

**STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS**

**DIVISION DECISION 2005-01**

**MICHAEL B. AND LORENE KUIMELIS  
APPLICATION 30933**

**November 2, 2005**

## **DIVISION OF WATER RIGHTS DECISION 2005-**

### **MICHAEL B. AND LORENE KUIMELIS APPLICATION 30933**

#### **1.0 INTRODUCTION AND OVERVIEW**

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has reviewed the water right application of Michael B. and Lorene Kuimelis (applicants) to divert 20 acre-feet (af) of water to storage each year for irrigation, fire protection, and recreation purposes. The applicants intend to divert the water from an unnamed stream tributary to Mill Creek, located in the Russian River watershed in Sonoma County. The applicants' project is located in the north-central portion of Sonoma County, approximately two miles southwest of Healdsburg, California.

This Division decision is based on a review of all available information, including an evaluation of the hydrologic characteristics of the unnamed stream and the availability of water to serve the proposed project, the beneficial uses of the proposed water diversion, the protestants' claims, and the potential impacts on prior water rights and public trust resources. The Division concludes that a water right permit should be issued, subject to the terms and conditions contained in the Order portion of this decision.

Prior to adopting this decision, the Division adopted a Mitigated Negative Declaration. The mitigation terms will be incorporated into the water right permit for this project and are also contained in the Order portion of this decision.

#### **2.0 BACKGROUND**

#### **2.1 APPLICATION AND PROJECT DESCRIPTION**

On September 17, 1999, the applicants filed water right Application 30933 with the Division. The applicants seek to divert a total of 20 acre-feet per annum (afa) of water to storage in an onstream reservoir constructed in the fall of 2002. The applicants state in their application that the earthen dam that forms the reservoir is 22 feet high and 300 feet long. The surface area of

the reservoir is approximately one acre when full. Water collected to storage under this application will be used for irrigation, fire protection, and for recreation at the reservoir. The place of use (POU) for irrigation consists of 25 acres of vineyard, 10 acres of which have been planted. Water will be diverted from December 15 through March 31 from an unnamed stream tributary to Mill Creek thence Dry Creek thence the Russian River. All conveyance lines from the point of diversion (POD) to the POU will be routed underground. The reservoir is partially located on the property of an adjoining landowner. However, the adjoining landowner will not be using water from the reservoir. A condition will be included in the permit that states the permit shall not be construed as conferring upon the permittee a right to encroach upon neighboring property and that such encroachment shall require authorization from the neighboring landowner.

## 2.2 NOTICE AND SUMMARY OF PROTESTS

On February 25, 2000, the Division issued a notice of Application 30933 in accordance with Water Code sections 1300 through 1304. The Division received the following protests:

Protestant	Basis of Protest
U. S. Fish and Wildlife Service	Environmental Issues
National Marine Fisheries Service	Environmental Issues
Sonoma County Water Agency	Injury to Prior Rights
Kurt and Lea Gilg	Injury to Prior Rights and Environmental Issues
Trout Unlimited of California	Environmental Issues and Other Issues

### 2.2.1 U. S. FISH AND WILDLIFE SERVICE

U. S. Fish and Wildlife Service (USFWS) stated in its protest its concern regarding the possible presence and take of freshwater shrimp (*Syncaris pacifica*), which is protected under the Endangered Species Act of 1973 as amended (ESA). USFWS withdrew its protest by letter dated August 12, 2002 after determining that freshwater shrimp did not appear to be in the project area, according to surveys performed.

### 2.2.2 NATIONAL MARINE FISHERIES SERVICE

National Marine Fisheries Service (NOAA Fisheries) stated in its protest its concern that the proposed project may endanger the populations of coho salmon (*Oncorhynchus kisutch*) and steelhead trout (*Oncorhynchus mykiss*), which are both listed as threatened species under section 9 of the ESA. In an undated letter received by the Division on October 2, 2000, NOAA Fisheries proposed the following conditions for dismissal of its protest:

1. The Division must concur with the accuracy and adequacy of the applicants' consultant's data and assumptions applied in the consultant's cumulative impact analysis.

