. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
 - c) A time schedule for the installation of these facilities.

- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights upon request.

Any non-compliance with the terms of the permit shall be reported by Permittee promptly to the Deputy Director for Water Rights.

Diversion and use of water from Point of Diversion 4 (Hoodoo Creek) prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

- 12. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
(0000208)
- 13. 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; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of 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; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most likely descendant from the deceased Native American. The most likely descendant may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed. Local tribal authorities with the Middletown Rancheria, Band of Pomo and Lake Miwok Indians should also be contacted if remains are uncovered, or for any other cultural resource-related issue.

(0000215)

14. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has been used on the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Rights' approval, this information may be updated, and Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300a)
15. For the protection of active nests of raptor and migratory bird species, removal of oak woodland and oak-pine woodland within the project site shall be conducted between September 1 and April 15, which is outside of the peak nesting period for most migratory species. If vegetation removal is to be conducted during the peak nesting period for raptor and migratory bird species, a pre-construction survey for active bird nests shall be conducted by a qualified biologist two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or after a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)
16. Several of the larger trees near the northern boundary of the proposed place of use shall be preserved, including the 51-inch Douglas fir, the 44-inch ponderosa pine, one of the 38-inch valley oaks and the 59-inch black oak. Preservation of these trees will include the preservation of any trees and other vegetation in the immediate vicinity such that no disturbance occurs within the drip-line of the target tree.

Measures to avoid or reduce degradation of oak woodland and mixed oak-pine woodland habitats within the project area shall include: installing temporary fencing around woodland habitat that is outside of the construction areas, placing fencing around the avoidance areas as far as feasible from the tree drip-lines, and maintaining fencing in place until all construction activities on the site have been completed.

A count and identification of the trees in the proposed vineyard area shall be conducted by a qualified biologist prior to commencement of any construction activities for vineyard development. Removal of mature oaks and pines, especially those exceeding 24 inches in diameter at breast height, shall be avoided, where feasible. For oak-pine woodland that cannot be avoided or salvaged, an oak-pine woodland replacement program shall be implemented in the designated 5-acre tree replacement area on the property to replace individual trees. Oak trees are to be replaced on a tree-by-tree basis, with the size class taken into consideration. Generally, oaks larger than 24 inches in diameter at breast height will be replaced at a 2:1 ratio, although most will be avoided in this size class; oak trees less than 24 inches will be replaced at a 1:1 ratio. Tree species other than oaks will be replaced at a 1:1 ratio. The replacement program shall include an irrigation, maintenance and monitoring plan, developed by a qualified restoration specialist. This plan shall be submitted to the Deputy Director for Water Rights for approval and modification if necessary prior to commencement of any construction activities. The results of tree replacement monitoring shall also be submitted to the Deputy Director for Water Rights.

Tree mitigation areas shall include a five-year monitoring plan. Monitoring of the site shall be undertaken biannually. Mitigation shall be considered successful when at the end of the five-year period, the tree plantings have achieved a 75 percent success rate and the mitigation sites have achieved a 35 percent to 50 percent cover of woody vegetation. If survival of the plantings is determined to be below 75 percent after any of the monitoring events, additional plants shall be planted in order to maintain a 75 percent success rate. When the five-year monitoring period is completed and the final success criteria have been met, the Division of Water Rights and the Department of Fish and Game shall be informed that mitigation requirements have been completed.

(0400500)

17. Permittee shall obtain a Section 404 permit from the United States Army Corps of Engineers prior to development of any elements of the proposed project within jurisdictional wetlands or waters of the United States. Upon review of the proposed project, the permit would authorize the discharge of dredged or fill material associated with the proposed project. A copy of the permit shall be submitted to the Deputy Director for Water Rights prior to diverting any water from Hoodoo Creek.

Vegetation removal, ground-disturbing activities and grading activities shall be conducted during the dry season (April 15 through October 15, unless extended or shortened by the Lake County Community Development Director based on likely weather conditions/lack of potential for substantial rains) to minimize the potential for disturbed soils and polluted runoff to flow into the intermittent drainages.

(0000210)

18. Impacts to the stream at point of diversion 4 shall be mitigated through riparian enhancement onsite or the purchase of compensatory credits. Mitigation shall be implemented at a ratio of 3:1 (linear feet of enhanced stream: linear feet of impacted stream), contingent upon final approval from the United States Army Corps of Engineers. A report of the riparian enhancement mitigation to be implemented shall be submitted to the Deputy Director for Water Rights prior to diverting from Hoodoo Creek.

(0400500)

19. A pre-construction survey for bent-flowered fiddleneck shall be conducted by a qualified biologist during the bloom period, March to June prior to any ground moving or construction activities for the project. The results of the surveys shall be submitted to the Deputy Director for Water Rights and the Department of Fish Game. If any bent-flowered fiddleneck are found during the pre-construction survey, a 100-foot buffer shall be established around the species' location with the placement of posts and construction fencing by a qualified biologist to avoid direct or indirect impacts to the species. No encroachment into the fenced area shall be permitted and fencing shall remain in place until all construction activities have ceased. In addition, the buffer shall be permanently avoided and no activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation. The protection of these locations will eliminate potential impacts to bent-flowered fiddleneck by avoidance.

