
State Water Resources Control Board

MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21080(c)
Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044

From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: Narsai M. David Applications 29686 and 29687 to Appropriate Water

APPLICANT/PETITIONER: Narsai M. David
350 Berkeley Park Boulevard
Kensington, CA 94707

PROJECT DESCRIPTION:

Applications 29686 and 29687 were filed in 1990, seeking appropriative permits for diversion to storage of 98 acre-feet per annum (afa) (Application 29687), and direct diversion of an additional 49 afa for irrigation of a proposed 80-acre vineyard (Application 29686). Revised applications were submitted to the Division of Water Rights (Division) on November 24, 2003, which reduced the place of use (POU) to 50 acres and the total diversion under both applications to 113 afa. On August 2, 2007, the Applicant requested that the diversion rate be reduced from 3 cubic feet per second (cfs) to 2 cfs.

Application 29686 seeks the right to divert 26 af from Pope Creek between March 15 and May 15 for frost protection. Application 29687 seeks the right to divert up to 87 afa from Pope Creek to offstream storage between November 1 and May 15 for irrigation and heat protection of the proposed 50-acre vineyard.

DETERMINATION:

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less-than-significant effect on the environment for the reasons specified in the attached Initial Study.



PERMIT CONDITIONS:

Water Right Application 29686:

Source: Water is to be appropriated from Pope Creek tributary to Lake Berryessa

County: Napa

Point of Diversion: POD is located within the SE ¼ of the SW ¼ of Section 11, T9N, R5W, MDB&M.

Amount and Season: 26 acre-feet by direct diversion from March 15 through May 15 of the succeeding year.

Total Annual Use: 26 acre-feet

Purpose of Use: Frost protection

Place of Use: Includes all of the following, located in Napa County:

- 3 acres within NE ¼ of SE ¼ of Section 11, T9N, R5W, MDB&M
 - 3 acres within SE ¼ of SE ¼ of Section 11, T9N, R5W, MDB&M
 - 15 acres within SW ¼ of SE ¼ of Section 11, T9N, R5W, MDB&M
 - 5 acres within SE ¼ of SW ¼ of Section 11, T9N, R5W, MDB&M
 - 1 acre within NW ¼ of NW ¼ of Section 14, T9N, R5W, MDB&M
 - 15 acres within NE ¼ of NW ¼ of Section 14, T9N, R5W, MDB&M
 - 7 acres within SE ¼ of NW ¼ of Section 14, T9N, R5W, MDB&M
 - 1 acre within NW ¼ of NE ¼ of Section 14, T9N, R5W, MDB&M
- 50 acres

Water Right Application 29687:

Source: Water is to be appropriated from Pope Creek tributary to Lake Berryessa

County: Napa

Point of Diversion: POD is located within the SE ¼ of the SW ¼ of Section 11, T9N, R5W, MDB&M.

Amount and Season: 87 acre-feet per annum to offstream storage between November 1 and May 15 for irrigation and heat protection

Total Annual Use: 87 acre-feet

Purpose of Use: Irrigation, heat protection, and frost protection

Place of Use: (Identical place of use as Application 29686, above)

PERMIT TERMS:

Acronym used in permit terms: Department of Fish and Game (DFG)

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Board.

1. Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the Bay Area Air Quality Management District (BAAQMD). Prior to the start of construction or diversion or use of water under this permit, Permittee shall submit documentation to the Deputy Director for Water Rights showing that BAAQMD has approved the Permittee's Dust Control and Mitigation Plan.
2. 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.
3. Before storing any water in the reservoir, Permittee shall install a staff gage in the reservoir, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir. This staff gage must be maintained in operating condition as long as water is being diverted under this permit.

Permittee shall record the staff gage readings on the last day of each month annually. Permittee shall record the maximum and minimum water surface elevations and the dates on which these water levels are measured each water-year between October 1 and September 30. Permittee shall maintain a record of all staff gage readings and shall submit these records with annual progress reports, and whenever requested by the Division.

4. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from November 1 of each year through May 15 of the succeeding year, bypass a minimum of 47.1 cubic feet per second (cfs) at the point of diversion on Pope Creek. Under all bases of right, Permittee shall bypass the entire stream flow outside of the season of diversion.

The bypass may be measured at the USGS streamgage located on Putah Creek near Guenoc (USGS 11453500). If this measurement site is utilized, the gage shall read 178.8 cfs to document compliance with the above requirement. To verify the accuracy of using the Guenoc gage, Permittee shall take measurements to compare real-time site-specific data to the Guenoc gage data. A minimum of two measurements shall be taken at the point of diversion on Pope Creek to make this comparison. Permittee shall document that the substitute gage provides accurate information for this site and shall provide the documentation to the Division 30 days prior to diversion and as requested by Division staff for re-calibration. In the absence of such documentation, Permittee shall measure bypass at the point of diversion. The gage data shall be correlated prior to diversion under this permit.