2. The permit must limit the amount to be diverted to 20 afa.
3. The permit must provide a minimum bypass flow of inflow or the estimated long-term February median flow (whichever is less) throughout the year.

With regard to condition 1, the Division sent a letter dated February 21, 2002 to applicants' consultant stating that Division staff concurred with the findings of the water availability analysis (Cumulative Streamflow Impact Analysis, September 6, 2001). By letter dated February 1, 2001, applicants' representative agreed to condition 2 and 3. NOAA Fisheries' conditions for dismissal of its protest have been met, and its protest is therefore dismissed.

### **2.2.3 SONOMA COUNTY WATER AGENCY**

Sonoma County Water Agency (SCWA) is required by its Permits 12947A, 12949, 12950 and 16596 (Applications 12919A 15736, 15737 and 19351, respectively), to maintain minimum instream flows in Dry Creek using releases from Lake Sonoma and natural accretions between Lake Sonoma and the confluence of Dry Creek with the Russian River. SCWA is also required to maintain minimum stream flows in the Russian River at a point downstream of its confluence with Dry Creek. SCWA is concerned that a permit issued for Application 30933 could reduce the amount of natural accretions to Dry Creek, and thereby require the Agency to make higher releases from Lake Sonoma than would otherwise be required in order to maintain these minimum instream flow requirements. SCWA agreed to dismiss its protest on the condition that standard State Water Board Terms 80(a) and 90(a) be included in the permit as follows:

Term 80(a). The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

Term 90(a). This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

The applicants agreed to the above terms by letter dated April 17, 2000, and the Division dismissed SCWA's protest.

### **2.2.4 KURT AND LEA GILG**

Kurt and Lea Gilg divert water under Small Domestic Use Registration No. 390 (A030758R) approximately 300 feet downstream from the applicants' proposed dam and reservoir.

Protestants Gilg are concerned that the proposed project would cut off the natural stream flow into their reservoir. In addition, the Gilgs are concerned about possible degradation of water quality downstream from the project site during the first years after construction due to the removal of natural vegetation. The applicants and the Gilgs negotiated dismissal of the protest, agreeing that the following terms be included in any permit issued on Application 30933:

- a. This permit is specifically subject to the prior rights of Kurt and Lea Gilg, or assigns, under appropriation issued pursuant to Small Domestic Registration Certificate R390 (Application 30758R).
- b. Permittee shall maintain a pump station at the reservoir for irrigation in order that water entering the reservoir that is not authorized for appropriation under this permit can be released. The release facility and method of operation shall be satisfactory to the State Water Board.
- c. Whenever the prior storage rights of Kurt and Lea Gilg, or assigns, under Small Domestic Registration R390 issued pursuant to Application 30758R, are not satisfied by April 15 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights.
- d. Water release prior to April 15 will be required if the water level in Kurt and Lea Gilg's reservoir decreases to a point where the health of the reservoir, in particular the survival of the fish population, may be potentially threatened.
- e. Permittee shall notify Kurt and Lea Gilg, or assigns, at least 24 hours in advance of any releases.
- f. The use of gasoline-powered watercraft on the reservoir and the use of gasoline or diesel powered equipment for operation of pumps or other equipment is not allowed. Kurt and Lea Gilg, or assigns, will not unreasonably discourage or hinder the installation and extension of electrical transmission lines to operate pumping or other equipment. If permittee elects to extend the transmission line from a power pole located on the Gilg property, the transmission line will be placed underground.
- g. Permittee shall limit any construction work for the dam and reservoir to daylight hours and shall make all reasonable efforts to suppress dust during construction. If the dam and reservoir are constructed by an outside contractor, permittee shall include provisions for dust control in the construction contract.

State Water Board standard term 43B (see Condition 5 on Page 9) is similar to Condition b. above and will replace Condition b. in the permit for Application 30933. Conditions d., f., and g. above are not conditions on the diversion or use of water and,

therefore, will not be included in the permit. However, Conditions d., f., and g. remain part of the private agreement between the applicants and the Gilgs.