(0400500)

20. The American badger has the potential to occur in the annual grassland and oak woodland habitats on the project site. Impacts to this species can be avoided by conducting a pre-construction survey on the project site. If active burrows are found in the construction zone and are determined by a qualified biologist to contain only an adult badger (not a natal den), the den may be destroyed while the badger is absent to encourage the badger to leave the site. If a qualified biologist determines that a natal den is present on the project site, impacts to the species

can be avoided by maintaining an undisturbed 200-foot buffer zone around the den until a qualified biologist determines that the den has been vacated. Results of the pre-construction survey for the

American badger must be submitted to the Deputy Director for Water Rights prior to diverting under this permit.

(0400500)

21. Potential nesting habitat for the sharp-shinned hawk is present on and within 500 feet of the project site. Tree removal and other activities associated with the proposed project development could result in adverse impacts to this species. The implementation of the mitigation measures listed below will ensure that the impacts to the sharp-shinned hawk are less than significant. Specifically, removal of trees or other woody vegetation shall be conducted outside of the nesting season. If tree removal and other project-related activities are to occur during the nesting season (March through September), a pre-construction survey for nesting sharp-shinned hawks shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. The survey shall take place within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game (DFG). The results of the surveys shall be submitted to the Deputy Director for Water Rights and the DFG.

Removal of trees or other woody vegetation shall be conducted outside of the nesting season for raptor and migratory bird species. If tree removal and other project-related activities are to occur during the nesting season (March through September), pre-construction surveys for nesting Cooper's hawk, white-tailed kite, and other raptor species shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. If active nests are identified in these areas, the Department of Fish and Game shall be consulted to develop measures to avoid "take" of active nests prior to the initiation of any tree removal or project-related activities. Avoidance measures may include the establishment of buffers and biological monitoring.

If vegetation removal is to be conducted during the peak nesting period for raptor and migratory bird species, a pre-construction survey for active bird nests shall be conducted by a qualified biologist within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)

22. The following performance standard describes implementation of a new diversion system on Hoodoo Creek. Specific details of the system design will be addressed when the Applicant's Streambed Alteration Agreement application that was submitted to the Department of Fish and Game is processed and the final design will incorporate any design requirements set forth in this Streambed Alteration Agreement.

The existing diversion pipe from Hoodoo Creek to the existing diversion pond will be removed and the creek bank will be reconstructed to isolate the pond hydraulically from flows in Hoodoo Creek. An infiltration gallery will be installed below the bottom of Hoodoo Creek. The gallery shall generally consist of perforated pipe or screened cylindrical screens installed in a trench, and backfilled with permeable sand and gravel to the original creek bottom level. Cobbles and boulders may be placed to minimize the chance of eroding, exposing, or otherwise disturbing the infiltration gallery at high creek flows. The final cross-section and grade of the creek at the intake location will not be significantly different than the existing condition. This design will allow the infiltration of

creek flow into the diversion pond without drawing fish into the pond.

To meet the February median bypass flow requirements, Permittee will have Hoodoo Creek rated by an experienced stream gaging technician to establish the depth of flow at the intake location corresponding to the bypass requirement. The discharge pipe leading from the infiltration gallery will be configured in an upside-down "U" shape, with the top of the "U" set at the depth of flow in the creek corresponding to the bypass rate. The pipe itself will be sized to hydraulically restrict the flow to approximately 1 cubic foot per second. Water entering the infiltration gallery will not overflow the upside-down "U" or enter the sump until the level of the creek is at the depth established for the February median flow. This configuration will also preclude the backflow of water from the diversion pond into the creek. The final plans for the passive bypass system on Hoodoo Creek shall be submitted to the Deputy Director for Water Rights prior to diversion from Hoodoo Creek.

The diversion pond shall be drained and allowed to dry out each year to prevent bullfrogs, which can be harmful to native amphibian species, from breeding within the pond.

(0400500)

23. Prior to construction of the project, Permittee shall obtain a grading permit and approved Erosion and Sedimentation Control Plan from Lake County and submit the approvals, or waiver thereof, to the Division. Sediment control measures shall be in place prior to the onset of construction and shall be monitored and maintained until construction activities have ceased. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion. Construction activities within 100 feet of drainages shall occur between April and October to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. In addition, Best Management Practices to control erosion (e.g. silt fences, straw bales) shall be implemented during construction activities.

(0450800)

24. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of any construction undertaken after issuance of the permit, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the Central Valley Regional Water Quality Control Board, or by the State Water Board.

(0000100)

25. No water shall be used on undeveloped portions of the place of use under this permit until Permittee has filed a report of waste discharge with the Central Valley Regional Water Quality Control Board (Regional Board), pursuant to Water Code Section 13260, and the Regional Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Water Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- a) the Regional Board issues a waiver pursuant to Section 13269, or
- b) the Regional Board fails to act within 120 days of the filing of the report.

No Permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

26. This permit is specifically subject to the prior rights of Luchetti Children's Trust under appropriation issued pursuant to Application 3797.

(00000T)

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

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.

