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: Russ Living Trust Water Right Project

APPLICANT: Russ Living Trust
c/o Ms. Paula Russ
P.O. Box 62
San Gregorio, CA 94074

PROJECT LOCATION:

The 68-acre Russ Living Trust property is located approximately two miles east of the community of Aetna Springs and approximately 3.5 miles north of the community of Pope Valley in Napa County, California. The site is within Township 9N, Range 5W of the "Aetna Springs, California" U.S. Geological Survey (USGS) 7.5 minute topographic quadrangle.

PROJECT DESCRIPTION:

Application 30322 proposes the diversion and storage of 49 acre-feet per annum (afa) from an Unnamed Stream tributary to Pope Creek thence Lake Berryessa. The collection season would be from November 1 through April 30. An existing 7 acre-foot (af) capacity onstream reservoir would be enlarged to 49 af with the proposed project. Application 30323 proposes to directly divert 50 afa at the onstream reservoir from March 1 through May 31 for frost protection of the 50-acre proposed place of use. Water would be diverted at a maximum rate of 2.99 cubic feet per second (cfs).

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 Initial Study prepared for this project.

Acronyms used in permit terms: Department of Fish and Game (DFG), United States Fish and Wildlife Service (USFWS), Army Corps of Engineers (USACE), Bay Area Air Quality Management District (BAAQMD).

PERMIT TERMS:

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. Best Management Practices (BMPs) for any disturbed areas shall be included in any plan to control erosion for the proposed project. At a minimum, BMPs shall include, but not be limited to the following measures:

   - Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;
   - No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and
   - Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

2. To prevent substantial erosion from construction activities, the following permit terms, substantially as follows, shall be included in any water right permits or licenses issued pursuant to Applications 30322 and 30323:

   - Prior to the commencement of construction activities, Permittee shall obtain a grading permit and approval of an Erosion Control Plan prepared in accordance with Napa County's Conservation Regulations from the County of Napa. The Napa County Erosion Control Plan shall be consistent with the Napa County use requirements in areas with slopes greater than five percent. Copies of the approved grading permit and Erosion Control Plan from the County of Napa shall be submitted to the Deputy Director for Water Rights for approval prior to starting construction. If an Erosion Control Plan is not required, Permittee shall provide the Deputy Director for Water Rights a copy of a waiver from Napa County prior to any project construction activity in the place of use.

   - No construction shall commence and no water shall be used under this permit until all necessary Federal, State and local approvals have been obtained.

3. In order to minimize PM_{10} emissions associated with construction, a dust control plan shall be developed and implemented for the proposed project. At a minimum, the plan shall include, but not be limited to the following measures:

   - Active construction areas shall be watered at least twice daily; all trucks hauling soil, sand, or other loose material shall be covered or required to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer);

   - Exposed stockpiles shall be covered or watered twice daily;

   - All construction vehicles and equipment shall be properly maintained and operated, and the use of construction equipment that meets the current emission standards for diesel engine-powered equipment shall be required; and

- Traffic speeds on unpaved access roads shall be limited to 15 miles per hour.

4. To protect air quality, a permit term, substantially as follows, will be included in any water right permits or licenses issued pursuant to Applications 30322 and 30323:

   - Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by BAAQMD. Prior to the start of construction or diversion of water under this permit, Permittee shall submit evidence to the Deputy Director for Water Rights showing that BAAQMD has approved the Permittee's Dust Control and Mitigation Plan.

5. To protect water quality, the following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

   - 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 California Regional Water Quality Control Board, Central Valley Region or by the State Water Board.

   - 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.

6. To ensure that water is diverted and used in accordance with the project description and to minimize the project's potential impacts to hydrology and water quality, the following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

   - Under any permits on Applications 30322 and 30323: The total quantity of water diverted under permits issued pursuant to Applications 30322 and 30323, together with that diverted under the license issued pursuant to Application 19656, shall not exceed 99 acre-feet per annum.

   - Under any permit on Application 30322: Within one year of reservoir enlargement, 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 Putah Creek Watermaster and the Deputy Director for Water Rights.

