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**North Coast Regional Water Quality Control Board**

December 29, 2015

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In the Matter of

**Water Quality Certification**

for

**Kellogg Ranch Safe Harbor Agreement –  
Yellowjacket Creek Fish Passage Improvement Project  
WDID No. 1B15142WNSO**

APPLICANT: Jackson Family Wines, Inc.  
RECEIVING WATER: Yellowjacket Creek; tributary to the Russian River Watershed  
HYDROLOGIC UNIT: Geyserville Hydrologic Unit No. 114.25  
COUNTY: Sonoma  
FILE: Kellogg Ranch Safe Harbor Agreement – Yellowjacket Creek  
Fish Passage Improvement Project  
ECM PIN CW- 819094

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BY THE EXECUTIVE OFFICER:

1. On October 30, 2015, the North Coast Regional Water Quality Control Board (North Coast Water Board) received an application from Carolyn Wasem on behalf of the Jackson Family Wines, Inc. (Applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (Certification) for activities associated with the Kellogg Ranch Safe Harbor Agreement – Yellowjacket Creek Fish Passage Improvement Project (Project). The proposed Project will cause disturbances to waters of the United States and the state associated with Yellowjacket Creek; a tributary to the Russian River watershed within the Geyserville Hydrologic Unit No. 114.25. The Project is located just east of the former, historic town of Kellogg, off of Highway 128. Yellowjacket Creek is located south and west of the Robert Louis

Stevenson State Park, at the base of Mt. St. Helena, at latitude 38.634408 N, and longitude -122.66.3339 W, near the boundary of Napa and Sonoma counties. Permanent impacts to waters of the U.S. and the state include approximately 0.55 acres and 555 linear feet of streambed and streambank.

2. The primary purpose of the Project is to remediate an existing water diversion weir, which creates a barrier to adult and juvenile anadromous salmonid migration – coho salmon (*Onchorhynchus kisutch*) and steelhead trout (*Onchorhynchus mykiss*) - in Yellowjacket Creek. By constructing a series of boulder step-pools, the Project will reconnect access to 1.9 miles of spawning and spring-fed, cold water rearing habitat upstream. The diversion weir and associated concrete apron has been in place for more than 100 years and was originally constructed by the former owners of the Kellogg Ranch prior to 1914. The diversion weir services the water rights now owned by the Jackson Family Wines, Inc. and provides flows to several adjacent reservoirs.
3. The Project includes the following key elements:
  - A series of boulder step-pool structures with 12-inch vertical steps and pools ranging in length from 10 to 30 feet
  - Streambed grading with engineered streambed material and possibly an impervious material layer downstream of the existing scour pool to establish a more natural channel slope
  - Streambank bioengineering for erosion and scour protection in disturbed areas
  - Retrofit of the diversion weir structure to include a fish screen and allow easier management of diversions and minimum instream flows
4. The proposed Project would include fish removal and exclusion done in consultation with staff from the California Department of Fish and Wildlife (CDFW) and the NOAA-National Marine Fisheries Service (NMFS) fisheries biologists, as well as a consulting-fisheries biologist for the Applicant. If necessary, stream flow will be diverted around the construction area. A small earthen coffer dam will be constructed just upstream of the existing diversion control structure and all stream flow will be diverted into the existing diversion canal. At the downstream end of the canal, a pump will be installed to lift diverted flow out of the diversion canal, through a pipe to the downstream end of the construction zone. Temporary erosion control and silt retention best management practices (BMPs) will be installed where diverted flow re-enters the creek.
5. The streambed and banks below the diversion weir will be graded to establish a more natural channel slope. The channel of streambed that will be reconstructed may require installation of impervious material in addition to engineered streambed material to prevent excess loss of low flows to subsurface percolation. A maximum of 2,300 cubic yards of engineered streambed material will be used. In addition to large natural rocks, foot rocks, and boulder clusters, the Project will incorporate large woody material – trees and rootwads – into five separate “refuge pools”. Twenty

“standard pools” will also be constructed, which are described in the engineering designs for the Project.

6. The proposed Project includes a plan to revegetate disturbed areas with live vegetation stakes (willows), container grown native vegetation, and native seed mixes, in limited areas where construction work disturbs currently stable stream banks or raises the channel bottom such that currently unstable creek bank areas are exposed to more regular flows.
7. The Project is planned to be implemented between May 2016 and May 2018. Project construction will occur between June 15 and October 15 of any given year when flows and sediment transport potential are at their lowest.
8. The Applicant will apply for authorization from the United States Army Corps of Engineers for a Clean Water Act, section 404 permit.
9. The North Coast Water Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the Project qualifies for a Categorical Exemption, 15333, Small Habitat Restoration Project, and will file a Notice of Exemption with the State Clearinghouse concurrent with issuance of the Certification, pursuant to CEQA guidelines.
10. The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation plans are adopted for this watershed prior to the expiration date of the Certification, the North Coast Water Board may revise the provisions of the Certification to address actions identified in such action plans. Bank erosion is identified as a source contributing to the sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Activities that will be authorized by this Certification are designed to reduce removal of riparian vegetation and reduce sediment discharges from bank erosion. Accordingly, this Certification is consistent with, and implements, BMPs that would attenuate sediment and temperature adverse impacts.
11. Pursuant to the North Coast Water Board’s Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to “rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

12. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The North Coast Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.
13. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality Certification. (Weblink included below).

