



State Water Resources Control Board

PROPOSED MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21080(c)
Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: Ronald McGehee Water Right Change Petition and Application to
Appropriate Water (Applications A021429B and A031057)

APPLICANT: Ronald W McGehee
c/o Ryan Stolfus, Wagner & Bonsignore CCE
2151 River Plaza Drive, Suite 100
Sacramento, CA 95833-4133

PROJECT LOCATION:

Approximately one-mile northwest of the city of Ukiah in Mendocino County, California, within
Sections 30, 31, and 32 of Township 16 North, Range 12 West of the "Ukiah, California" U.S.
Geological Survey (USGS) 7.5-minute topographic quadrangle.

PROJECT DESCRIPTION:

Under water right Application 31057 (A031057), Ronald McGehee (Applicant) proposes to
construct an off-stream reservoir for storage of 45 acre-feet (af) per year of water diverted from
Hensley Creek tributary to the Russian River. The appropriated water would be used for
irrigation and frost protection of 37 acres of proposed vineyard on previously cultivated land
near Hensley Creek.

The Applicant is also petitioning to change the place of use (POU) and add purposes of use to
an existing water right license, License 9947B (Application A021429B). License 9947B
authorizes diversion of up to 290 af of water from an unnamed stream tributary to York Creek,
thence the Russian River, for the irrigation of 35.8 acres along York Creek, as well as for
domestic, stockwatering, recreation, and fire protection purposes. Under License 9947B, water
is diverted at and stored in an onstream reservoir (Round Mountain Reservoir). Combined
diversion under License 9947B and two other licenses for Round Mountain Reservoir, 9947A
and 9947C, shall not exceed 290 af per year. The Applicant seeks to eliminate the POU
authorized under License 9947B and add the 37 acres specified under A031057, add frost
protection and heat control as purposes of use, and add the offstream reservoir requested
under A031057 as a place of storage for water diverted at Round Mountain Reservoir.

**DETERMINATION:**

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less than significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

**WATER RIGHT TERMS:**

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Board. Unless otherwise specified the following terms will be incorporated into any new or amended water right issued pursuant to Application 31057 and License 9947B.

- **GEO-1: Erosion Control Plan.** Prior to the start of construction or diversion or use of water under this right, right holder shall submit an erosion control plan, prepared by a licensed civil engineer, to the Deputy Director for Water Rights. The erosion control plan shall include best management practices for the control of sediment and erosion from the construction site, including but not limited to:
  - Vegetation removal shall be limited to the minimum amount necessary to accommodate the proposed project. As the permanent vegetation cover (vineyard) is maturing, erosion control measures sufficient to stabilize the soil shall be established on all disturbed areas. Native seed mix hydroseeding is allowed as an erosion control measure if conducted in compliance with the terms and conditions of this water right, or as authorized under another basis of right;
  - Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;
  - No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and
  - Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

Before storing water in the reservoir, right holder shall furnish evidence which substantiates that the erosion control plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.

- **GEO-2: Other Agency Permits.** No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Within 90 days of the issuance of this right or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources,

Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

- **AIR-1: Emission Control and Mitigation Plan.** Prior to the start of construction, right holder shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights for approval. Right holder shall also submit a copy of the plan to the Mendocino County Air Quality Management District. The Emission Control and Mitigation Plan shall be consistent with the Bay Area Air Quality Management District's California Environmental Quality Act Air Quality Guidelines and Mendocino County Air Quality Management District's Interim CEQA Criteria and GHG Pollutant Thresholds, Revised December 2013, and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. Right holder shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Right holder shall also provide a copy of the evidence to Mendocino County Air Quality Management District upon request. Evidence may consist of, but is not limited to, photographs and construction records.
- **HYD-1: Contaminant Runoff Prevention.** 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.
- **HYD-2: Construction Buffer during Rainy Season.** Construction activities within 100 feet of any drainage shall only occur from June 1 through October 15 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources.
- **HYD-3: Diversion Season and Face-Value** (*Application 31057 only*). The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 45 acre-feet per year by storage to be collected from December 15 of each year to March 31 of the succeeding year.
- **HYD-4: Minimum Bypass Flow** (*Application 31057 only*). For the protection of fish and wildlife, no water shall be diverted under this right unless the flow in Hensley Creek is at or above 30.0 cubic feet per second, as determined at the Point of Diversion. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
- **BIO-1: Pre-construction Botanical Survey.** Prior to the onset of construction activities, a qualified botanist and/or biologist shall conduct an appropriately timed bloom survey for white-flowered rein orchid (*Piperia candida*) (blooms March-September). The Toren's grimmia (*Grimmia torenii*) is a moss and therefore does not have defined flowers or a bloom season and can be surveyed for at all times of the year. If either of these species is observed during the pre-construction survey, the Division of Water Rights and the California Department of Fish and Wildlife shall be contacted; any and all construction activities will be delayed until an appropriate course of action is established and approved by the California Department of Fish and Wildlife, with a copy to the Deputy Director for Water Rights. If none of these special-status plants are observed

during the pre-construction survey, then construction activities may begin. Within seven days of any pre-construction botanical survey, a report of findings from the survey shall be submitted to the California Department of Fish and Wildlife with a copy to the Deputy Director for Water Rights.

- **BIO-2: Pre-construction Reptile and Amphibian Survey.** Within 14 days prior to the onset of construction activities, a qualified biologist shall conduct pre-construction surveys for foothill yellow-legged frog (*Rana boylei*) (FYLF), California red-legged frog (*Rana draytonii*) (CRLF), and western pond turtle (*Emys marmorata*) (WPT) within all areas on the property where construction, staging, or other ground disturbance may occur and which fall within 100 feet of any stream, drainage, wetland, reservoir, or pond. If FYLF, CRLF, or WPT are observed during the pre-construction survey, the Division of Water Rights, U.S. Fish and Wildlife Service, and/or California Department of Fish and Wildlife shall be contacted as appropriate; any and all construction activities will be delayed until an appropriate course of action is established and approved by the California Department of Fish and Wildlife and/or U.S. Fish and Wildlife Service, with a copy to the Deputy Director for Water Rights. If no evidence of FYLF, CRLF, or WPT is observed during the pre-construction survey, then construction activities may begin following worker environmental awareness training. A qualified biologist shall conduct an environmental awareness training for crew members prior to commencement of construction activities. The training shall discuss a description of the species, their biology, habitat requirements, and the procedures to follow should any FYLF, CRLF, or WPT occur within the construction footprint. Right holder shall provide evidence to verify implementation of environmental awareness training within 30 days of commencement of construction activities to the Deputy Director for Water Rights, the California Department of Fish and Wildlife, and U.S. Fish and Wildlife Service. Evidence may consist of, but is not limited to, a signed affidavit by the qualified biologist conducting the training.

If a FYLF, CRLF, and/or WPT is found, the construction crew shall be instructed to halt activities until the individual leaves the construction footprint. The construction crew shall notify the property owner immediately following a FYLF, CRLF, or WPT occurrence. If construction is delayed or halted for more than 30 days, another pre-construction survey for FYLF, CRLF, and WPT shall be conducted. Within seven days of the pre-construction survey, a report of findings from the survey shall be submitted to the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, with a copy to the Deputy Director for Water Rights.

- **BIO-3: Pre-construction Nesting Bird Survey.** If construction activities are to occur between February 1 and September 30, a qualified biologist shall conduct a pre-construction survey for the purpose of identifying nesting bird species. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed construction areas. The survey shall be conducted no more than 14 days prior to the beginning of construction activities proposed to occur between February 1 and September 30. If an active raptor or migratory bird nest is found during the pre-construction survey, the right holder shall notify the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service with a copy to the Deputy Director for Water Rights. 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 biologist shall delimit and maintain the buffer zone with construction tape

or pin flags. A report of the findings and actions taken shall be submitted to the Division of Water Rights prior to construction activities. If construction is delayed or halted for more than 14 days between February 1 and September 30, another pre-construction survey for nesting bird species shall be conducted.