   - Under any permit on Application 30322: Prior to storage of any water under Application 30322, Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the Putah Creek Watermaster and the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir. The staff gage must be maintained in operating condition as long as water is being diverted or used under this permit.

Permittee shall record the staff gage readings on the last day of each month and on November 1 annually. Permittee shall record the maximum and minimum water surface elevations and the dates that these water levels occur 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.

The State Water Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

- Under any permit on Application 30323: Prior to any direct diversion of water under Application 30323, Permittee shall maintain a device, satisfactory to the Deputy Director for Water Rights, which is capable of measuring water directly diverted under this permit. A satisfactory device includes: a weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements. Permittee shall maintain monthly records of direct diversion from March 1 to May 31 of each year, or such other period as may be specified with written notice to the Permittee by the Putah Creek Watermaster. Permittee shall submit the records with annual Progress Reports by Permittee, and whenever requested by the Division.

- Under any permit on Applications 30322 and 30323: For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from November 1 to May 31 maintain a minimum bypass of 2.0 cfs below the point of diversion. Under all bases of right Permittee shall bypass the total streamflow from June 1 through October 31. The total streamflow at the reservoir shall be bypassed whenever it is less than 2.0 cfs at the point of diversion.

- Under any permit on Applications 30322 and 30323: Prior to the start of construction, and diversion or use of water under this permit, the 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 gage and monitoring device that will be installed or have been installed to measure stream flow and/or reservoir storage capacity, including any necessary calibration.

  c. A time schedule for the installation and rating 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.

f. A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan and monitoring facilities described in the Compliance Plan.

Permittee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Deputy Director for Water Rights within 15 days upon request by the State Water Board, the Deputy Director, or other authorized designees of the State Water Board.

Diversion or 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 report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.

7. To avoid impacts to any special-status plant species that may have become established since the last botanical survey of the property in 2004, the following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- A biologist whose qualifications are acceptable to the Deputy Director for Water Rights shall conduct a pre-construction survey for regionally occurring special status plant species during their bloom periods prior to any ground moving or construction activities. The results of the survey shall be submitted to the Deputy Director for Water Rights for any approval to begin ground moving or construction activities. If any special status plant species are found during the pre-construction survey, a 25-foot no-disturbance buffer shall be established around the species' locations to avoid direct or indirect impacts. The species location(s) shall be indicated on a map that shall be submitted to the Deputy Director for Water Rights with the survey report. An exclusionary fence shall be installed around the buffered areas prior to any construction within 100 feet of the species location. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. The buffers 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, except permitted crossings consistent with USACE, Section 404 permit (33 U.S.C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

8. To protect Western pond turtles, the following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- Within 14 days prior to the onset of construction activities, a biologist whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist), shall conduct pre-construction surveys for Western pond turtle within all areas that fall within 100 feet of suitable aquatic habitat for this species as shown in the habitat map (Figure 5 of the Russ Trust Initial Study/Mitigated Negative Declaration). If Western pond turtles are observed within the reservoir proposed for expansion, the approved biologist, upon authorization from DFG, shall capture the

turtles and transport them to an area of equally suitable habitat at least 300 feet outside of the construction footprint. If no turtles are observed during the pre-construction survey, then construction activities may begin. If construction is delayed or halted for more than 30 days, another pre-construction survey for western pond turtle shall be conducted. Within seven days of the pre-construction survey, a report of findings from the survey shall be submitted to DFG with a copy to the Deputy Director for Water Rights.