(0000010)

- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

- D. 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 State Water 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 State Water 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 State Water 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water 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)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to Permittee and an opportunity for hearing, the State Water 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 State Water 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)

- F. 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, 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.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of Permittee. If a stream or lake agreement is not necessary for this permitted project, Permittee shall provide the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.

(0000063)

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/she accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore 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).

STATE WATER RESOURCES CONTROL BOARD

Original Signed by: JWK for

Victoria A. Whitney
Deputy Director for Water Rights

Dated: August 10, 2010

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21240

Application 30495 of

Kenneth W. and Janet L. Rosenthal
P.O. Box 763
Middletown, CA 95461-0763

filed on **November 27, 1995**, has been approved by the State Water Resources Control Board (State Water Board) 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:

- 1) Unnamed Stream** _____
- 2) Unnamed Stream** _____
- 3) Unnamed Stream** _____
- 4) Hoodoo Creek** _____

Tributary to:

- Hoodoo Creek thence Dry Creek** _____
- Dry Creek thence Putah Creek** _____
- Dry Creek thence Putah Creek** _____
- Dry Creek thence Putah Creek** _____

within the County of **Lake**

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
1) North 2,028,613 feet and East 6,380,531 feet	SE ¼ of NE ¼	9	10N	7W	MD
2) North 2,028,856 feet and East 6,380,439 feet	NE ¼ of NE ¼	9	10N	7W	MD
3) North 2,028,957 feet and East 6,380,758 feet	NE ¼ of NE ¼	9	10N	7W	MD
4) North 2,029,763 feet and East 6,381,595 feet	NE ¼ of NE ¼	9	10N	7W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Frost protection	SW ¼ of SW ¼	3	10N	7W	MD	20
	SE ¼ of SE ¼	4	10N	7W	MD	13
	NE ¼ of NE ¼	9	10N	7W	MD	14
					Total	47

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **2.99 cubic feet per second** by direct diversion from **March 15 to March 31** of each year for points of diversion 1, 2, and 3, and; **1 cubic foot per second** by direct diversion from **March 15 to March 31** of each year for point of diversion 4. The combined rate of diversion shall not exceed **2.99 cubic feet per second**. The maximum amount diverted under this permit for all uses shall not exceed **25 acre-feet per year**.

(000005B)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2019**.

(0000009)

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

(0000020)

8. Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- a) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.
- b) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. Permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- c) Permittee shall maintain a device, satisfactory to the State Water Board, which is capable of measuring water directly diverted under this permit. A satisfactory device includes:

For Pumping Stations: (1) In-line flow meter having instantaneous and total flow reading capability, or (2) Proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump.

For Gravity Diversions: A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements.

- d) Permittee shall maintain monthly records of direct diversion from March 1 to July 15 of each year, or such other period as may be specified with written notice to Permittee by the watermaster.
- e) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- f) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as Permittee may prescribe.
- g) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.
- h) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:
 - 1) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.
 - 2) All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.
 - 3) All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- i) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa:
 - 1) does not drop below 640,000 acre-feet in storage as of May 1, Permittee shall have three years, starting in the next Accumulation Season, to make up or repay Permittee's excess diversions; or
 - 2) does not reach 640,000 acre-feet of storage as of May 1, Permittee shall have one year, starting in the next Accumulation Season, to make up or repay Permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, Permittee shall be excused from any further obligation for repayment of the overage.
- j) Permittee shall provide the watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- k) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.
- l) Permittee is hereby put on notice of Permittee's right, upon reasonable prior notice, to inspect and to copy, at Permittee's own expense, all records and reports of the watermaster.

- m) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is **23.1 acre-feet per annum** as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this 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)

9. The State Water Board shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

(0220086)

10. For the protection of fisheries, wildlife, and other instream (and public trust) uses in Hoodoo Creek, diversions under this permit shall be subject to maintenance of minimum bypass flow in Hoodoo Creek of **1.88 cubic foot per second**.

No water shall be diverted under this permit until Permittee has installed a device in Hoodoo Creek, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of this permit. Permittee shall submit plans and specifications of the streamflow measuring device to the Deputy Director for Water Rights, within six-months of the date the permit is issued. The device and the location of the monitoring station shall be reviewed and must be satisfactory to the Deputy Director for Water Rights, before any construction is undertaken. Permittee shall furnish evidence which substantiates that the streamflow measuring device has been installed, within sixty (60) days from the date of approval of the water right permit. If the measuring device is rendered inoperative for any reason, all diversions shall cease until such time as the device is restored to service. Said measuring device shall be properly calibrated, operated, and maintained by Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 30495.

(0140200)

11. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
 - c) A time schedule for the installation of these facilities.

- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights upon request.

Any non-compliance with the terms of the permit shall be reported by Permittee promptly to the Deputy Director for Water Rights.

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

12. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

13. 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; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of 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; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most likely descendant from the deceased Native American. The most likely descendant may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed. Local tribal authorities with the Middletown Rancheria, Band of Pomo and Lake Miwok Indians should also be contacted if remains are uncovered, or for any other cultural resource-related issue.

(0000215)

14. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit.

