

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2007-0020-DWR

In the Matter of Permit 19416 (Application 5648C-15)
Chatom Vineyards, Inc.

ORDER DENYING PETITION FOR EXTENSION OF TIME

SOURCE: Indian Creek (subterranean stream) tributary to San Antonio Creek thence South Fork Calaveras River thence Calaveras River

COUNTY: Calaveras County

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 19416 to Chatom Company, Ltd. (Permittee) on February 21, 1985, pursuant to Application 5648C-15, and subsequently assigned the permit to Chatom Vineyards, Inc. (Permittee) on February 5, 1988. The permit authorizes diversion to storage of 14 acre-feet (af) per annum to be collected from November 1 of each year through April 1 of the succeeding year. The combined maximum rate of diversion to offstream storage under this permit and any other permit authorizing diversion by Permittee at the same point of diversion shall not exceed two cubic feet per second. The purposes of use include irrigation and frost protection of 35 acres of vineyard.
2. The permit requires that construction work be completed by December 1, 1987, and that the water be applied to the authorized use by December 1, 1988.
3. Division records show that Permittee has failed to commence or complete construction work and complete application of water to beneficial use within the time provided under the permit. Progress Reports filed by Permittee between 1985 and 1992 (except for 1991) state the reason the water has not been put to full beneficial use is because the reservoir needs to be sealed on the inside face in order to stop the reservoir from leaking. The 1991 Progress Report estimated that 3 af were stored in the reservoir. The Division did not receive the 1994 Progress Report. The 1995 Progress Report filed with the Division showed Permittee irrigated and frost protected 17 acres of vineyard, however no quantity of water was listed. The 1996 Progress Report stated the reservoir was not able to hold water. The Division has not received any Progress Reports since 1996.
4. On December 6, 1988 Permittee requested, and on March 16, 1990 the Division granted, an extension of time to December 31, 1993 to complete application of the water to full beneficial use.
5. The Division has conducted three licensing inspections:

- a. On October 9, 1989 Division staff found the dam and Reservoir 2 complete but the reservoir leaked badly and Permittee sought additional time to attempt to seal it. The pumping plant from Indian Creek was complete and was pumping to offstream storage in Reservoir 1 (5648C-14) but the lift to Reservoir 2 (A5648C-15) was too great and the system needed to be modified. The Division recommended an extension of time. The inspection also stated Permittee originally planned to use Reservoir 1 to serve the eastern portion of the vineyard and Reservoir 2 to serve the western portion, however Reservoir 2 has not held water.
- b. On June 7, 1990, Division staff surveyed Reservoir 2 with the assistance of the Division of Dam Safety (Dam Safety). Reservoir 2 had a 14 af capacity. The reservoir leakage had not been fixed. A Division staff contact report dated July 18, 1991 states that Reservoir 2 has not been repaired due to financial limitations.

During the May 15, 2000 conversation, the Permittee stated Reservoir 2 still leaks but the Permittee wanted to retain Permit 19416. Reservoir 2 currently collects water from an Unnamed Stream. Pumping from Indian Creek to Reservoir 2 has not been completed. The Division's May 19, 2000 letter advised Permittee to either (1) abandon the project and breach the dam, or (2) request an extension of time and submit a petition to change to add a point of diversion on the Unnamed Stream that the reservoir is located on, add the Unnamed Stream as a source and list Reservoir 2 as a point of diversion and rediversion.

- c. On May 26, 2000, Permittee requested a licensing inspection since they were not financially able to pursue filing a change petition.

On July 11, 2000, Division staff conducted a third inspection, and found there were no changes since the first two inspections conducted on October 9, 1989 and June 7, 1990 respectively. The inspection found Reservoir 2 was complete but continued to leak and the approximate 250-foot lift required to get the water to the reservoir from Indian Creek is so great that the pumping plant operation needed modification in order to be used. The Permittee was storing 1.8 acre-feet from the Unnamed Stream and the water was used solely for stockwatering. Division staff recommended that the Permittee file a petition for extension of time and change to: (1) fix reservoir leakage, (2) add the Unnamed Stream as a source, (3) add Reservoir 2 as a point of diversion and rediversion and storage, (4) modify and utilize the Indian Creek to Reservoir 2 diversion, and (5) beneficially use water. Permittee was also advised to file a change petition to increase the place of use from 60 to 80 acres.

6. On April 13, 2001, Permittee filed for a petition for a two-year extension of time within which to complete construction work and apply water to beneficial use. The additional time is required to complete the project due to increased costs relating to the booster pump system needed to fill Reservoir 2. Permittee stated the additional costs involved with the booster pump requirement prohibit immediate installation of the system. On July 15, 2002, the Division notified Permittee additional fees were due on the time extension petition. On May 28, 2004, the Division received the additional fee. The time extension petition has not been publicly noticed. Permittee also filed a Change Petition to add the Unnamed Stream as a point of diversion, add the existing dam as a point of diversion and rediversion, and add stockwatering, wildlife enhancement, and fire protection as purposes of use. Permittee included the required fees. The change petition has not been publicly noticed.
7. 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.

8. Permittee has not shown that due diligence has been exercised. Permittee has stated that lack of finances has precluded them from sealing the leaky reservoir and purchasing the necessary booster pumps to divert water from Indian Creek to Reservoir 2. Before an extension of time can be approved by the State Water Board, it must meet the criteria set forth in the California Code of Regulations, title 23, section 844 that states in part:

An extension of time within which to complete an application, to commence or complete construction work or apply water to beneficial use will be granted only upon such conditions as the board determines to be in the public interest and upon a showing to the board's satisfaction that due diligence has been exercised.... 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...

9. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Reservoir 2 leaks but the Permittee lacks the finances to seal the reservoir and to install the booster pump to divert water from Indian Creek to the reservoir.

On March 20, 2006, Division staff contacted Permittee regarding the two-year extension of time requested in the April 2001 petition to ascertain if the project was complete. Permittee stated the reservoir still leaks badly and monies (\$90,000) are not available to seal it. Permittee verified additional monies are needed to redo the pumping system to pump water from Indian Creek to Reservoir 2. Division staff advised Permittee that lack of finances is not generally accepted as good cause for delay. (Cal. Code of Regs., tit. 23, § 844.)

10. Permittee has not shown that satisfactory progress will be made if a time extension is granted. On March 16, 1990, Permittee was granted a time extension that required the water be put to full beneficial use by December 31, 1993. The Permittee has not completed the project and has not shown any change in circumstances that could facilitate action toward completion of the project. Information provided by the Permittee in March 2006 indicates the reason the reservoir has not been sealed is due to lack of finances and there has been no change in circumstances.
11. Permittee has not shown good cause for the time extension.
12. The Division will process the change petition that describes the project as it is built and currently operated. Since the time extension is denied, the Division will proceed to license Permit 19416 after the change petition is processed.

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NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY DENIES THE PETITION FOR EXTENSION OF TIME.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: May 19, 2007