

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2008 - 0027**

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In the Matter of Petition for Change of Place of Use and  
Petition for Extension of Time

**Sleepy Hollow Properties**

Permit 20636 (Application 29698)

SOURCE: Unnamed Stream tributary to Petaluma River thence San Pablo Bay

COUNTY: Sonoma

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**ORDER APPROVING PETITION FOR CHANGE OF PLACE OF USE AND  
PETITION FOR EXTENSION OF TIME AND  
APPROVING ISSUANCE OF AMENDED PERMIT**

BY THE BOARD:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 20636 to Sleepy Hollow Properties (Permittee) on September 9, 1992, pursuant to Application 29698.
2. The permit required complete application of water to the authorized use by December 31, 1996.
3. On June 1, 2001, Permittee filed petitions for change in the Place of Use (POU) and for an extension of time with the State Water Board. The permitted POU consists of 60 acres of pasture. Permittee requests to increase the POU by 115 acres, for a total of 175 acres. Between 2001 and 2002, the existing and proposed POU, which was historically used as pasture and dry farmed oat hay crops, was converted to vineyard. Concurrent with the petition for change, Permittee filed a petition for an extension of time, requesting an additional ten years within which to develop the project and apply the water to beneficial use. Permittee amended the petition for an extension of time on May 9, 2007 for an additional 10 years (20 years total) within which to develop the project.
4. Public notice of the petitions for change in POU and extension of time was issued on September 21, 2001 and no protests were received.
5. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be

made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.

6. Permittee has shown that due diligence has been exercised. Information contained in Application 29698 and in the Division's files indicates that the dam and reservoir authorized by Permit 20636 were already constructed at the time the application was filed (March 23, 1990). Permittee has shown through yearly progress reports, submitted to the Division, that the permitted water project had been constructed and used to irrigate up to 60 acres of pasture and stockwatering of 700 animals during the development period specified in Permit 20636.
7. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permit 20636 allowed approximately 4.25 years from the date of permit issuance to put water to full beneficial use. On June 6, 2001, Permittee filed a petition for change in POU to expand the irrigated acreage from 60 acres to 175 acres. A companion petition for extension of time was also filed to provide Permittee with the additional time needed to develop the expanded place of use prior to licensing of the project. At the time the petition for extension of time was filed, Permittee was already irrigating 50 acres of pasture and stockwatering 700 animals. Additional time was needed to expand the irrigated POU and demonstrate water use consistent with Permit 20636 and the requested petition for change.
8. Permittee has shown that satisfactory progress will be made if a time extension is granted. Permittee has fully developed the proposed place of use and has requested an extension of time to document and authorize current water use. Therefore, it is likely that Permittee will be able to complete the project and request a license consistent with the revised development schedule.
9. The State Water Board has determined that Permittee has shown good cause for the petitions for change in POU and an extension of time, and that the former does not constitute the initiation of a new right nor operates to the injury of any other lawful user of water.
10. To ensure compliance with Water Code section 1605, a permit term should be added requiring Permittee to install a measuring device and maintain water diversion and use records.
11. The State Water Board, Division of Water Rights, as Lead Agency, prepared an Initial Study for this project pursuant to the California Environmental Quality Act. (Cal. Code Regs., tit. 14, § 15063.) The Initial Study identified potentially significant impacts to biological and cultural resources. The Division proposed the following mitigation measures to mitigate for the potential environmental impacts of the project, and Permittee agreed to incorporate these measures into the project:
  - a. Establishment of a 50-foot buffer area around the reservoir identified in Permit 20636 to protect potential habitat for California red-legged frog;
  - b. Protocols to protect protected animal species in the event that future ground disturbing activities occur within the POU;

- c. Setbacks to prevent encroachment on riparian habitat; and
- d. Conditions requiring notification of the Chief of the Division if project activities uncover any buried archeological deposits or human remains.

Conditions should be included in the permit requiring implementation of these mitigation measures.