### 2.2.5 TROUT UNLIMITED OF CALIFORNIA

Trout Unlimited of California (TUC) states in its protest that the Public Trust Doctrine requires sufficient water flows to be left in the streams to protect the fishery and its habitat and that State law requires protection of all beneficial uses. TUC requests that the State Water Board prepare an Environmental Impact Report for the project. The parties were unable to resolve this protest; therefore, the Division scheduled a field investigation to address the issues raised by TUC.

### 2.3 FIELD INVESTIGATION AND STAFF ANALYSIS

On March 5, 2003, the Division issued a Notice of Field Investigation for Application 30933 to the interested parties. The notice informed TUC, the sole remaining protestant, that it would be asked to provide information demonstrating that approval of the project would cause specific injury to the environment or public trust resources. The notice also informed TUC that it should submit written data to support its position and propose terms to resolve protest issues. The following parties participated in the March 28, 2003 field investigation:

Michael Kuimelis	Applicant
Nicholas Bonsignore	Applicants' Representative
John Goin	Applicants' Representative
Stan Griffin	Representing Protestant Trout Unlimited of California
MaryLisa Lynch	Representing Division of Water Rights, State Water Board
Steven Herrera	Representing Division of Water Rights, State Water Board

Division staff conducted the field investigation in accordance with Water Code sections 1345 through 1348. A report dated March 28, 2003, describing the field investigation is included in the application file.

### 3.0 ISSUES

The two main issues discussed during the field investigation were the bypass requirements and water availability during the proposed season of diversion. Mr. Griffin stated that he thought the project was feasible. The proposed minimum bypass of 0.09 cubic foot per second (cfs) was determined by the applicants' consultant and provided to the Division in the consultant's Cumulative Streamflow Impact Analysis dated September 6, 2001. The proposed bypass is based on the February median flow as recommended in the draft *Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams* (Guidelines) prepared by California Department of Fish and Game and NOAA Fisheries. The consultant established the February median flow by comparing the drainage area above the project to Pena Creek, a gaged stream of similar characteristics. TUC had estimated a bypass of 0.12 cfs for the project, but Mr. Griffin was not concerned about the slight discrepancy. He was, however, concerned about how the applicants were going to comply

with the bypass requirement and asked if TUC could review the design criteria for the bypass structure. Division staff stated that any permit issued would include a term requiring that the bypass facility design be approved by the Chief of the Division and would also include a compliance plan requirement.

With regard to the diversion season, TUC had proposed that the diversion season not commence until January 15. TUC asserted in letters dated May 13, 2002 and October 4, 2002 that diversion of water between December 15 and January 15 would capture the first large storm event in some years to the disadvantage of anadromous fisheries. By letter dated June 24, 2002, the Division requested additional information from TUC to substantiate its allegation. In correspondence dated August 7, 2002, TUC provided a limited response to the Division's request. TUC stated:

...Additional information indicating that diversion to storage from December 15 to January 15 would capture the first large storm events in some years can be found on the Internet. For example, the California Department of Water Resources, California Data Exchange Center (CDEC) Precipitation Records indicate that for December 2000 rainfall near Healdsburg, California totaled 0.99 inches, and in December 2001 [totaled] 1.12 inches. In January and February of each of those years, rainfall totaled 8.41 and 16.13 inches and 7.43 and 9.91 inches respectively. Capturing early rain events, or appreciably decreasing flow from such events, will produce fish migration impacts and other impacts as well.

...

Although TUC provided partial rainfall data for two water years, it did not demonstrate how the data supported its allegation that the proposed project, with a season of diversion that begins December 15, would be disadvantageous to anadromous fisheries. The Cumulative Streamflow Impact Analysis prepared by the applicants' consultant and approved by Division staff analyzes a 12-year period of streamflow data from October 1978 through September 1990 for Pena Creek. This data was then adjusted for differences in drainage area and mean annual precipitation between Pena Creek and Mill Creek watersheds. The consultant's analysis of historical rainfall data from the Healdsburg precipitation station showed that average precipitation during the 12-year period (42.92 inches per year) closely approximates the long-term average precipitation for the years 1932 to 1998 (41.9 inches per year), and suggests that stream discharge during the period of record for the Pena Creek gaging station closely approximates the long-term average discharge. The extended record provides a more reliable basis for analysis than the two-year period provided by TUC.

