



State Water Resources Control Board

**PROPOSED
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
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PROJECT TITLE: Marino Water Right Project

APPLICANT: Gerald J. Marino, Joseph C. Nichelini, and Christopher J. Harney
19419 Marna Lane
Sonoma, CA 95476

PROJECT LOCATION:

The 455-acre subject property is located approximately six miles northeast of Angwin in Napa County, California. The location can be found within Township 9N, Range 5W of the "Aetna Springs, California" and "Walter Springs, California" U.S. Geological Survey (USGS) 7.5 minute topographic quadrangles.

PROJECT DESCRIPTION:

Application 30384 proposes the diversion to storage of a total of 245 acre-feet of water per year. The collection season would be from December 15 through March 31 of the following year. Two reservoirs would store the collected water. An existing 46.8 acre-foot capacity onstream reservoir would be increased in capacity to 196 acre-feet. The enlarged reservoir would include the 35 acre-foot capacity licensed pursuant to License 10101 for stockwatering and recreational purposes; no changes in the purposes of use under License 10101 would occur. Diversion to the reservoir would be from Point of Diversion 1 (POD 1) located at the dam of the enlarged reservoir, on an Unnamed Stream tributary to Pope Creek thence Putah Creek at Lake Berryessa thence the Yolo Bypass, as well as from Pope Creek at POD 2.

One offstream reservoir (Reservoir 4) would also be constructed with a 49 acre-foot storage capacity. Water would be diverted to storage in Reservoir 4 from PODs 1 and 2 via proposed pipelines between POD 1 and POD 2 and between POD 1 and the offstream reservoir. Water would be used for purposes of irrigation, frost protection, heat control, recreation, fire protection, and wildlife enhancement for a proposed 305-acre vineyard within a gross of 455 acres.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

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.

WATER RIGHT TERMS:

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), Regional Water Quality Control Board (RWQCB), Point of Diversion (POD), Initial Study/Mitigated Negative Declaration (IS/MND), Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA).

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. If the storage dam will be of a size as to be within the jurisdiction of the Division of Safety of Dams as to safety, construction under this permit shall not be commenced until the Division of Safety of Dams has approved the plans and specifications for the dam.
2. In accordance with the requirements of Water Code section 1393, Permittee shall clear the area covered by the proposed reservoir enlargement of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.
3. In order to minimize potential erosion impacts from construction activities, Best Management Practices (BMPs) for any disturbed areas should be included in any plan to control erosion for the proposed project. At a minimum, BMPs should include, but not be limited to the following measures:
 - a. Vegetation removal shall be limited to the minimum amount necessary to accommodate the proposed project. As the permanent vegetation cover is maturing, temporary vegetation or other erosion control measures sufficient to stabilize the soil shall be established on all disturbed areas. New plantings shall be protected by using such measures as jute netting, straw mulching, and fertilizing;
 - b. Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;
 - c. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and
 - d. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

4. Prior to the start of construction or diversion or use of water under this permit, 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 Division a copy of a waiver from Napa County prior to any project construction activity in the place of use.
5. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state, and local approvals have been obtained.
6. In order to minimize potential air quality impacts, 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:
 - a. 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);
 - b. Exposed stockpiles shall be covered or watered twice daily;
 - c. 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
 - d. Traffic speeds on unpaved access roads shall be limited to 15 miles per hour.
7. Prior to the start of construction, Permittee shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Permittee shall also submit a copy of the plan to BAAQMD. The Emission Control and Mitigation Plan shall be consistent with BAAQMD's Air Quality Guidelines and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. Permittee shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Permittee shall also provide a copy of the evidence to BAAQMD upon request. Evidence may consist of, but is not limited to, photographs and construction records.
8. No work shall commence and no water shall be diverted, stored, or used under this permit until a signed copy of an Air Quality Permit from BAAQMD is filed with the State Water Resources Control Board, Division of Water Rights. Compliance with the terms and conditions of the permit is the responsibility of the Permittee. If an Air Quality Permit is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by BAAQMD.