Based on the information in the Division's files, riparian water has been used on the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Rights' approval, this information may be updated, and Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300a)

15. For the protection of active nests of raptor and migratory bird species, removal of oak woodland and oak-pine woodland within the project site shall be conducted between September 1 and April 15, which is outside of the peak nesting period for most migratory species. If vegetation removal is to be conducted during the peak nesting period for raptor and migratory bird species, a pre-construction survey for active bird nests shall be conducted by a qualified biologist two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or after a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)

16. Several of the larger trees near the northern boundary of the proposed place of use shall be preserved, including the 51-inch Douglas fir, the 44-inch ponderosa pine, one of the 38-inch valley oaks and the 59-inch black oak. Preservation of these trees will include the preservation of any trees and other vegetation in the immediate vicinity such that no disturbance occurs within the drip-line of the target tree.

Measures to avoid or reduce degradation of oak woodland and mixed oak-pine woodland habitats within the project area shall include: installing temporary fencing around woodland habitat that is outside of the construction areas, placing fencing around the avoidance areas as far as feasible from the tree drip-lines, and maintaining fencing in place until all construction activities on the site have been completed.

A count and identification of the trees in the proposed vineyard area shall be conducted by a qualified biologist prior to commencement of any construction activities for vineyard development. Removal of mature oaks and pines, especially those exceeding 24 inches in diameter at breast height, shall be avoided, where feasible. For oak-pine woodland that cannot be avoided or salvaged, an oak-pine woodland replacement program shall be implemented in the designated 5-acre tree replacement area on the property to replace individual trees. Oak trees are to be replaced on a tree-by-tree basis, with the size class taken into consideration. Generally, oaks larger than 24 inches in diameter at breast height will be replaced at a 2:1 ratio, although most will be avoided in this size class; oak trees less than 24 inches will be replaced at a 1:1 ratio. Tree species other than oaks will be replaced at a 1:1 ratio. The replacement program shall include an irrigation, maintenance and monitoring plan, developed by a qualified restoration specialist. This plan shall be submitted to the Deputy Director for Water Rights for approval and modification if necessary prior to commencement of any construction activities. The results of tree replacement monitoring shall also be submitted to the Deputy Director for Water Rights.

Tree mitigation areas shall include a five-year monitoring plan. Monitoring of the site shall be undertaken biannually. Mitigation shall be considered successful when at the end of the five-year

period, the tree plantings have achieved a 75 percent success rate and the mitigation sites have achieved a 35 percent to 50 percent cover of woody vegetation. If survival of the plantings is determined to be below 75 percent after any of the monitoring events, additional plants shall be planted in order to maintain a 75 percent success rate. When the five-year monitoring period is completed and the final success criteria have been met, the Division of Water Rights and the Department of Fish and Game shall be informed that mitigation requirements have been completed.

(0400500)

17. Permittee shall obtain a Section 404 permit from the United States Army Corps of Engineers prior to development of any elements of the proposed project within jurisdictional wetlands or waters of the United States. Upon review of the proposed project, the permit would authorize the discharge of dredged or fill material associated with the proposed project. A copy of the permit shall be submitted to the Deputy Director for Water Rights prior to diverting any water from Hoodoo Creek.

Vegetation removal, ground-disturbing activities and grading activities shall be conducted during the dry season (April 15 through October 15, unless extended or shortened by the Lake County Community Development Director based on likely weather conditions/lack of potential for substantial rains) to minimize the potential for disturbed soils and polluted runoff to flow into the intermittent drainages.

(0000210)

18. Impacts to the stream at point of diversion 4 shall be mitigated through riparian enhancement onsite or the purchase of compensatory credits. Mitigation shall be implemented at a ratio of 3:1 (linear feet of enhanced stream: linear feet of impacted stream), contingent upon final approval from the United States Army Corps of Engineers. A report of the riparian enhancement mitigation to be implemented shall be submitted to the Deputy Director for Water Rights prior to diverting from Hoodoo Creek.

(0400500)

A pre-construction survey for bent-flowered fiddleneck shall be conducted by a qualified biologist during the bloom period, March to June prior to any ground moving or construction activities for the project. The results of the surveys shall be submitted to the Deputy Director for Water Rights and the Department of Fish Game. If any bent-flowered fiddleneck are found during the pre-construction survey, a 100-foot buffer shall be established around the species' location with the placement of posts and construction fencing by a qualified biologist to avoid direct or indirect impacts to the species. No encroachment into the fenced area shall be permitted and fencing shall remain in place until all construction activities have ceased. In addition, the buffer shall be permanently avoided and no activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation. The protection of these locations will eliminate potential impacts to bent-flowered fiddleneck by avoidance.

(0400500)

20. The American badger has the potential to occur in the annual grassland and oak woodland habitats on the project site. Impacts to this species can be avoided by conducting a pre-construction survey on the project site. If active burrows are found in the construction zone and are determined by a qualified biologist to contain only an adult badger (not a natal den), the den may be destroyed while the badger is absent to encourage the badger to leave the site. If a qualified biologist determines that a natal den is present on the project site, impacts to the species

can be avoided by maintaining an undisturbed 200-foot buffer zone around the den until a qualified biologist determines that the den has been vacated. Results of the pre-construction survey for the American badger must be submitted to the Deputy Director for Water Rights prior to diverting under this permit.