TUC argues that diverting water to storage from December 15 to January 15 would capture the first large storm event in some years to the disadvantage of anadromous fisheries. According to the precipitation data reviewed by applicant's consultant that included Water Years 1979 to 1990 and Water Years 2000 and 2001, 12 of the 14 years (excepting Water Years 1979 and 1987) had a large storm event prior to December 15. Division staff independently reviewed available records of daily precipitation near the city of Healdsburg for Water Years 1978 to 2001. During this period, 21 of the 24 years (excepting Water Years 1979, 1987, and 1990), or 88 percent of

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<sup>1</sup> Division staff's review of the CDEC Precipitation Records, to which TUC refers, found 0.99 inches for December 1999 and 1.12 inches for December 2000.

the years, had a large storm event prior to December 15. Additional information on this subject is contained in the *Staff Report, Russian River Watershed* (August 15, 1997) prepared by the Division. Paragraph 4.4.1 on page 27 states, "...in 90 percent of all years of record, substantial precipitation and pulse flows occur by mid-December."

Staff further reviewed the precipitation data specifically for the period of December 15 to January 15 for the years 1979, 1987, and 1997 or the 12 percent of the years analyzed when large storm events did not occur before December 15. Staff then adjusted flow data from Pena Creek based on the precipitation and drainage area in the project watershed to determine the effect on streamflow of late arriving large storm events. It is reasonable to conclude that in some of the years when large storm events do not occur before December 15, it is possible that the December hydrograph at the confluence of Mill Creek and the unnamed stream could be impaired. However, there is no evidence in the record regarding the effect this impairment may have on fish, and TUC did not provide an analysis to support its allegation. The project will be conditioned by the recommendations established in the *Guidelines* prepared by California Department of Fish and Game and NOAA Fisheries. The *Guidelines* specify a season of December 15 through March 31, to which the application conforms. They also require a bypass of the February median flow or, in this case, 0.09 cfs. This bypass requirement will prevent the permittee from collecting water to storage until more than 0.09 cfs is flowing at the point of diversion. TUC has provided no evidence to refute the recommendations of the *Guidelines* for this project.

Notwithstanding the above-referenced correspondence received from TUC, after discussing the diversion season at the field investigation, Mr. Griffin stated that he believed the 0.09 cfs bypass would resolve TUC's concern. Mr. Griffin did not provide any additional information at the field investigation, although he did indicate agreement with the 0.09 cfs bypass amount and the season of diversion from December 15 through March 15. He indicated that upon advice of legal counsel TUC was not willing to dismiss its protest at that time.

It is important to note that according to the above-mentioned Cumulative Streamflow Impact Analysis, the total combined seasonal diversion amount for all diverters of record above the confluence of Mill Creek with the unnamed stream on which the applicants' project is located is 167 acre-feet. This amount represents approximately 0.8 percent of the estimated average seasonal runoff of 21,000 af for Mill Creek at the confluence with the unnamed stream. Therefore, the impact of the December 15 through January 15 period for this project or cumulatively does not have the ability to cause a significant impact on the seasonal hydrograph for the Mill Creek watershed.

Based on the information available, the Division concludes that a bypass of 0.09 cfs is sufficient for the protection of coho salmon and steelhead trout. The Division further concludes that while the permittee's project may infrequently impair December 15 to January 15 flows, there is no evidence to imply that such impairment will adversely affect anadromous fish. Therefore, TUC's protest is dismissed.



#### 4.0 WATER AVAILABILITY

To issue a water right permit, the Division must find that unappropriated water is available to supply the applicants. [Wat. Code §1375(d).] Unappropriated water is available if the water is neither appropriated by a senior appropriator, diverted for riparian use (Wat.Code § 1202), nor needed for public trust resources, including fish, wildlife, and other instream beneficial uses of the water. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419, 426 [189 Cal. Rptr. 346, 349].)

