



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: Berglund Family Vineyards
Petitions for Change and Extension of Time

APPLICANT: Berglund Family Vineyards
c/o Diane Willson
176 Main Street, Suite B
St. Helena, CA 94574

PROJECT LOCATION:

The proposed project is located about four miles northeast of Angwin and about a quarter mile northeast of the town of Pope Valley in Napa County, California. The project site is located within Section 21, Township 9N, Range 5W of the "Aetna Springs" and "St. Helena, California" U.S. Geological Survey (USGS) 7.5 minute topographic quadrangles.

PROJECT DESCRIPTION:

The proposed project includes a Petition for Extension of Time, a Petition for Change to add a point of diversion/rediversion at Lower Reservoir and redistribution of storage and a reduction in place of use. The Petitioner proposes to use the diverted and stored water under Permit 17941 for irrigation, heat control, and frost protection on approximately 68 acres of existing vineyard within the 80-acre place of use. No additional vineyard would be developed with the proposed project.

DETERMINATION:

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

PERMIT CONDITIONS:

Source: Water is to be appropriated from an Unnamed Stream tributary to Burton Creek thence Maxwell Creek thence Pope Creek thence Putah Creek, in Napa County.

Points of Diversion:

(1) Point of Diversion to Storage in Upper Reservoir and Rediversion: Water diverted from an Unnamed Stream tributary to Burton Creek thence Maxwell Creek thence Pope Creek, being within the SE ¼ of the SW ¼ of projected Section 21, Township 9N, Range 5W, MDB&M.

(2) Point of Diversion to Storage in Lower Reservoir and Rediversion: Water diverted from an Unnamed Stream tributary to Burton Creek thence Maxwell Creek thence Pope Creek, being within the NE ¼ of the SW ¼ of projected Section 21, Township 9N, Range 5W, MDB&M.

Amount and Season: 98 acre-feet (af) of water will be collected to storage from November 1 to May 15. The maximum annual withdrawal will not exceed 92 af from the two reservoirs under the permit.

Purpose of Use:

Storage of water for the purposes of irrigation, frost protection, and heat control of 68 acres within the 83-acre place of use.

Place of Use:

Use Within	Section	Township	Range	B & M	Approximate Acreage
SE¼ of NW¼	21	9N	5W	MD	26
NE¼ of NW¼	21	9N	5W	MD	7
NW¼ of SE¼	21	9N	5W	MD	6
SW¼ of NE¼	21	9N	5W	MD	29
NW¼ of NE¼	21	9N	5W	MD	9
NE¼ of SW¼	21	9N	5W	MD	6
Total					83

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 Resources Control Board.

1. To ensure the protection of air quality, 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 other regulated chemicals on the place of use.
2. The bypass may be measured at the USGS stream gage located on Putah Creek near Guenoc (USGS 11453500). If this measurement site is utilized, the gage shall read as follows to document compliance with the above bypass requirement:
 - a. 96.7 cfs from December 1 through February 28 (4 cfs in Burton Creek)
 - b. 24.2 cfs from March 1 through April 30 (1 cfs in Burton Creek)
 - c. 12.1 cfs from May 1 through May 15 and November 1 through November 30 (0.5 cfs in Burton Creek)

To verify the accuracy of using the Guenoc gage, within 180 days of issuance of the amended water right, (a) Permittee shall take measurements to compare real-time site-specific data to the Guenoc gage data. A minimum of two measurements shall be taken below the confluence of the Unnamed Stream (source of point of diversion) on Burton Creek to make this comparison, and (b) Permittee shall document that the substitute gage provides accurate information for this site. Any future correlations must be completed within 30 days of request by Division staff.

In the absence of such documentation, Permittee shall measure bypass below the confluence of the Unnamed Stream (source of point of diversion) on Burton Creek.

3. No water shall be diverted under this license unless licensee has installed a device on Burton Creek, satisfactory to the State Water Board, which is capable of measuring the flows required by the conditions of this license. In lieu of installing a measuring device, Licensee may satisfy this requirement through use of a U.S. Geological Survey (USGS) stream gage. Should the USGS stream gage device be abandoned or discontinued in the future, Licensee shall notify the Deputy Director within seven days of the discontinuance, and within 180 days of the discontinuance, Licensee shall either identify an alternative USGS stream gage device for use, or install and maintain a measuring device on Burton Creek.
4. To further ensure the protection of water quality during operation of the project, Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance to enter into or be placed where it may be washed by rainfall runoff into the waters of the State.
5. For the protection of threatened and endangered species and their habitat, this permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

6. The Permittee shall maintain a 50-foot-wide setback around the reservoirs as shown on Setback Map No. SB-01 dated March 13, 2008 on file with the Division of Water Rights. No new ground disturbing activities shall occur within the setback area, with the exception of occasional equipment access necessary for continued operation of the reservoir. Equipment access within the setback area shall be limited to only activities necessary for the ongoing management of the setback area and operation of the reservoir and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native riparian vegetation within the setback area is allowed.
7. The Permittee shall obtain approval of the United States Fish and Wildlife Service (USFWS), Sacramento Endangered Species Office, and the California Department of Fish and Game 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. The Permittee shall refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation.
8. For the continued protection of created wetlands, no ground disturbing activities shall occur within the wetland area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. Planting, maintenance, and irrigation of native wetland vegetation within the setback area are allowed.
9. For the protection of archaeological resources, the archaeological sites CA-Nap-21, CA-Nap-387, CA-Nap-389 and CA-Nap-388 located in the reconnaissance report by Archaeological Consulting and Research Services, Inc. shall be excluded from the place of use. These sites shall not be otherwise impacted by any developments related to the proposed water storage, distribution and use. Such impacts would include dams, dikes, storage locations, pipelines, canals or ditches, and any other surface or subsurface disturbance related to the proposed water use.
10. The archaeological sites identified as CA-Nap-21, CA-Nap-387, CA-Nap-388 and CA-Nap-389 shall not be impacted by any subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Discing of the archaeological deposits will continue to be allowed. Further development of these archeological sites may be allowed following the completion of a cultural resources mitigation program, the expense of which would be entirely borne by the applicant. The mitigation program would have to be designed and completed by a professional archaeologist and subject to approval by the Deputy Director for Water Rights.

In order to protect the three archaeological sites identified as CA-NAP-21, CA-NAP-387, and CA-NAP-389/803 in the report titled Limited Archaeological Investigations at the Berglund Property, Pope Valley, California by Eileen Barrow, B.A. and Thomas M. Origer, M.A. dated October 24, 2008, revised December 19, 2008, Permittee shall be subject to the following restrictions for ongoing agricultural operations and any activities involving replanting of vines on the archaeological sites within the Place of Use pursuant to Permit 17941 (Application 25765):

- A. Vine removal shall be done as non-invasively as possible, by pulling the vines either vertically or roughly horizontally using a tractor and chain, as demonstrated in the video titled Vine Removal, accompanying the above referenced report. Vine removal

- shall occur only while the soil is moist down to six inches, and vines shall be replanted in the same location as the vines which were removed;
- B. No trenching, or other mechanical disturbance, including ripping below the disc zone shall be allowed;
 - C. Cultivation (discing) is allowed for weed control and general vineyard maintenance; and
 - D. No artifacts or other materials shall be removed from the sites.
11. 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 the 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.
12. If human remains are encountered, then the Permittee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances 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.

Contact Person: Greg Brown	Telephone: (916) 323-1847 email: gbrown@waterboards.ca.gov
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APPROVED:

ORIGINAL SIGNED BY:
JAMES W. KASSEL for

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUL 27 2012