5. Prior to diversion of use of water under this permit, Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights, to measure the instantaneous rate and the cumulative amount of water withdrawn from Pope Creek on the diversion pump discharge pipe. In-line flow meters shall be installed on the irrigation and frost protection

pumps discharge lines. Evidence that the required measuring devices have been installed shall be submitted to the Deputy Director for Water Rights prior to diversion of water.

6. Permittee shall adhere to the June 8, 2007, Compliance Plan for Flow Bypass (Compliance Plan) (NVVE 2007) approved by the Division and shall comply with the flow bypass term specified in this permit. 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. Permittee shall be responsible for all costs associated with installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by Permittee for 10 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 in writing to the Deputy Director for Water Rights within 15 days of the violation.

7. 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 not 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 Right's approval, this information may be updated, and Permittee may use water under basis of riparian 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.

8. Permittee shall allow representatives of the Division reasonable access upon notification of the Permittee or the Permittee's agent for the purpose of verifying compliance with the conditions of this permit. (Term for Application 29686 and 29687)
9. These permit terms shall remain in effect as long as water is being diverted by the Permittee (or successors-in-interest) under any permits or licenses issued pursuant to Applications 29686 and 29687.
10. Permit 21294 only – 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:
 - i. 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.
 - ii. Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible

for partial payment of the watermaster costs in accordance with the terms of the Agreement.

- iii. 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: (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.
- iv. 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 the permittee by the watermaster.
- v. Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- vi. 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.
- vii. 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.
- viii. 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:
 - a. 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.
 - b. 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.
 - c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- ix. 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.

- x. Permittee shall provide 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.
 - xi. 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.
 - xii. 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.
 - xiii. Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this permit is 23.5 acre-feet per annum, the total average annual depletion assigned to this project, which includes depletion under Application 28687, is 90.9 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) (Application 29686)
11. Permit 21295 only – 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:
- i. 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.
 - ii. Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
 - iii. Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the State Water Board. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the State Water Board, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.

- iv. 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: (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. 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 the permittee by the watermaster.
- v. Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- vi. 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.
- vii. 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.
- viii. 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:
 - a. 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.
 - b. 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.
 - c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- ix. 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.

- x. Permittee shall provide 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.
- xi. 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.
- xii. 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.
- xiii. Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 87 acre-feet per annum, the total average annual depletion assigned to the project, which includes depletion under Application 29686, is 90.9 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. (Application 29687)

- 12. 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.
- 13. Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with the Division. If a permit from USACE is not necessary for this permitted project, Permittee shall provide the Division with a letter from USACE affirming that a permit is not needed.
- 14. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.
- 15. To prevent degradation of the quality of water during and after construction of the project, Permittee shall file a report of waste discharge pursuant to Water Code Section 13260 prior to commencement of construction and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Board.

16. This permit is subject to the continuing authority of the State Water Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.
17. Permittee shall be responsible for complying with all applicable regulations from the Napa County Agricultural Commissioner's Office for the use of soil stabilizers, pesticides, herbicides, and regulated chemicals within the place of use.
18. 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.
19. In order to control and minimize potential erosion during construction activities, Best Management Practices (BMP) shall be prepared by a licensed civil engineer and submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. BMPs for controlling erosion may include, but are not limited to the following: vegetation removal shall be limited to the minimum amount necessary to accommodate installation of the diversion facility; temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas; and sediment shall be retained on-site by sediment basins, traps, siltation barriers, or other appropriate measures as needed.
20. If the place of use is determined to be within an erosion hazard area, then a discretionary permit is required from Napa County for removal of vegetation. Existing vegetation shall be retained to the extent feasible. If the place of use is not within an erosion hazard area, then no further mitigation is required as stipulated by Napa County regulations.
21. Before the initiation of any ground-disturbing or vegetation-clearing activities, Permittee shall retain a qualified botanist, acceptable to the Deputy Director for Water Rights, to conduct a survey for special-status plant species with the potential to occur within the place of use. The botanist shall conduct the survey at the appropriate time of year when the species would be in flower and therefore clearly identifiable. Based on the blooming periods for the species with potential to occur in the place of use an early blooming-period survey in late March to early April and a late blooming-period survey in late May to June would be appropriate to target all seven special-status plant species. The botanist shall perform an updated California Natural Diversity Database query for special-status plant species prior to the survey. Because potential direct impacts to special-status plants are only associated with construction of the proposed bridge crossing, reservoir, installation of the irrigation system, and planting of vineyards, the survey shall be restricted to the appropriate areas of potential direct impact.