Division staff reviewed and concurred with the Cumulative Streamflow Impact Analysis contained in the Initial Study (Appendix A) prepared by Jones & Stokes for Application 30933. The methodology used for the analysis is contained in the *Guidelines*. Appendix A analyzes the cumulative impact of the proposed diversion on the hydrology of Mill and Dry Creeks. Seasonal runoff for the Mill Creek watershed was estimated by adjusting historical U. S. Geological Survey gaged data for nearby Pena Creek for differences in drainage area and mean annual precipitation between the two watersheds. The analysis concludes that the proposed project has the calculated potential to remove approximately 0.8 percent of the estimated seasonal runoff in Mill Creek at its confluence with the unnamed stream from which the proposed diversion will occur. This project, along with all other known projects in the Mill Creek watershed, has the potential to remove 1.03 percent of the estimated seasonal runoff for Mill Creek calculated at its confluence with Dry Creek. Flows in Dry Creek are controlled by releases from Warm Springs Dam located upstream of this confluence; therefore, the proposed diversion will have no discernable effect on the long-term flows in Dry Creek.

As recommended in the *Guidelines*, the proposed minimum bypass flow for the protection of fish is based on the February median flow. The February median flow at the point of diversion was estimated at 0.09 cfs by adjusting the February median flow for the Pena Creek gage for differences in drainage area and mean annual precipitation between the gaged watershed and the watershed above the proposed point of diversion.

#### 5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

In general, California Environmental Quality Act (CEQA) applies to discretionary projects that public agencies approve or propose to be carried out. [Pub. Resources Code §21080(a).] The applicants' project is a discretionary project as defined in CEQA. (Pub. Resources Code §21065; Cal. Code Regs., tit. 14 §15357.) Therefore, CEQA applies to the Division's action on Application 30933. The State Water Board is the lead agency (Pub. Resources Code §§21067, 21090.1, 21165; Cal. Code Regs., tit. 14 §15050.) As lead agency, Division staff reviewed and edited the Initial Study prepared by Jones & Stokes for Application 30933, and approved a proposed Negative Declaration. Following are the identified potential significant impacts and mitigation measures:

1. **Potential damage to the reservoir and vineyard due to the presence of soils subject to landslides and expansion.** The Division will include a term in the permit requiring

preparation of a site-specific geology report for the presence of unstable soils. The term will require that mitigation measures described in the report be implemented during vineyard and reservoir construction.

2. **Potential soil erosion during construction and operation of the reservoir and vineyard.** The Division will include a term in the permit requiring an Erosion Control and Revegetation Plan and implementation schedule.
3. **Potential reduction in water quality during construction of the reservoir and installation and operation of the vineyard.** The Division will include a term in the permit requiring the permittee to obtain all required state and local agency permits prior to construction and diversion of water.
4. **Potential reduction in the available aquatic habitat or riparian habitat for native species of plants and animals.** The Division will include a term in the permit requiring the permittee to establish a setback area from the stream where no construction or operation activity will occur. In addition, permittee shall properly install and maintain an in-line flow meter capable of measuring the cumulative amount of water diverted for use under the permit. Permittee shall during the period of December 15 through March 31, bypass a minimum of 0.09 cfs, or the total streamflow, whichever is less, for the protection of fish and wildlife.
5. **Potential cumulative effect on anadromous fish in Mill Creek and the unnamed tributary to Mill Creek from water diversion.** The Division reviewed the analysis of cumulative impacts prepared by the applicant's consultant and found that the project will have a less-than-significant cumulative effect on anadromous fish in the Mill Creek watershed.
6. **Potential disturbance of a wetland from the installation of the vineyard.** The Division will include a term in the permit that prohibits disturbance of the wetland by the permittee throughout the life of the project.
7. **Potential disturbance of the unnamed stream tributary to Mill Creek from construction of the reservoir and dam and water diversion.** The Division will include a term in the permit requiring the permittee to file with the Division a copy of a stream alteration agreement between the California Department of Fish and Game and the permittee. The Division will also include a term in the permit that states the 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 or the federal Endangered Species Act.
8. The Division will include a term in the permit to address the possibility of uncovering buried archeological deposits. The term directs the permittee to cease project activities within 100 feet of any find that should occur and to notify the Chief of the Division of Water Rights. The applicant shall then be required to retain a professional archeologist to evaluate the find and recommend appropriate mitigation.