Receiving Water: Yellowjacket Creek; tributary to the Russian River Watershed  
Geyserville Hydrologic Unit No. 114.25

Filled or Excavated Area: Permanent impact to waters of the U.S. and the state:  
0.55 acres and 555 linear feet of streambed and streambank

Latitude/Longitude: 38.634408° N/ 122.66.3339 ° W

Expiration: December 29, 2020

Accordingly, based on its independent review of the record, the North Coast Water Board certifies that the Kellogg Ranch Safe Harbor Agreement – Yellowjacket Creek Fish Passage Improvement Project (WDID No. 1B15142WNSO), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

All conditions of this Certification apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Certification.

1. This Certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of this Certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant.
4. An application flat fee of \$200 was received for this project on July 2, 2015. The original application intended to utilize the State Water Board's General 401 Water Quality Certification for Small Habitat Restoration Projects (General 401 Certification) which includes a \$200 flat fee. However, based on our review it was determined that the Project does not meet the eligibility criteria for the General 401 Certification because it exceeds the 500 foot linear foot threshold limit. Alternatively, the North Coast Water Board determined that the Project will require individual Certification and is subject to fee category for Ecological Restoration and Enhancement Projects which also has an application fee of \$200. This Certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee") and during the monitoring phase of the project ("Annual Post Discharge Monitoring Fee"), per the current fee schedule, which can be found on our website:  
[http://www.swrcb.ca.gov/northcoast/water\\_issues/programs/water\\_quality\\_certification.shtml](http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml).
5. Post construction monitoring will occur in accordance with the protocols in Flow West's Yellowjacket Creek Fish Passage Project Monitoring Plan. Jackson Family Wines will conduct monitoring long term consistent with the provisions in the Safe Harbor Agreement by and between Jackson Family Wines, Inc., the National Marine Fisheries Service and the California Department of Fish and Wildlife. Monitoring methods will include cross sections at established, permanent field locations, longitudinal profiles, field observations and photographs. The monitoring plan includes direct physical monitoring and vegetation survival rate that will be conducted following completion of the project.

The landowner will provide the North Coast Water Board with an annual report by November 1 each year for a 5 year period. The report will include the following information: 1) results of monitoring; 2) status of beneficial management activities

being undertaken at the project site in the preceding year; 3) a discussion regarding trends, successes or failures of properly implemented activities within the intent of benefiting water quality and the species covered in the Safe Harbor Agreement.

Reports shall be submitted electronically to the North Coast Water Board at

[northcoast@waterboards.ca.gov](mailto:northcoast@waterboards.ca.gov).

6. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of activities covered under this Certification.
7. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The applicant shall request approval from the North Coast Water Board if an exception from this requirement is needed for a specific location.
8. BMPs shall be implemented as proposed in the application materials. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other Project activities that could result in erosion or sediment discharges to surface water. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the State.
9. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area.
10. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this Certification.
11. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
12. Prior to implementing any change to the Project that may have a significant or material effect on the findings, conclusions, or conditions of this Certification, the Applicant shall obtain the written approval of the Regional Water Board Executive

Officer. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Certification, and the Applicant may be subject to enforcement action(s).

13. All Project work shall be conducted as described in this Certification and in the application submitted by the Applicant, and shall comply with all applicable water quality standards as detailed in the Basin Plan. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to enforcement actions.
14. The Applicant shall provide a copy of this Certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the Project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility company(ies) is performed in accordance with the information provided by the Applicant to the Regional Water Board.
15. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
16. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the State including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
17. The Regional Water Board may add to or modify the conditions of this Certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
18. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. In response to a suspected violation of any condition of this Certification, the Regional Water Board may require the holder of any federal permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable

relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Certification, the Regional Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

19. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Certification by letter and shall email a copy of the letter to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov)

To discharge dredged or fill material under this Certification, the successor-in-interest must email the North Coast Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) a written request for transfer of the Certification. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board.

The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Certification. Except as may be modified by any preceding conditions, all Certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

20. The authorization of this Certification for any dredge and fill activities expires on December 29, 2020. Conditions and monitoring requirements outlined in this Certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments, please call Jonathan Warmerdam at (707) 576-2468 or Stephen Bargsten at (707) 576-2653.

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Matthias St. John  
Executive Officer

Weblink: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Original to: Ms. Carolyn Wasem, Jackson Family Wines, Inc.  
425 Aviation Blvd., Santa Rosa, CA 95409