- Prior to the onset of construction activities, the approved biologist shall develop a worker sensitivity training program that addresses all the issues associated with the presence of Western pond turtle within the project site, including recognition of this species and its habitat, as well as measures to take in the event the species is observed onsite during construction. All personnel that will be working within the vicinity of suitable habitat for Western pond turtle shall take the sensitivity training program and sign an acknowledgement that he or she has received the training, and fully understands the contents of the sensitivity training program. Within seven days of the sensitivity training program, the signed acknowledgments by project personnel shall be submitted to DFG with a copy to the Deputy Director for Water Rights. The construction foreman or other designated construction personnel shall be designated as the onsite monitor for the duration of construction activities. The onsite monitor will be responsible for ensuring any new personnel joining the construction crew receives the sensitivity training material and signs the acknowledgement. The approved biologist shall be retained on-call in the event the onsite monitor has any questions or encounters Western pond turtle situations beyond the scope of the sensitivity training.

- If Western pond turtles are observed in the construction area at any time during construction, the onsite monitor shall be notified and construction in the vicinity of the sighting shall be halted until such a time as a turtle has left the construction zone of its own volition or the approved biologist is given clearance by DFG to relocate a turtle.

- Once construction of the proposed project is complete, Permittee shall maintain a 50-foot wide setback around the enlarged reservoir. No new ground disturbing activities shall occur within the setback area, with the exception of livestock access and 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 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. The setback shall not apply to permitted crossings consistent with USACE, Section 404 permit (33 U.S.C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

6. To protect the federally threatened valley elderberry longhorn beetle (VELB), the following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- Two elderberry shrubs have been observed on the property at separate locations along the seasonal Unnamed Streams (see Figure 5 of the Russ Trust Initial Study/Mitigated Negative Declaration, 2011). Prior to any construction activities in the place of use, Permittee shall consult with USFWS to establish a mitigation plan (Plan) for the two elderberry shrubs. Permittee shall submit a plan approved by USFWS to the Deputy Director for Water Rights to protect VELB prior to any project construction. If a plan is not required by USFWS, Permittee shall forward a statement from USFWS indicating that a plan is not required to the Deputy Director for Water Rights prior to any construction activities related to this project. If construction-related disturbance will occur within 100-feet of elderberry shrubs, the USFWS shall be consulted to determine if an impact will occur. If VELB are determined to occupy the site, no activities determined to have a potential to adversely affect the shrubs or any VELB shall be conducted without a Biological Opinion, Incidental Take Permit, or other authorization from the USFWS, and findings shall be provided to the Deputy Director for Water Rights for approval 10 days prior to any project construction. If required, transplanting of elderberry shrubs or planting additional seedlings or cuttings shall be conducted consistent with the USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (1999).

10. The following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323 to protect special status amphibians:

- Within 14 days prior to the onset of construction activities, a biologist whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist), shall conduct a pre-construction survey for California red-legged frog (CRLF) and foothill yellow-legged frog (FYLF) within any and all areas that fall within 100 feet of suitable habitat for these species. If either of these species are observed within the project site during the pre-construction survey, Division of Water Rights, USFWS and/or DFG shall be contacted and any and all construction activities must be delayed until an appropriate course of action can be established and approved by USFWS and/or DFG. If no CRLF and/or FYLF are observed within the project site during the pre-construction survey, the Permittee shall notify the Deputy Director for Water Rights of the results of the survey before any construction begins. If construction is delayed or halted for more than 30 days, another pre-construction survey for CRLF and FYLF shall be conducted.

- Prior to the onset of construction activities, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights (qualified biologist) shall develop a worker sensitivity training program that addresses all of the issues associated with the assumed presence of California red-legged frog (CRLF) and foothill yellow-legged frog (FYLF) within the project site; including recognition of these species and their habitat. Any and all personnel that will be working within the vicinity of suitable habitat for these species shall take the sensitivity training program and sign an acknowledgement that he or she has received the training, understands that take of these animals and destruction of their habitats is a violation of the Federal Endangered Species Act and/or the California Endangered Species Act, and fully understands the contents of the sensitivity training program.

Exclusion fencing erected as part of mitigation for Western pond turtle shall be suitable for exclusion for FYLF and CRLF. Once the exclusion fencing is erected, the qualified biologist shall return to the project site once a week during the construction period to inspect the fencing and confirm that no frogs have access to the exclusion zone. If either of these species are observed within the project site during construction, the Division of Water Rights, USFWS and/or DFG must be contacted and all construction activities must be delayed until an appropriate course of action can be established and approved by USFWS and/or DFG.