The applicants agreed to incorporate these mitigation measures in the Initial Study and the proposed Mitigated Negative Declaration before the documents were released for public review. On April 8, 2002, Division staff circulated the proposed Mitigated Negative Declaration and Initial Study for public review and comment. Comments were received from TUC and the North Coast Regional Water Quality Control Board. The Division considered the comments and, based on the whole record, finds that the mitigation measures contained in the Mitigated Negative Declaration will adequately reduce potential environmental effects to less-than-significant levels. Prior to adopting this Decision the State Water Board approved the Mitigated Negative Declaration. The conditions contained in the Mitigated Negative Declaration will be incorporated, substantially as written, into the permit issued pursuant to this decision. The State Water Board will subsequently submit the Mitigated Negative Declaration and Notice of Determination to the State Office of Planning and Research.

## 6.0 CONCLUSIONS

As stated in Section 3.0 above, TUC submitted no written data to support its position and no terms to resolve its protest. Based on the information in the file and that collected at the March 28, 2003 field investigation, the Division concludes that there is unappropriated water available for appropriation under Application 30933, the use proposed in the application is beneficial and in the public interest, and that the application should be approved subject to the terms and conditions specified in the Order below.

## ORDER

**IT IS HEREBY ORDERED** that Application 30933 is approved, and a permit shall be issued subject to prior rights and subject to Standard Permit Terms 6 and 9 through 14.<sup>2</sup> In addition, the permit shall be subject to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 20 afa to be collected from December 15 of each year to March 31 of the succeeding year.
2. 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.
3. The capacity of the reservoir covered by this permit (Application 30933) shall not exceed 20 af.
4. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2015.

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<sup>2</sup> The State Water Board maintains a list of Standard Permit Terms that may be obtained upon request.

5. 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 Division Chief so that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe, or alternative facility, to the Division Chief for approval. 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.
6. For the protection of fish and wildlife, permittee shall during the period of December 15 through March 31, bypass a minimum of 0.09 cfs as measured directly below the point of diversion. The total stream flow immediately upstream of the point of diversion shall be bypassed whenever the stream flow is less than 0.09 cfs.
7. Within six months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. An acceptable Compliance Plan must 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 or until the permittee is issued a water right license for this project, whichever is later. The permittee shall provide the monitoring data to the Division Chief upon request.

Any non-compliance with the terms of the permit shall be reported by the permittee promptly to the Division Chief.

If the Division Chief determines the Compliance Plan is not acceptable, the permittee shall resubmit the Compliance Plan, with the deficiencies identified by the Division Chief corrected, within 60 days of notification by the Division Chief that the plan is not accepted.

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.

8. If the bypass facilities constructed under this permit are rendered inoperable for any reason, the diversion of water under this permit shall cease until such time as the bypass facilities are operable.
9. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.
10. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.
11. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit.

Based on the information in the Division of Water Rights' files, riparian water has not been used on the place of use. Therefore, consistent with this term, permittee may not divert any water under basis of riparian right for use on the place of use authorized by this permit unless diversions under this permit are reduced so that the total amount of water diverted under this permit in combination with any claimed riparian right is less than 20 afa.

With the Chief of the Division of Water Rights' approval, information on the amount of water historically used under claim of riparian right may be updated, and permittee may use water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Division Chief quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Division Chief may approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.