9. Construction activities within 100 feet of any drainage shall only occur between April 1 and October 15 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources.
10. Permittee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
11. 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 RWQCB, San Francisco Bay Region, or by the State Water Board.
12. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 245 acre-feet per annum to be diverted from December 15 of each year to March 31 of the succeeding year.
13. The total quantity of water diverted under this permit, together with that diverted under the license issued pursuant to Application 20370, shall not exceed 245 acre-feet per annum.
14. Before storing water in the reservoirs, Permittee shall install a staff gage in each reservoir, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoirs. Each 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 December 15 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.

15. Prior to diversion or use of water under this permit, Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights to measure the instantaneous rate and the cumulative amount of water withdrawn from Reservoir 4. The in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these records with annual progress reports, and whenever requested by the Division.
16. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from December 15 through March 31 maintain a minimum bypass of 0.5 cubic foot per second at POD 1 and 45 cubic feet per second at POD 2. Under all bases of right Permittee shall bypass the total streamflow from April 1 through December 14. The total streamflow at the onstream reservoir shall be bypassed whenever it is less than 0.5 cubic feet per second at POD 1.

17. No water shall be diverted under this right unless, within six months of the date of this permit, right holder is monitoring the bypass flows required by this right in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Right holder shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan.
18. 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.
19. Several elderberry shrubs have been observed on the property at separate locations along Pope Creek (see Figure 4 of the IS/MND for the Marino Water Rights Project). Prior to any construction activities in the place of use, Permittee shall consult with USFWS to establish a mitigation plan (Plan) for the elderberry shrubs. Permittee shall submit a plan approved by USFWS to the Deputy Director for Water Rights to protect valley elderberry longhorn beetle (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, 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 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).
20. Within 14 days prior to the onset of construction activities within any and all areas that fall within 100 feet of suitable habitat for California red-legged frog and foothill yellow-legged frog (reservoirs and all drainages, as shown on Figure 4 of the IS/MND for the Marino Water Rights Project), a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist), shall conduct a pre-construction survey for these species. If either of these species is observed within the project site during the pre-construction survey, USFWS and/or DFG must 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 California red-legged frog and/or foothill yellow-legged frog are observed within the project site during the pre-construction survey, construction activities may begin. If construction is delayed or halted for more than 14 days, another pre-construction survey for California red-legged frog and foothill yellow-legged frog shall be conducted.

Prior to the onset of construction activities, the approved biologist shall develop a worker sensitivity training program that addresses all issues associated with the assumed presence of California red-legged frog and foothill yellow-legged frog 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 FESA and/or the CESA, and fully understands the contents of the sensitivity training program. The signed acknowledgments by project personnel for the worker sensitivity training program shall be attached with a report of the pre-construction survey and shall be submitted to USFWS/DFG with a copy to the Division.

21. Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) of at least 50 feet shall be established around any and all suitable California red-legged frog and/or foothill yellow-legged frog habitats within the project site (reservoirs and all drainages). The areas within these avoidance setbacks may not be developed as long as this permit or license remains active unless a formal habitat assessment and protocol determinant-level surveys are conducted for California red-legged frog and a biological opinion from the USFWS has been issued. The Permittee may opt to proceed with a formal habitat assessment and protocol-level determinant surveys for special-status amphibians to avoid implementation of the permanent avoidance setbacks onsite; the results of the assessment and USFWS consultation shall be submitted to the Deputy Director for Water Rights.
22. A biologist whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist) shall conduct a pre-construction survey for Western pond turtles no more than 30 days prior to construction in suitable aquatic habitats within all areas that fall within 100 feet of suitable aquatic habitat for this species as shown in the habitat map (Figure 4 of the IS/MND for the Marino Water Rights Project). A combination of visual and trapping surveys may be performed with authorization from DFG.