11. For the protection of potential California red-legged frog habitat along the reservoirs and to allow for the growth of riparian vegetation, Permittee shall:

a. Obtain approval of USFWS, Sacramento Endangered Species Office, and DFG prior to any reservoir dredging operation. Permittee shall submit to the Deputy Director for Water Rights evidence of agency approval prior to any future reservoir dredging operations;

b. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;

These requirements shall remain in effect as long as water is being diverted under any permits or licenses issued pursuant to Applications 30322 and 30323.

12. To protect special status birds, the following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- If tree removal activities are to occur 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 prior to tree removal. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed tree removal activities. The survey shall be conducted no more than 14 days prior to the beginning of tree removal activities. 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. The Permittee shall report to the Deputy Director for Water Rights the results of the survey prior to any construction in the place of use.

13. To protect burrowing owl, the following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- If ground-disturbing activities such as trenching or ripping are to occur in the place of use, Permittee shall consult with DFG whether to conduct a burrowing owl (*Athene cunicularia*) survey in affected portions of the place of use. Prior to conducting ground-disturbing activities, Permittee shall submit the determination by DFG to the Deputy Director for Water Rights. If a survey is recommended, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a

burrowing owl burrow survey about 14 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. The protocol shall include the date(s) when the survey will be conducted. If burrowing owls or suitable habitat/nesting burrows are detected, the results of the survey shall be provided to DFG and the Deputy Director for Water Rights and the biologist shall develop a DFG-approved mitigation/conservation plan to be implemented 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.

14. To protect the Serpentine Bunchgrass Community, the following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- Permittee shall avoid adverse impacts to the Serpentine Bunchgrass Community onsite. Prior to construction activities within 100 feet of the Serpentine Bunchgrass Community, a 25-foot no-disturbance buffer shall be established around the Community. The perimeter of the no-disturbance buffer shall be marked off with posts and construction fencing by a qualified biologist approved by the Deputy Director for Water Rights to avoid direct or indirect impacts to the sensitive plant community. Photographs showing the buffer shall be submitted to the Deputy Director for Water Rights prior to construction within 100 feet of the Serpentine Bunchgrass Community. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. The buffer shall be permanently avoided. No activity shall occur within the buffer zone, including, but not limited to grading, road construction, fencing, storage areas, and irrigation, except permitted crossings consistent with USACE, Section 404 permit (33 U.S.C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

15. The following permit terms, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- No work shall commence and no water shall be diverted, stored, or used under this permit until a signed copy of a Streambed Alteration Agreement between DFG and the Permittee is filed with the Deputy Director for Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a Streambed Alteration Agreement is not necessary for this permitted project, the Permittee shall provide the Deputy Director for Water Rights a copy of a waiver signed by the DFG.

- Minimum 50-foot buffers along the two seasonal Unnamed Streams and minimum 20-foot buffers along the ephemeral streams on the property measured from the top of the bank on both sides of the stream shall be maintained within the place of use. Napa County Stream Setbacks may require additional buffers. The buffers shall be formally incorporated in any Erosion Control Plan for the project. The buffers shall be staked prior to construction by a biologist or engineer whose qualifications are

acceptable to the Deputy Director for Water Rights, maintained throughout construction, and permanently avoided. Permitted uses within the buffer zones shall be consistent with Napa County Conservation Regulations and may include permitted crossings consistent with USACE, Section 404 permit (33 U.S.C. § 1344.) and DFG Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements. Copies of an approved grading permit and Erosion Control Plan, if required, from the County of Napa, which incorporate the stream setbacks, shall be submitted to the Deputy Director for Water Rights, prior to starting construction.

Prior to the start of construction or diversion or use of water under this permit, Permittee shall obtain any required permit from USACE and file a copy with the Deputy Director for Water Rights. If a permit from the USACE is not necessary for this permitted project, the Permittee shall provide to the Deputy Director for Water Rights a letter from the USACE affirming that a permit is not needed.