If no special-status plants are found during the focused survey, the botanist shall document the findings in a report to the Permittee and State Water Board, and no further mitigation will be required.

If special-status plants are found, a map detailing the locations of the plants shall be submitted to the Deputy Director for Water Rights prior to any ground-disturbing or vegetation-clearing activities and the following measures shall be implemented:

- (a) Permittee shall not spray herbicides within 50 feet of the special-status plant population;
 - (b) Permittee shall not allow any land disturbance within 50 feet of the special-status plant population;
 - (c) Permittee shall permanently identify the plant population within the boundaries of the place of use by surrounding the site with flagged construction stakes to be spaced and maintained at a maximum distance of 30 feet apart;
 - (d) Permittee shall restrict cattle or other domestic stock access to the special-status plant populations within the boundaries of the place of use;
 - (e) Permittee shall prepare, or cause to be prepared, a long-term habitat conservation plan, in consultation with DFG and/or United States Fish and Wildlife Service (USFWS) if required, for the protection of the special-status plant population within the boundaries of the place of use. The plan shall be subject to review, modification, and approval by the Deputy Director for Water Rights. Amendments to the said plan shall be prepared in consultation with DFG and USFWS and a copy of any such amendments shall be submitted to the Deputy Director for Water Rights.
22. If native oak trees 6 inches in diameter or larger, measured at diameter at breast height (DBH), are to be removed from the place of use, a qualified biologist approved by the Deputy Director for Water Rights shall prepare an Oak Tree Mitigation and Monitoring Plan for replacement of trees in undeveloped portions of the property at a 3:1 ratio. Potential planting areas for these trees include riparian corridors outside of protected buffer areas, areas adjacent to remaining patches of oak woodland and foothill pine forest, and ruderal grassland areas where appropriate. A planting plan shall be developed by a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, depicting the locations where the mitigation trees will be planted. The planting plan shall include planting specifications for replacement trees, irrigation methods, maintenance and monitoring requirements, and success criteria for mitigation plantings. The mitigation area(s) shall be monitored for a minimum duration of five years. Failed plantings shall be replaced to achieve net success criteria of 80 percent survival after five years. Annual reports shall be submitted to the Division beginning with the end of the first year after the mitigation area(s) have been established and continuing until mitigation requirements are completed. The mitigation requirement will be deemed complete at the end of five years if the success criteria have been met. Trees surviving five years shall be maintained in perpetuity. Photographic documentation showing the results of the tree replacement shall be submitted to the Deputy Director for Water Rights 30 days after the mitigation requirements have been completed. All photos shall be dated and the location of the photos shown on a drawing or map of the place of use.
- Native oak trees to be retained or designated for retention shall be protected through the use of barricades or other appropriate methods during the construction phase. Native oak trees over 6 inches DBH to be removed shall be replaced with an equivalent kind, quality, and quantity at a ratio of 3:1.
23. If trees are to be removed between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-

construction survey for the purpose of identifying nesting bird species. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed construction areas. The survey shall be conducted no more than 14 days prior to the beginning of construction activities and a report of the findings shall be submitted to the Deputy Director for Water Rights prior to construction. If an active raptor or migratory bird nest is found during the pre-construction survey, the Permittee shall notify DFG. If an active raptor nest is found during the pre-construction survey, a 500-foot no-disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.

24. Permittee shall establish a setback within 45 feet measured from the top of the bank of Pope Creek (within the Permittee's property), to minimize disturbance to potential aquatic, aestivation, and/or basking habitat for foothill yellow-legged frog, California red-legged frog, and western pond turtle. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of occasional equipment access reasonably necessary for continued operation of the vineyard. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area is allowed. Permittee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this permit.
25. Before the initiation of any ground-disturbing or vegetation-clearing activities, Permittee shall retain a qualified biologist, acceptable to the Deputy Director for Water Rights, to conduct a survey to determine if elderberry shrubs with stems greater than 1-inch diameter at ground level are present within 100 feet of the place of use. The findings of the survey shall be submitted in a report to the Deputy Director for Water Rights at least two weeks before project construction begins.

If no elderberry shrubs with stems greater than 1-inch diameter at ground level are found during the focused survey, the biologist shall document the findings in a letter report to the Permittee and State Water Board, and no further mitigation will be required.

If elderberry shrubs with stems greater than 1-inch diameter at ground level are present within 100 feet of the place of use, avoidance and minimization measures such as the installation of orange barrier fencing shall be implemented to ensure that a 100-foot buffer is maintained between construction areas and elderberry shrubs. Photographs of any elderberry shrubs with stems greater than 1-inch diameter at ground level should be included in the survey report.