(0400500)

21. Potential nesting habitat for the sharp-shinned hawk is present on and within 500 feet of the project site. Tree removal and other activities associated with the proposed project development could result in adverse impacts to this species. The implementation of the mitigation measures listed below will ensure that the impacts to the sharp-shinned hawk are less than significant. Specifically, removal of trees or other woody vegetation shall be conducted outside of the nesting season. If tree removal and other project-related activities are to occur during the nesting season (March through September), a pre-construction survey for nesting sharp-shinned hawks shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. The survey shall take place within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game (DFG). The results of the surveys shall be submitted to the Deputy Director for Water Rights and the DFG.

Removal of trees or other woody vegetation shall be conducted outside of the nesting season for raptor and migratory bird species. If tree removal and other project-related activities are to occur during the nesting season (March through September), pre-construction surveys for nesting Cooper's hawk, white-tailed kite, and other raptor species shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. If active nests are identified in these areas, the Department of Fish and Game shall be consulted to develop measures to avoid "take" of active nests prior to the initiation of any tree removal or project-related activities. Avoidance measures may include the establishment of buffers and biological monitoring.

If vegetation removal is to be conducted during the peak nesting period for raptor and migratory bird species, a pre-construction survey for active bird nests shall be conducted by a qualified biologist within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)

22. The following performance standard describes implementation of a new diversion system on Hoodoo Creek. Specific details of the system design will be addressed when the Applicant's Streambed Alteration Agreement application that was submitted to the Department of Fish and Game is processed and the final design will incorporate any design requirements set forth in this Streambed Alteration Agreement.

The existing diversion pipe from Hoodoo Creek to the existing diversion pond will be removed and the creek bank will be reconstructed to isolate the pond hydraulically from flows in Hoodoo Creek. An infiltration gallery will be installed below the bottom of Hoodoo Creek. The gallery shall generally consist of perforated pipe or screened cylindrical screens installed in a trench, and backfilled with permeable sand and gravel to the original creek bottom level. Cobbles and boulders may be placed to minimize the chance of eroding, exposing, or otherwise disturbing the infiltration

gallery at high creek flows. The final cross-section and grade of the creek at the intake location will not be significantly different than the existing condition. This design will allow the infiltration of creek flow into the diversion pond without drawing fish into the pond.

To meet the February median bypass flow requirements, Permittee will have Hoodoo Creek rated by an experienced stream gaging technician to establish the depth of flow at the intake location corresponding to the bypass requirement. The discharge pipe leading from the infiltration gallery will be configured in an upside-down "U" shape, with the top of the "U" set at the depth of flow in the creek corresponding to the bypass rate. The pipe itself will be sized to hydraulically restrict the flow to approximately 1 cubic foot per second. Water entering the infiltration gallery will not overflow the upside-down "U" or enter the sump until the level of the creek is at the depth established for the February median flow. This configuration will also preclude the backflow of water from the diversion pond into the creek. The final plans for the passive bypass system on Hoodoo Creek shall be submitted to the Deputy Director for Water Rights prior to diversion from Hoodoo Creek.

The diversion pond shall be drained and allowed to dry out each year to prevent bullfrogs, which can be harmful to native amphibian species, from breeding within the pond.

(0400500)

23. Prior to construction of the project, Permittee shall obtain a grading permit and approved Erosion and Sedimentation Control Plan from Lake County and submit the approvals, or waiver thereof, to the Division. Sediment control measures shall be in place prior to the onset of construction and shall be monitored and maintained until construction activities have ceased. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion. Construction activities within 100 feet of drainages shall occur between April and October to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. In addition, Best Management Practices to control erosion (e.g. silt fences, straw bales) shall be implemented during construction activities.

(0450800)

24. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the Central Valley Regional Water Quality Control Board, or by the State Water Board.

(0000100)

25. No water shall be used under this permit until Permittee has filed a report of waste discharge with the Central Valley Regional Water Quality Control Board (Regional Board), pursuant to Water Code Section 13260, and the Regional Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Water Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- a) the Regional Board issues a waiver pursuant to Section 13269, or
- b) the Regional Board fails to act within 120 days of the filing of the report.

No Permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

26. This permit is specifically subject to the prior rights of Luchetti Children's Trust under appropriation issued pursuant to Application 3797.

(00000T)

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

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.

(0000010)

- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

- D. 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 State Water 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 State Water 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 State Water 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water 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)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to Permittee and an opportunity for hearing, the State Water 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 State Water 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)

- F. 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, 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.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of Permittee. If a stream or lake agreement is not necessary for this permitted project, Permittee shall provide the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.

(0000063)

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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/she accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore 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).

