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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21308

Application 30322 of

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

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with California Water Code (Water Code) section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2012-0029.)

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Therefore, **Application 30322** filed on **December 17, 1993** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: **Unnamed Stream**

Tributary to: **Pope Creek**

within the County of **Napa**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,002,091 feet and East 6,433,758 feet	**NE ¼ of SE ¼**	**6**	**9N**	**5W**	**MD**

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation						
Frost Protection						
Heat Control						
Domestic						
Stockwatering						
Recreation						
Fire Protection						
	SE ¼ of NE ¼	**6**	**9N**	**5W**	**MD**	**2**
	NE ¼ of SE ¼	**6**	**9N**	**5W**	**MD**	**13**
	SW ¼ of NW ¼	**5**	**9N**	**5W**	**MD**	**11**
	NW ¼ of SW ¼	**5**	**9N**	**5W**	**MD**	**24**
Total						**50**

The place of use is shown on map filed with the State Water Board.

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).

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **49 acre-feet per annum** to be collected from **November 1 to April 30 of each year**.
(0000005C)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)

7. 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**.
(0000005M)

8. The capacity of the reservoir covered under this permit shall not exceed **49 acre-feet**.
(0000005N)

9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2022**.
(0000009)

10. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence

shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

11. Prior to storage of any water under this permit, 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.

(0070047)

12. 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 gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.

c) A time schedule for the installation 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.

The permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan. The monitoring data shall be maintained by the permittee for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request.

Any non-compliance with the terms of the permit shall be reported by the permittee promptly to the Deputy Director for Water Rights. Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

13. Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.

2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.

3) Within one year of the construction of the reservoir covered by this permit, 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 watermaster and the State Water Board.

4) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the State Water Board, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the permittee.

5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.

6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.

7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.

8) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:

   a. All amounts directly diverted and/or diverted to storage by holders of Post- Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.

   b. All amounts directly diverted and/or diverted to storage by holders of Post- Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.

   c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.

9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit. Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.

12) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this Permit is 49 acre-feet per annum, the total average annual depletion assigned to the project, which includes depletion under Application 30323, is 72.5 acre-feet per annum as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

14. The State Water Board shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(0000012)
(0220087)

15. 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.

(0000100)

16. 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.

(0000208)

17. 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 cubic feet per second** 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 cubic feet per second** at the point of diversion.

(0140060M)

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

(0000203)

19. 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.

(0450300)

20. 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.

(0450300)

21. 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.

(0450300)

22. 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.

(0450300)

23. 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.

(0490500)

24. 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:

a. Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;

b. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and

c. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

(0120500)

25. 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:

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.

(0490500)

26. 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.

(0400500)

27. 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.

(0400500)

28. 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.

(0400500)

29. 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.

(0400500)

30. 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.

(0400500)

31. 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.

(0400500)

32. 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).

(0400500)

33. 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.

(0400500)

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 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).

(0400500)

35. 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.

(0380500)

36. 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.

(0380500)

37. Storage of water under this permit shall not begin until the County Engineer, the United States Soil Conservation Service, or a civil engineer registered by the State of California has approved the plans and specifications for the dam, or has otherwise certified as to the safety of the dam, and any modification, reconstruction, or enlargement of the dam is under the direction of said party.

(000000K1)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.

(0000010)

C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

D. Pursuant to Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in

accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

F. This permit does not authorize any act which results in the taking of a threatened or endangered 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 sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 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.

(0000014)

G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between DFG and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by DFG.

(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

Phillip Crader FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: NOV 26 2012