- 12. On March 16, 2007, the Division issued a notice of intent to adopt a Mitigated Negative Declaration for the project (SCH No. 2007032089). (Cal. Code Regs., tit. 14, § 15072.)
- 13. The Mitigated Negative Declaration reflects the State Water Board's independent judgment and analysis. No comments were received during the public review process for the proposed Mitigated Negative Declaration. After considering the document, the State Water Board determined that the proposed project, with mitigation measures, will not have a significant effect on the environment. The documents or other material, which constitute the record, are located in the files held by the State Water Board, Division of Water Rights. The State Water Board will file a Notice of Determination for this project with the Governor's Office of Planning and Research within five days from the issuance of this order.
- 14. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making Permittee aware of obligations resulting from these laws.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT THE STATE WATER RESOURCES CONTROL BOARD APPROVES THE PETITIONS FOR CHANGE OF PLACE OF USE AND FOR EXTENSION OF TIME. PERMIT 20636 IS AMENDED AS FOLLOWS:**

- 1. Condition 4 of the permit shall be amended to read as follows:

Purpose of use	Place of use	Section (Projected) *	Township	Range	Base and Meridian	Acres
<b>Stockwatering</b>	<b>NE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	
<b>Irrigation</b>	<b>NE<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>4</b>
	<b>SW<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>5</b>
	<b>SE<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>19</b>
	<b>NW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>2</b>
	<b>NE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>4</b>
	<b>SW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>13</b>
	<b>SE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>26</b>	<b>4N</b>	<b>6W</b>	<b>MD</b>	<b>4</b>

	NE <sup>1</sup> / <sub>4</sub> of SE <sup>1</sup> / <sub>4</sub>	27	4N	6W	MD	21
	SE <sup>1</sup> / <sub>4</sub> of SE <sup>1</sup> / <sub>4</sub>	27	4N	6W	MD	18
	NW <sup>1</sup> / <sub>4</sub> of NE <sup>1</sup> / <sub>4</sub>	34	4N	6W	MD	8
	NE <sup>1</sup> / <sub>4</sub> of NE <sup>1</sup> / <sub>4</sub>	34	4N	6W	MD	33
	SW <sup>1</sup> / <sub>4</sub> of NE <sup>1</sup> / <sub>4</sub>	34	4N	6W	MD	4
	SE <sup>1</sup> / <sub>4</sub> of NE <sup>1</sup> / <sub>4</sub>	34	4N	6W	MD	6
	NW <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub>	35	4N	6W	MD	25
	NE <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub>	35	4N	6W	MD	9
	<b>Total</b>					<b>175</b>

2. Condition 7 of the permit shall be amended to read as follows:

Complete application of the water to the authorized use shall be made by December 31, 2016.

(00000006)

3. The following term shall be added to the Permit:

Permittee shall install and properly maintain a staff gage in Sleepy Hollow Reservoir, satisfactory to the State Water Board, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage readings on or about November 1 and March 31 of each year. Such readings shall be supplied to the State Water Board with the next progress report submitted by Permittee.

The State Water Board may require the release of water that cannot be verified as having been collected to storage prior to October 1 of each year.

(0070047, 0100047)

4. The following term shall be added to the Permit:

For the protection of potential habitat for California red-legged frog (*Rana aurora draytonii*) and to allow for the continued growth of riparian vegetation, Permittee shall:

- a. Maintain, undisturbed, a minimum of a 50 feet wide strip of natural upland vegetation around the water storage reservoir;
- b. Obtain approval of the United States Fish and Wildlife Service-Sacramento Endangered Species Office and the California Department of Fish and Game prior to any future reservoir dredging operations. Permittee shall submit to the Chief of the Division of Water Rights evidence of the above agencies' approval prior to any future reservoir dredging operations; and

- c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during any future dredging operations.

These requirements shall remain in effect as long as water is being diverted by Permittee (or successors-in-interest) under any license issued pursuant to Permit 20636.

(0400205)

5. The following term shall be added to the Permit:

If ground disturbing activities, such as trenching, ripping or vine removal occur in the place of use, a qualified biologist shall conduct protocol level surveys for western burrowing owls (*Athene cunicularia*). If western burrowing owls are detected, mitigation shall follow the guidelines set forth in the California Department of Fish and Game's Staff Report on Burrowing Owl Mitigation (October 1995).

(0400600)

6. The following term shall be added to the Permit:

If ground disturbing activities such as trenching, ripping or vine removal occur in the place of use and if a qualified biologist detects pallid bat (*Antrozous pallidus*) species onsite roosting in rocky outcrops, cliffs, crevices, manmade structures and/or foraging within the project site boundaries, bat roosting areas shall be completely avoided and the United States Fish and Wildlife Service, Sacramento Endangered Species Office shall be contacted for further consultation and conservation requirements.