STATE WATER RESOURCES CONTROL BOARD

Original Signed by: JWK for

Victoria A. Whitney
Deputy Director for Water Rights

Dated: July 23, 2009

GSBrown:tvallejo 06.26.2009
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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Applications 30495 and 30496

Kenneth W. and Janet L. Rosenthal

ORDER APPROVING ISSUANCE OF PERMITS

SOURCE: (1) Unnamed Stream tributary to Dry Creek, (2) Unnamed Stream tributary to Hoodoo Creek, and (3) Hoodoo Creek tributary to Dry Creek thence Putah Creek

COUNTY: Lake

WHEREAS:

1. Applications 30495 and 30496 of Kenneth W. and Janet L. Rosenthal (Applicants) were filed concurrently with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on November 27, 1995.
2. Application 30495 requests direct diversion of 2.99 cubic feet per second (cfs) from two unnamed streams, and 1 cfs from Hoodoo Creek, with a combined diversion limit of 2.99 cfs. The annual diversion limit from all sources combined is 25 acre-feet per annum (afa). Water will be used for frost protection of 47 acres of vineyard.

Application 30496 requests collection to storage of 42.6 af per annum in four existing reservoirs from the same sources as listed in Application 30495 for irrigation, frost protection, recreation, and fire protection of 47 acres of vineyard.
3. There is unappropriated water available for the period March 15 to March 31 for Application 30495 and for the period November 1 of each year to March 31 of the succeeding year for Application 30496, based on the March 21, 2003 water availability analysis and the October 18, 2004 supplemental analysis. The monthly precipitation record (Attachment 1 to March 21, 2003 analysis) and Exhibits C, D and E of the October 18, 2004 analysis do not support a finding of the availability of unappropriated water after March 31 for the unnamed streams. The applicant did not supply any data for the unnamed streams showing that there is water, in excess of the quantities needed for prior rights and public trust resources, after March 31. Therefore, the Division concludes that the minimal flows in the unnamed streams existing after March 31 are needed to serve prior rights and for public trust resources. Applicant has agreed to a March 31 end date for the diversion season for Hoodoo Creek.
4. The water will be diverted and used without injury to any lawful water user. The Division noticed Applications 30495 and 30496 on February 1, 2002. Protests were received from the following protestants: (a) United States Bureau of Reclamation (USBR), (b) Solano County Water Agency (SCWA), (c) California Sportfishing Protection Alliance (CSPA), (d) Luchetti Children's Trust, (e) Dennis Reynolds, (f) Department of Fish and Game (DFG), and (g) Don Strachan. The protest filed by Don Strachan was not accepted.

5. The protests filed by USBR and SCWA were conditionally dismissed on March 1, 2002, based on inclusion of standard permit terms required by Order WR 96-002 in any permits issued.
6. On May 13, 2009, the Division advised CSPA that their protest concerns appeared to be resolved based on the Mitigated Negative Declaration. CSPA was required to submit information by June 12, 2009, demonstrating that the proposed mitigation measures are inadequate or the protest would be cancelled pursuant to Water Code section 1335. A timely response was not received. Therefore, the CSPA protest is cancelled.
7. On May 13, 2009, the Division advised DFG that their protest concerns appeared to be resolved based on the Mitigated Negative Declaration and reduced diversion season (as listed in the finding on the availability of unappropriated water). DFG was required to submit information by June 12, 2009, demonstrating that the proposed mitigation measures are inadequate or the protest would be cancelled pursuant to Water Code section 1335. A timely response was not received. Therefore, the DFG protest is cancelled.
8. On May 19, 2009, Luchetti Children's Trust (Luchetti) advised the Division that its protest is resolved and should be dismissed, provided terms are included in any permit which (a) recognize Luchetti's prior right under appropriation issued pursuant to Application 3797, and (b) require a bypass flow of 1.88 cfs on Hoodoo Creek. These terms will be included in the permits. The Luchetti protest is dismissed.
9. The Division circulated an Initial Study/Mitigated Negative Declaration (MND) on July 3, 2006 (SCH #2006072017) for the water right applications. The Division will file a Notice of Determination (NOD) with the State Clearinghouse within five days of issuance of the permits.

The following mitigation measures/permit terms have been identified for this project:

1. For the protection of fisheries, wildlife, and other instream (and public trust) uses in Hoodoo Creek, diversions under these permits shall be subject to maintenance of minimum bypass flow in Hoodoo Creek of **1.88 cubic foot per second**.

No water shall be diverted under these permits until Permittee has installed a device in Hoodoo Creek, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of these permits. Permittee shall submit plans and specifications of the streamflow measuring device to the Deputy Director for Water Rights, within six months of the date these permits are issued. The device and the location of the monitoring station shall be reviewed and must be satisfactory to the Deputy Director for Water Rights before any construction is undertaken. Permittee shall furnish evidence which substantiates that the streamflow measuring device has been installed, within sixty (60) days from the date of approval of the water right permit. If the measuring device is rendered inoperative for any reason, all diversions shall cease until such time as the device is restored to service. Said measuring device shall be properly calibrated, operated, and maintained by Permittee (or successors-in-interest) as long as any water is being diverted under any permit or license issued pursuant to Application 30495/30496.

(0140200)

2. Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Deputy Director for Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
- b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
- c) A time schedule for the installation of these facilities.
- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan. The monitoring data shall be maintained by Permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request.

Any non-compliance with the terms of the permit shall be reported by Permittee promptly to the Deputy Director for Water Rights.