If required, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Resources Control Board prior to the start of construction or diversion or use of water under this permit.

16. To protect oak trees and oak woodland habitat, the following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- Direct impacts to native oak trees shall be mitigated by the following: 1) An oak tree replacement program shall be implemented, which shall include the planting, irrigation, monitoring, and maintenance of replacement native oak trees at a 2 to 1 ratio in areas not included in the proposed place of use; 2) A permit for removal of trees greater than six inches in diameter shall also be obtained from Napa County prior to any tree removal activities, unless specifically waived by Napa County, and; 3) A copy of the Napa County permit or waiver shall be submitted to the Deputy Director for Water Rights prior to the commencement of any construction activities.

  Pursuant to Napa County requirements, vegetation identified by Napa County for preservation that is removed (either advertently or inadvertently) or vegetation that is removed before any required permit from Napa County has been issued, shall be replaced with fifteen-gallon trees at a ratio of 2 to 1 at locations approved by Napa County, or replaced with smaller trees at a higher ratio to be determined by Napa County. Failed plantings shall be replaced to achieve net success criteria of 80 percent tree survival after five years. Trees surviving five years shall be maintained in perpetuity. Photo documentation showing the results of the tree replacement shall be submitted to the Deputy Director for Water Rights after the five years. All photos shall be dated and the location of the photos shown on a drawing.

  To protect oak trees intended to remain undisturbed from project-related disturbance, construction fencing shall be installed as far as feasible outside the driplines of oak trees within the vicinity of construction areas. No encroachment into the fenced areas shall be permitted and fencing shall remain in place until all construction activities have ceased. Where encroachment is necessary past the driplines, a certified arborist shall document compliance with the following: 1) At least 12 inches

of mulch will be temporarily placed to protect roots from compaction; 2) Any tree roots to be severed shall be the maximum feasible distance from the trunk, and; 3) Any roots over one-inch in diameter that are damaged as a result of construction activities shall be traced back and cleanly cut behind any damaged area, and exposed roots shall be kept moist or covered immediately.

Documentation that this mitigation measure has been completed shall be submitted to the Deputy Director for Water Rights within 180 days of reservoir construction (for trees near the reservoir) and within 180 days of vineyard planting (for trees in the place of use).

17. There is the possibility that subsurface archaeological deposits may exist in the project area, as archaeological sites may be buried with no surface manifestation. As such, the following permit term, substantially as follows, shall be included in any water right permits or licenses issued pursuant to Applications 30322 and 30323:

- 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 flaked 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.

18. There is also the possibility that an unanticipated discovery of human remains could occur. The following permit term, substantially as follows, shall be included in any permits or licenses issued pursuant to Applications 30322 and 30323:

- If human remains are encountered, 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 Napa 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.

19. To prevent further undercutting at the spillway, the following permit term, substantially as follows, shall be included in any water right permits or licenses issued pursuant to Applications 30322 and 30323:

- Prior to the start of construction and/or diversion under this permit, Permittee shall submit a detailed spillway repair plan approved by a registered engineer documenting how the spillway will be repaired to prevent sediment from entering the waterway. The plan shall include best management practices for prevention of sediment and non-set concrete from entering the waterway during construction. The plan shall document whether water quality section 401 and/or section 404 certification are needed for the repair and list the dates such approvals were applied for. No spillway repair construction shall occur until all necessary approvals are obtained. The plan shall be subject to review, modification and approval by the Deputy Director for Water Rights prior to implementation. Within 30 days of completion of the spillway repairs, the registered engineer shall provide documentation to the Deputy Director for Water Rights that all repairs or modifications were made in accordance with the plan and all other required approvals. No diversion may occur until the Deputy Director for Water Rights receives the required documentation that spillway repairs were made in accordance with the approved repair plan.

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

APPROVED:

for James W. Kassel

Barbara Evoy, Deputy Director
Division of Water Rights

Date: OCT 19 2012