

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

WR ORDER 2001-20 DWR

IN THE MATTER OF PERMIT 20971 (APPLICATION 30396)
TEMPORARY URGENCY CHANGE IN THE PLACE OF USE
UNDER ROBERT AND BETTY HUDSON'S
PERMIT 20971 (APPLICATION 30396)

SOURCES: Unnamed Stream tributary to Carneros Creek, and Carneros Creek

COUNTY: NAPA

ORDER APPROVING TEMPORARY URGENCY CHANGE IN THE PLACE OF USE

1.0 SUBSTANCE OF PETITION

On July 17, 2001, Robert and Betty Hudson filed a petition requesting a Temporary Urgency Change to Permit 20971 (Application 30396) under Water Code section 1435, et seq. If approved, the place of use under Permit 20971 would be expanded to include 35 acres of nearby vineyard.

2.0 BACKGROUND

The petitioner holds Permit 20971 (issued on July 10, 1998) which authorizes the storage of up to 170 acre-feet per year (afa) from three points of diversion on an Unnamed Stream tributary to Carneros Creek and one point of diversion to offstream storage on Carneros Creek in Napa County. The distribution of storage under Permit 20971 is as follows: 20 afa in #1 Reservoir, 25 afa in #2 Reservoir, 69 afa in the North Pit Reservoir, and 55 afa in the South Pit Reservoir. The authorized place of use under Permit 20971 is 170 acres of vineyard located in sections 11, 13, and 14, T5N, R5W, MDB&M, as shown on a map on file with the State Water Resources Control Board (SWRCB). The permittee has indicated that, to date, only the 69-acre-foot-capacity North Pit Reservoir, supplied by a point of diversion to offstream storage located on Carneros Creek within the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of projected section 13, T5N, R5W, MDB&M, has been constructed. Additionally, only 70 acres of the 170-acre authorized place of use have been developed.

In the spring of 2001, a groundwater well used to supply a portion of the neighboring Rombauer Vineyard experienced a dramatic drop in its yield, as compared to previous years. The permittee has indicated that due to the dramatic decrease in yield, Rombauer Vineyard is in jeopardy of losing about 35 acres of existing vineyard and thus, has an urgent need for water. The permittee proposes to supply 7.5 af of water previously stored in the petitioner's North Pit Reservoir to Rombauer Vineyard (using a temporary 4-inch-diameter pipeline) upon

approval of this petition through October 31, 2001. The proposed temporary urgency change would add 35 acres of vineyard located within sections 13 and 18, T5N, R5W, MDB&M, (as shown on map submitted with the petition) to the authorized place of use under Permit 20971.

3.0 ENVIRONMENTAL CONSIDERATIONS

The proposed temporary urgency change involves the addition of 35 acres of existing vineyard to the authorized place of use under Permit 20971. The maximum amount of water to be supplied to the place of use is 7.5 acre-feet. The petitioner has stated that in anticipation of this action, the petitioner has reduced the amount of water used within the existing, permitted place of use. Thus, the proposed temporary urgency change should not result in an increase in consumptive use under Permit 20971 or a resultant increase in the amount of water diverted from Carneros Creek, and therefore should not unreasonably affect fish, wildlife, or other instream beneficial uses within Carneros Creek.

Additionally, the proposed place of use is an existing vineyard, which would have been irrigated absent the failure of a groundwater well. The water will be supplied to the proposed place of use via a temporary 4-inch-diameter pipeline laid on the ground. Therefore, the delivery and application of water to the proposed place of use should not unreasonably affect fish, wildlife, or other instream beneficial uses within Carneros Creek.

Based on the information provided above, the Division of Water Rights concludes that this action is exempt for the California Environmental Quality Act under Title 14, California Code of Regulations, Section 15304.

4.0 SWRCB'S DELEGATION OF AUTHORITY

Resolution 99-031, section 3.2.22 delegates to the Chief of the Division of Water Rights the authority to approve temporary urgency changes pursuant to Water Code Section 1435 provided the necessary findings can be made.

5.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The Permittee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water;
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change is in the public interest.

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ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the filed petition for temporary urgency change in the place of use under Robert and Betty Hudson's Permit 20971 (Application 30396) is approved.

All existing terms and conditions of the subject permit remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is effective for 180 days from the date of this order.
2. For the purposes of the delivery of up to 7.5 acre-feet of water, the place of use under Permit 20971 shall be temporarily changed as follows:


The authorized place of use is expanded to include 35 acres of existing vineyard located within sections 13 and 18, T5N, R5W, MDB&M, as shown on a map submitted with the petition.

3. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary urgency change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB 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 SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

4. This order 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 temporary transfer, the permittee shall obtain authorization for an incidental take prior to commencing with the changes authorized under this order. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
5. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

Dated: August 15, 2001

for 
Edward C. Anton, Chief
Division of Water Rights