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

3. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the state. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

4. 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; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of 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; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery, and a professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most

likely descendant from the deceased Native American. The most likely descendant may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed. Local tribal authorities with the Middletown Rancheria, Band of Pomo and Lake Miwok Indians should also be contacted if remains are uncovered, or for any other cultural resource-related issue.

(0000215)

5. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has been used on the place of use. Therefore, consistent with this term, permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Rights' approval, this information may be updated, and permittee may use water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300a)

6. For the protection of active nests of raptor species, removal of oak woodland and oak-pine woodland within the project site shall be conducted between September 1 and April 15, which is outside of the peak nesting period for most migratory species. If vegetation removal is to be conducted during the peak nesting period, a pre-construction survey for active bird nests shall be conducted by a qualified biologist two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or after a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)

7. Several of the larger trees near the northern boundary of the proposed place of use shall be preserved, including the 51-inch Douglas fir, the 44-inch ponderosa pine, one of the 38-inch valley oaks and the 59-inch black oak. Preservation of these trees will include the preservation of any trees and other vegetation in the immediate vicinity such that no disturbance occurs within the dripline of the target tree.

Measures to avoid or reduce degradation of oak woodland and mixed oak-pine woodland habitats within the project area shall include: installing temporary fencing around woodland habitat that is outside of the construction areas, placing fencing around the avoidance areas as far as feasible from the tree driplines, and maintaining fencing in place until all construction activities on the site have been completed.

A count and identification of the trees in the proposed vineyard area shall be conducted by a qualified biologist prior to commencement of any construction activities for vineyard development. Removal of mature oaks and pines, especially those exceeding 24 inches in diameter at breast height, shall be avoided, where feasible. For oak-pine woodland that cannot be avoided or salvaged, an oak-pine woodland replacement program shall be implemented in the designated 5-acre tree replacement area on the property to replace individual trees. Oak trees are to be

replaced on a tree-by-tree basis, with the size class taken into consideration. Generally, oaks larger than 24 inches in diameter at breast height will be replaced at a 2:1 ratio, although most will be avoided in this size class; oak trees less than 24 inches will be replaced at a 1:1 ratio. Tree species other than oaks will be replaced at a 1:1 ratio. The replacement program shall include an irrigation, maintenance and monitoring plan, developed by a qualified restoration specialist. This plan shall be submitted to the Deputy Director for Water Rights for approval and modification if necessary prior to commencement of any construction activities. The results of tree replacement monitoring shall also be submitted to the Deputy Director for Water Rights.

Tree mitigation areas shall include a five-year monitoring plan. Monitoring of the site shall be undertaken biannually. Mitigation shall be considered successful when at the end of the five-year period, the tree plantings have achieved a 75 percent success rate and the mitigation sites have achieved a 35 percent to 50 percent cover of woody vegetation. If survival of the plantings is determined to be below 75 percent after any of the monitoring events, additional plants shall be planted in order to maintain a 75 percent success rate. When the five-year monitoring period is completed and the final success criteria have been met, the Division of Water Rights and the Department of Fish and Game shall be informed that mitigation requirements have been fulfilled.

(0400500)

8. Permittee shall obtain a Section 404 permit from the United States Army Corps of Engineers prior to development of any elements of the proposed project within jurisdictional wetlands or waters of the United States. Upon review of the proposed project, the permit would authorize the discharge of dredged or fill material associated with the proposed project. A copy of the permit shall be submitted to the Deputy Director for Water Rights prior to diverting any water from Hoodoo Creek.

Vegetation removal, ground-disturbing activities and grading activities shall be conducted during the dry season (April 15 through October 15, unless extended or shortened by the Lake County Community Development Director based on likely weather conditions/lack of potential for substantial rains) to minimize the potential for disturbed soils and polluted runoff to flow into the intermittent drainages.

(0000210)

9. Impacts to the stream at point of diversion 4 shall be mitigated through riparian enhancement onsite or the purchase of compensatory credits. Mitigation shall be implemented at a ratio of 3:1 (linear feet of enhanced stream: linear feet of impacted stream), contingent upon final approval from the United States Army Corps of Engineers. A report of the riparian enhancement mitigation to be implemented shall be submitted to the Deputy Director for Water Rights prior to diverting from Hoodoo Creek.

(0400500)

10. A pre-construction survey for bent-flowered fiddleneck shall be conducted by a qualified biologist during the bloom period (March to June) prior to any ground moving or construction activities for the project. The results of the surveys shall be submitted to the Deputy Director for Water Rights and the Department of Fish and Game. If any bent-flowered fiddleneck are found during the pre-construction survey, a 100-foot buffer shall be established around the species' location with the placement of posts and construction fencing by a qualified biologist to avoid direct or indirect impacts to the species. No encroachment into the fenced area shall be permitted, and fencing shall remain in place until all construction activities have ceased. In addition, the buffer zones shall be permanently avoided and no activity shall occur within the buffer zones, including, but not limited to grading, road construction, fencing, storage areas, and irrigation. The protection of these locations will eliminate potential impacts to bent-flowered fiddleneck by avoidance.