If Western pond turtle is found near any proposed construction areas, impacts on individuals and their habitat shall be avoided to the extent feasible. If avoidance of occupied habitat is feasible, an exclusion zone around the habitat shall be established using temporary plastic fencing with "Sensitive Habitat Area" signs posted and clearly visible on the outside of the fence. If avoidance of occupied habitat is not possible, the approved biologist, with approval from DFG, shall capture turtles prior to construction activities and relocate them to nearby, suitable habitat a minimum of 300 feet downstream from the work area. Exclusion fencing should then be installed if feasible to prevent turtles from reentering the work area. For the duration of work in these areas, the approved biologist shall conduct monthly follow-up visits to monitor the effectiveness of exclusionary measures.

Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) shall be established around all suitable Western pond turtle habitats within the project site. These setbacks shall be 100 feet from the perimeter of the enlarged reservoir and the confluence of the Unnamed Stream with the reservoir. The areas within these avoidance setbacks may not be developed as long as water is being diverted/stored under this permit, unless approval from DFG has been issued and submitted to the Deputy Director of Water Rights.

23. Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a Western pond turtle habitat enhancement plan for review and approval of the Deputy Director for Water Rights. The enhancement plan shall include the actions necessary to provide sufficient underwater refugia and basking habitat (e.g., submerged logs, downed trees and large rocks) for Western pond turtles. Permittee shall develop

- the enhancement plan in consultation with DFG. The approved Western pond turtle enhancement plan shall be implemented and Permittee shall provide photographic documentation that the plan has been implemented within one year of enlargement of the reservoir.
24. 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 construction and/or tree removal activities. 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 and the Deputy Director for Water Rights within three days of the find. 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.
 25. 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 & Game Code, §§ 205-2097) 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.
 26. 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 Division. 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 Division a copy of a waiver signed by DFG.
 27. For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall establish minimum 50 foot setbacks from Pope Creek and the three Unnamed Streams on the property tributary to Pope Creek with riparian habitat (Figure 4 of the IS/MND for the Marino Water Rights Project). The setbacks shall be measured from the top of the bank of Pope Creek and the Unnamed Streams. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of access roads and occasional equipment access reasonably necessary for continued operation of the vineyard and management of the setback area. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting

- of native riparian vegetation within the setback area is allowed. These requirements shall remain in effect as long as water is being diverted under this permit.
28. For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall implement a riparian enhancement plan. Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a riparian enhancement plan for review and approval by the Deputy Director for Water Rights. The riparian enhancement plan shall specify: (1) the location of areas to be planted; (2) the number and species of plants to be planted; (3) planting methods; (4) success criteria and monitoring methods; and (5) a description of the actions that will be taken if success criteria are not met. The riparian enhancement plan shall require at least five years of monitoring to ensure identified success criteria are met. The riparian enhancement plan shall be implemented within two years of approval of the plan.
 29. For the protection of wetlands, Permittee shall establish minimum 50 foot setbacks within the places of use from the edge of any wetland (Figure 4 of the IS/MND for the Marino Water Rights Project); these setbacks shall be mapped by a qualified biologist acceptable to the Deputy Director for Water Rights (qualified biologist) and approved by the Deputy Director for Water Rights prior to the start of construction or diversion of water under this permit. The 50 foot setback area shall be flagged by a qualified biologist prior to the start of construction activities. No ground disturbing activities shall occur within the setback 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.
 30. For the mitigation of disturbed wetlands, mitigation shall be conducted in accordance with the provisions in a Mitigation and Monitoring Plan that shall be prepared for USACE in association with the 404 Permit Application process. Prior to licensing of this permit, Permittee shall submit evidence to the Deputy Director for Water Rights indicating that mitigation was completed in accordance with a USACE-approved mitigation plan. Evidence shall include confirmation by the USACE or submittal of a monitoring report verifying that required mitigation was completed.
 31. Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain the appropriate permit from USACE and file a copy with the Division of Water Rights. If a permit from USACE is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights with a letter from USACE affirming that a permit is not needed.
 32. Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Board or the San Francisco Bay RWQCB.
 33. Prior to the onset of construction activities, a formal arborist survey shall be conducted by a certified arborist or registered forester. Appropriate data (e.g., position, height, drip-line radius, diameter-at-breast-height (DBH), general health, etc.) shall be collected by the arborist for any potentially impacted trees and the data shall be submitted to Napa County and the Deputy Director for Water Rights prior to the onset of construction activities or diversion of water under this permit.