12. Prior to the consumptive use of water under this permit, permittee shall properly install and maintain an in-line flow meter(s) capable of measuring the cumulative amount of water diverted for use under this permit. The metering device(s) shall be installed between the reservoir and the place of use or any intervening diversion works or conveyance system, including, but not limited to, storage tanks and groundwater well pumping systems. Permittee shall maintain a record of the end-of-the-month meter readings. Permittee shall make these monthly records available to, or submit them whenever requested by, the Division.
13. An Erosion Control and Revegetation Plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Division Chief, prior to starting construction of the reservoir and vineyard associated with this permit. The Plan shall comply with the Sonoma County Vineyard Erosion and Sediment Control Ordinance in place at the time of the reservoir construction. The Plan will prescribe pollution prevention measures for the project and identify persons responsible for the implementation and maintenance of the measures. Pollution prevention measures will include measures for erosion control during and after construction (i.e., temporary and permanent seeding, water bars, vineyard terracing, reservoir outlet stabilization, etc.), sediment control (i.e., temporary sediment traps, straw roll sediment barriers, etc.), and spill prevention and response measures for hazardous materials used during construction. The Plan shall include an inventory of the trees to be removed, identification of the proposed planting site(s), species to be planted, and how they will be protected and maintained in perpetuity. Plants used for revegetation shall be native to Sonoma County. Before storing water in the reservoir, permittee shall furnish evidence to the Division Chief that substantiates that the Plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.
14. This permit is specifically subject to the prior rights of Kurt and Lea Gilg, or assigns, under appropriation issued pursuant to Small Domestic Registration Certificate R390 (Application D30758R).
15. Whenever the prior storage rights of Kurt and Lea Gilg, or assigns, under Small Domestic Registration R390 issued pursuant to Application D30758R, are not satisfied by April 15 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights.
16. Permittee shall notify Kurt and Lea Gilg, or assigns, at least 24 hours in advance of any releases from storage.
17. Permittee shall install and properly maintain a staff gage in the reservoir, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on a monthly basis and on December 14 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee. The

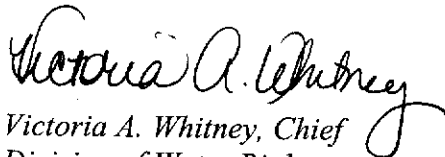
State Water Resources Control Board may require the release of water that cannot be verified as having been collected to storage prior to October 1 of each year.

18. A site-specific geologic investigation shall be performed for the reservoir site and proposed vineyard for the presence of unstable soils as per Sonoma County Policy PS-1f. The investigation report shall describe the investigation performed, any geologic hazards and include mitigation measures necessary to reduce risks to acceptable levels. These measures shall be implemented during vineyard and reservoir construction. A copy of the report approved by Sonoma County shall be submitted to the Division Chief before a license pursuant to this permit is issued.
19. Prior to construction of the reservoir at POD No.1, the permittee will consult with the appropriate Regional Water Quality Control Board. If required by the Regional Board, the permittee will comply with requirements of the NPDES Stormwater Discharge Permitting Program.
20. 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 waters of the State. When construction operations are completed, any excess materials or debris shall be removed from the work area.
21. For the protection of riparian habitat, permittee will establish a setback of either 50 feet or the distance specified in Sonoma County Code, Chapter 30, Article V, Section 26-66-030, whichever is greater. This minimum setback is based on the assumption that Sonoma County will consider the 25-acre vineyard project to be irrigated with water diverted under this permit a Level II or III authorized vineyard planting. The stream setback shall be measured from the top of the bank on both sides of the stream. No activity shall occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, and irrigation. Access roads are excepted from this prohibition.
22. Prior to construction or grading activities designated in this permit, the wetland identified during biological resources surveys for this project shall be staked and flagged by a qualified biologist, and a buffer zone that extends no less than 25 feet beyond the defined wetland boundary shall be established. No trenching, cultivation, or other disturbance shall take place within the preserved wetland area and buffer zone.
23. 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 Division Chief shall be notified of the discovery, and a professional archeologist shall be retained by the permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Division Chief 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 Division Chief.

24. The permittee shall obtain all necessary state and local agency permits and approvals required by other agencies prior to project construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Division Chief.
25. This permit shall not be construed as conferring upon the permittee a right to encroach upon neighboring property with waters or other features of the reservoir identified in this permit. Such encroachment shall require authorization from the neighboring property owner.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: **NOV 02 2005**