(0400500)

11. The American badger has the potential to occur in the annual grassland and oak woodland habitats on the project site. Impacts to this species can be avoided by conducting a pre-construction survey on the project site. If active burrows are found in the construction zone and are determined by a qualified biologist to contain only an adult badger (not a natal den), the den may be destroyed while the badger is absent to encourage the badger to leave the site. If a qualified biologist determines that a natal den is present on the project site, impacts to the species can be avoided by maintaining an undisturbed 200-foot buffer zone around the den until a qualified biologist determines that the den has been vacated. Results of the pre-construction survey for the American badger must be submitted to the Deputy Director for Water Rights prior to diverting under this permit.

(0400500)

12. Potential nesting habitat for the sharp-shinned hawk is present on and within 500 feet of the project site. Tree removal and other activities associated with the proposed project development could result in adverse impacts to this species. The implementation of the mitigation measures listed below will ensure that the impacts to the sharp-shinned hawk are less than significant. Specifically, removal of trees or other woody vegetation shall be conducted outside of the nesting season. If tree removal and other project-related activities are to occur during the nesting season (March through September), a pre-construction survey for nesting sharp-shinned hawks shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. The survey shall take place within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game. The results of the surveys shall be submitted to the Deputy Director for Water Rights and the Department of Fish and Game.

Removal of trees or other woody vegetation shall be conducted outside of the nesting season for raptor and migratory bird species. If tree removal and other project-related activities are to occur during the nesting season (March through September), pre-construction surveys for nesting Cooper's hawk, white-tailed kite, and other raptor species shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. If active nests are identified in these areas, the Department of Fish and Game shall be consulted to develop measures to avoid "take" of active nests prior to the initiation of any tree removal or project-related activities. Avoidance measures may include the establishment of buffer zones and biological monitoring.

If vegetation removal is to be conducted during the peak nesting period for raptor and migratory bird species, a pre-construction survey for active bird nests shall be conducted by a qualified biologist within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the United States Fish and Wildlife Service and the Department of Fish and Game.

(0400500)

13. The following performance standard describes implementation of a new diversion system on Hoodoo Creek. Specific details of the system design will be addressed when the Applicant's Streambed Alteration Agreement application that was submitted to the Department of Fish and

Game is processed, and the final design will incorporate any design requirements set forth in this Streambed Alteration Agreement.

The existing diversion pipe from Hoodoo Creek to the existing diversion pond will be removed, and the creek bank will be reconstructed to isolate the pond hydraulically from flows in Hoodoo Creek. An infiltration gallery will be installed below the bottom of Hoodoo Creek. The gallery shall generally consist of perforated pipe or screened cylindrical screens installed in a trench, and backfilled with permeable sand and gravel to the original creek bottom level. Cobbles and boulders may be placed to minimize the chance of eroding, exposing, or otherwise disturbing the infiltration gallery at high creek flows. The final cross-section and grade of the creek at the intake location will not be significantly different than the existing condition. This design will allow the infiltration of creek flow into the diversion pond without drawing fish into the pond.

To meet the February median bypass flow requirements, Permittee will have Hoodoo Creek rated by an experienced stream gaging technician to establish the depth of flow at the intake location corresponding to the bypass requirement. The discharge pipe leading from the infiltration gallery will be configured in an upside-down "U" shape, with the top of the "U" set at the depth of flow in the creek corresponding to the bypass rate. The pipe itself will be sized to hydraulically restrict the flow to approximately 1 cubic foot per second. Water entering the infiltration gallery will not overflow the upside-down "U" or enter the sump until the level of the creek is at the depth established for the February median flow. This configuration will also preclude the backflow of water from the diversion pond into the creek. The final plans for the passive bypass system on Hoodoo Creek shall be submitted to the Deputy Director for Water Rights prior to diversion from Hoodoo Creek.

The diversion pond shall be drained and allowed to dry out each year to prevent bullfrogs, which can be harmful to native amphibian species, from breeding within the pond.

(0400500)

14. Prior to construction of the project, Permittee shall obtain a grading permit and approved Erosion and Sedimentation Control Plan from Lake County and submit the approvals, or waiver thereof, to the Division. Sediment control measures shall be in place prior to the onset of construction and shall be monitored and maintained until construction activities have ceased. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion. Construction activities within 100 feet of drainages shall occur between April and October to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. In addition, Best Management Practices to control erosion (e.g. silt fences, straw bales) shall be implemented during construction activities.

(0450800)

15. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the Central Valley Regional Water Quality Control Board, or by the State Water Board.

(0000100)

16. No water shall be used under this permit until permittee has filed a report of waste discharge with the Central Valley Regional Water Quality Control Board (Regional Board) pursuant to Water Code Section 13260, and the Regional Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required.

Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Water Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Water Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- a) the Regional Board issues a waiver pursuant to Section 13269, or
- b) the Regional Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

NOW, THEREFORE, IT IS ORDERED THAT PERMITS ARE ISSUED FOR APPLICATIONS 30495 AND 30496, subject to the conditions of the attached permits.

STATE WATER RESOURCES CONTROL BOARD

Original Signed by: JWK for

Victoria A. Whitney
Deputy Director for Water Rights

Attachments: Permits 21240 and 21241
July 23, 2009

GSBrown:tvallejo 06.26.2009
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