34. 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 minimum 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.

Proposed replacement trees shall be planted with 35 feet of separation between trunks. Permittee shall provide a map showing the location of each replacement planting within one year of the date of permit issuance and provide updates to the map with subsequent monitoring reports if changes occur.

Replacement tree plantings for the mitigation area shall be obtained from a combination of nursery stock grown on site, direct planting in proposed mitigation area from acorns and seeds collected on site, and/or trees obtained from a local native plant nursery or supplier. Any trees obtained from nurseries or suppliers shall consist of propagules derived from locally collected stock (native of Napa County) having a similar genetic origin to indigenous species on site. Permittee shall provide a written statement within one year of permit issuance disclosing the origin of each of the replacement plantings and updates to the written statement with subsequent monitoring reports if failed plantings are replaced or relocated.

Permittee shall provide photographic evidence to document the tree replacement plantings within one year of the date of permit issuance and update photographs with subsequent reports if failed plantings are replaced or relocated.

Any diversion of water pursuant to this permit is unauthorized if survival of replacement tree plantings falls below 80%. Permittee shall maintain replacement plantings such that survival rate of trees is not less than the identified thresholds. Survival rate shall be documented and submitted by Permittee annually.

Annual monitoring reports shall be prepared by a biologist or certified arborist whose qualifications are acceptable to the Deputy Director for Water Rights. The initial monitoring report shall be submitted to the Deputy Director for Water Rights within one year of the date of permit issuance.

The initial monitoring report shall include documentation of:

- planting locations (map);
- species of each planting;
- size of each tree at planting (height and diameter at breast height (dbh), if applicable);
- statement identifying the origin of each replacement tree; and
- photographic evidence documenting planted replacement trees.

Subsequent annual reports shall be submitted annually to the Deputy Director for Water Rights and shall include documentation of:

- size of each tree (height and dbh if applicable);
- age of each tree;
- health status of each tree;
- photographic evidence documenting progress of replacement trees; and
- locations (updated map), initial size measurement (height and dbh), photographic evidence and statement of origin for new plantings, if necessary to replace failed plantings.

These reports shall be filed annually for a minimum of five years or until at least 80% of replacement plantings has survived five years. At the time this success rate has been obtained, a final report shall be filed that provides written and photographic documentation of the following:

- location of each tree;
- size of each tree (height and dbh); and
- age of each tree.

Permittee shall refrain from any activities which may impact the replacement plantings including but not limited to development and timber harvesting in the replanting area.

The requirements of this term may be modified based on Napa County oak tree mitigation requirements and if modifications are first approved by the Deputy Director for Water Rights prior to implementation of the plan.

35. To protect oak trees intended to remain undisturbed from project-related disturbance, construction fencing shall be installed outside the drip lines of oak trees within 100 feet 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 shall 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 Division within 180 days of project construction.

36. The six locations designated as cultural sites identified by Tom Origer and Associates in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384" dated October 2006 shall be avoided during project construction, development, and operation. The sites shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use). If future project-related

activities or developments at the locations are unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the staff of the Division of Water Rights shall determine the significance of the sites. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Permittee shall be responsible for all costs associated with the cultural resource related work.

37. 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.
38. 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.
39. If current project design plans change to include any additional acreage or ground disturbing activities outside of the areas surveyed by Origer and Associates as identified in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384" dated October 2006, a cultural resources study shall be conducted of these areas. A report of findings shall be submitted to the Deputy Director for Water Rights for approval prior to construction of the project or diversion of water under this permit.

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