26. If ground-disturbing activities such as trenching or ripping are to occur in the place of use, a qualified biologist acceptable by the Deputy Director for Water Rights shall conduct a burrowing owl (*Athene cunicularia*) burrow survey 90 days prior to the ground-disturbing activity at the place of use. The biologist shall submit a survey protocol to be approved by the Deputy Director for Water Rights prior to conducting the burrowing owl/burrow survey. If burrowing owls or suitable habitat/nesting burrows are detected the results of the survey shall be provided to DFG and Deputy Director for Water Rights and the biologist shall

- develop a DFG approved mitigation/conservation plan 30 days prior to any ground-disturbing activities in the place of use. The survey report shall include a map indicating the locations of any burrowing owl(s) or owl sign. If no burrowing owls or suitable habitat/nest burrows are found the biologist shall submit a report of the finding to the Deputy Director for Water Rights and no burrowing owl conservation measures will be required.
27. A biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall be present during any construction work within the stream channel to ensure that no take of foothill yellow-legged frog (*Rana boylei*) occurs. If foothill yellow-legged frogs are encountered during construction, Permittee shall cease construction and ground disturbing activities in areas within 250 feet of the location where foothill yellow-legged frogs are present and shall contact DFG. Prior to restarting construction activities, Permittee shall submit to the Deputy Director for Water Rights evidence of DFG approval to continue construction.
 28. Permittee shall obtain the approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and DFG prior to any future reservoir dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations. Permittee shall refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation.
 29. Permittee shall not stock and shall not allow others to stock nonnative fish in the reservoir. Permittee shall monitor on a yearly basis the reservoir authorized under this permit, to make sure that no non-native fish, non-native frogs, or other exotic aquatic predators are accidentally introduced. Permittee shall eliminate any non-native fish or non-native frogs found by draining the reservoir where they were found and gigging non-native frogs found by hand. Permittee shall prepare annually a report describing the methodology used to survey the reservoir for the presence of exotic species, the dates when the surveys occurred, and what actions were taken if exotic species were found. These exotic species monitoring reports shall be submitted to the Division with the next required Report of Permittee, Report of Licensee or whenever requested by Division staff. Permittee shall post signs in English and Spanish at the reservoir stating that the introduction of fish and non-native frogs into the reservoir is prohibited.
 30. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of DFG to protect fisheries resources. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.
 31. The prehistoric site identified as the Metal Barn Site in the report titled, "A Cultural Resources Survey for Water Right Applications A29686 and A29687 (Narsai David) Pope Valley, Napa County, California" (Quinn and Origer 2001) shall not be included in the place of use and shall be fenced in order to eliminate current and future impacts and to preserve site integrity. An archaeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the Deputy Director for Water Rights, shall determine the boundaries of the sites and placement of permanent fencing. The archaeologist shall be present during installation of the fencing to prevent any inadvertent damage to the site. The boundaries of the permanent fencing shall include a buffer zone of 15 feet at a minimum around the site. Permanent fencing, with a height of 5 feet at a minimum ensuring that it is clearly visible for heavy equipment operators, shall be installed prior to project-related activities and shall remain in place for as long as water is

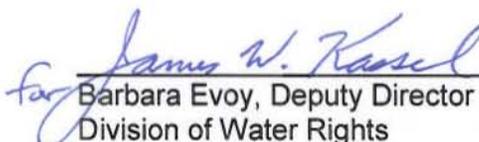
being diverted. Future developments at this site may be permitted only if a qualified archaeologist is retained by the Permittee to design and undertake investigations to determine site significance, and if necessary develop an appropriate mitigation plan, which must be approved by the Deputy Director for Water Rights.

32. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological 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 archaeologist 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.
33. If human remains are encountered, Permittee shall comply with Section 1564.5(e)(1) of the CEQA Guidelines and the Health and Safety 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 to identify the most-likely descendants of the deceased Native Americans. 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 and evidence of completion has been submitted to the Deputy Director for Water Rights.
34. Application 29686 only – The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2 cubic feet per second to be diverted from March 15 to May 15 of each year. The maximum amount diverted under this permit shall not exceed 26 acre-feet per year.
35. Application 29687 only – The capacity of the reservoir covered under this permit shall not exceed 49 acre-feet.

Contact Person: Greg Brown

Telephone: (916) 323-1847
email: gbrown@waterboards.ca.gov

APPROVED:


Barbara Evoy, Deputy Director
Division of Water Rights

6/29/12
Date