(0400601)

7. The following term shall be added to the Permit:

Permittee shall maintain riparian setbacks of a minimum of 25 feet from the top of the bank of both sides of the unnamed USGS blue-line stream located south of Lakeville Highway and setbacks of a minimum of 50 feet from the top of the bank on both sides of the unnamed streams located north of Lakeville Highway. No activity shall occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, and irrigation, with the exception of access roads and livestock access, unless the activity is approved in writing by the Chief of the Division of Water Rights.

These requirements shall remain in effect as long as water is being diverted by Permittee (or successors-in-interest) under any license issued pursuant to Permit 20636.

(0400206)

8. The following term shall be added to the Permit:

Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and

structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of 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 Chief of the Division of Water Rights.

(0000215)

9. The following term shall be added to the Permit:

If human remains are encountered, then Permittee shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission 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 Chief of the Division of Water Rights.

(0380500)

10. The following term shall be added to the Permit:

The area that contains the historic-period domestic refuse identified in the Tom Origer & Associates report dated October 2003 may continue to be cultivated with general vineyard maintenance activities. However, no ripping or grading shall be allowed in this area. If this area is ever replanted, the vines must be cut off with the root system remaining in the ground. Replanting of vines shall occur between the old rootstocks. If this is not possible, then techniques for removal of vines in this area shall be restricted to using mechanical non-invasive techniques (i.e., pulling the vines with a chain attached to a backhoe rather than excavation of vines). A qualified archeologist shall monitor these activities. If additional resources are discovered, then the archeologist shall halt work in the area of the find and notify the Chief of the Division of Water Rights. A professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of 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 Chief of the Division of Water Rights.

(0380501)

11. The following term shall be added to the Permit:

Permittee shall submit evidence of compliance with all applicable regulations from the Sonoma County Agricultural Commissioner's Office for the use of soil stabilizers, pesticides, herbicides, and other regulated chemicals on the place of use at the time the project authorized by this permit is inspected for license.

(0490300)

12. The following term shall be added to the Permit:

This permit does not authorize any act, which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this water right, Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

13. All other terms and conditions of Permit 20636 (Application 29698) are still applicable and will be included in the amended permit issued in accordance with this Order.

14. The attached Amended Permit 20636 is issued, superseding former Permit 20636 issued on September 9, 1992.

#### CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2008.

AYE: Vice Chair Gary Wolff, P.E., Ph.D.  
Arthur G. Baggett, Jr.  
Charles R. Hoppin  
Frances Spivy-Weber

NAY: None

ABSENT: Chair Tam M. Doduc

ABSTAIN: None



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Dorothy Rice, Executive Director for  
Jeanine Townsend, Clerk to the Board

Attachment

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2008-0043**

ADOPTION OF THE NEGATIVE DECLARATION FOR APPROVAL OF PETITION FOR  
CHANGE OF PLACE OF USE AND PETITION FOR EXTENSION OF TIME

WHEREAS:

1. The State Water Resources Control Board (State Water Board) is the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in connection with its water right proceeding to consider approving a Petition for Change in Place of Use and a Petition for Extension of Time for water right Permit 20636 (Application 29698).
2. On March 16, 2007, the Division circulated a notice of intent to adopt a Mitigated Negative Declaration for the project, SCH No 2007032089. (Cal. Code Regs., tit. 14, § 15072.)
3. The public review period for the proposed Mitigated Negative Declaration closed on April 16, 2007.
4. No comments were received during the public review process for the proposed Mitigated Negative Declaration.
5. The final Mitigated Negative Declaration has been completed in compliance with CEQA.
6. The Mitigated Negative Declaration reflects the State Water Board's independent judgment. After considering the Mitigated Negative Declaration, the State Water Board hereby determines that the proposed project, with mitigation measures, will not have a significant effect on the environment.

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts the final Mitigated Negative Declaration for Petition for Change in Place of Use and Petition for Extension of Time for water right Permit 20636 (Application 29698).

**CERTIFICATION**

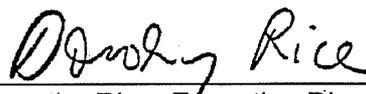
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2008.

AYE: Vice Chair Gary Wolff, P.E., Ph.D.  
Arthur G. Baggett, Jr.  
Charles R. Hoppin  
Frances Spivy-Weber

NAY: None

ABSENT: Chair Tam M. Doduc

ABSTAIN: None



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Dorothy Rice, Executive Director for  
Jeanine Townsend, Clerk to the Board