- **BIO-4: Preconstruction Bat Survey – General.** Within 14 days prior to the onset of construction activities, a qualified biologist shall conduct a preconstruction survey for the purpose of identifying all potential bat roosting habitat for special-status bats within 200 feet of earthmoving activities. If active special-status bat roosts are found during the pre-construction survey, the right holder shall notify the Division of Water Rights and the California Department of Fish and Wildlife; any and all construction activities will be delayed until an appropriate course of action is established and approved by the California Department of Fish and Wildlife, with a copy to the Deputy Director for Water Rights. If no active special-status bat roosts are found during the pre-construction survey, the right holder 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 preconstruction survey for this species shall be conducted. A report of the findings and actions taken shall be submitted to the Division of Water Rights prior to construction activities.

During construction, a qualified biological monitor shall be onsite to ensure that no pallid bats (*Antrozous pallidus*) are harmed. If pallid bats are observed in the construction area at any time during construction, the onsite biological monitor shall be notified and construction in the vicinity of the sighting shall be halted and the California Department of Fish and Wildlife shall be contacted, and an appropriate course of action established.

- **BIO-5: Pre-construction Bat Survey – Tree Removal.** A qualified biologist shall conduct a pre-construction survey for roosting bats within 14 days prior to removal of trees. The qualified biologist shall document the results of the pre-construction survey in a letter to the property owner and all involved regulatory agencies within 30 days following the survey. If no active roosts are identified during the pre-construction survey, then no further mitigation is required.

If any bats are found to occur within cavities of any trees proposed to be removed, then a 25-foot buffer shall be established around the tree until the biologist determines that the bats have vacated the cavity.

- **BIO-6: Creek Crossing Plan.** No vehicles shall use the stream crossings unless right holder is operating in accordance with a stream crossing plan satisfactory to the California Department of Fish and Wildlife. The stream crossing plan shall be developed by a qualified individual in consultation with the California Department of Fish and Wildlife and adhere to the terms of a Lake and Streambed Alteration Agreement. The stream crossing plan shall be designed to minimize introduction of sediment into the stream and impacts to anadromous salmonids, foothill yellow-legged frog, California red-legged frog, western pond turtle and their habitat. Right holder shall provide a copy of the stream crossing plan to the Deputy Director for Water Rights within 30 days of approval by the California Department of Fish and Wildlife.
- **BIO-7: Bullfrog Prevention Measures** (*Application 31057 only*). No water shall be diverted under this right unless right holder is operating in accordance with a mitigation plan satisfactory to the Deputy Director for Water Rights. The mitigation plan shall address eradication of non-native species. Right holder shall submit a report on mitigation plan activities in accordance with the time schedule contained in the mitigation

plan, and whenever requested by the Division of Water Rights. The Deputy Director for Water Rights may require modification of the mitigation plan upon a determination that the plan is ineffective or unsuccessful, or provide relief from this term upon a determination that the mitigation plan is no longer required.

- **BIO-8: Riparian Setbacks.** Right holder shall establish setbacks for the protections of riparian corridors along the streams within the project site as shown on Figure 9 of the McGehee Initial Study/Mitigated Negative Declaration. The setback shall be measured from the Watercourse Transition Line as defined in the 2016 California Forest Practice Rules (Cal. Code Regs., tit. 14 § 895.1.) and shall extend a minimum of 75 feet from Class 1 streams. Right holder shall also establish setback for the protection of riparian corridors along the Class III streams within the project site. The setback shall be measured from the Watercourse Transition Line as defined in the 2016 California Forest Practice Rules (Cal. Code Regs., tit. 14 § 895.1.) and shall extend a minimum of 25 feet from Class III streams and 50 feet from all existing and proposed reservoirs. Setbacks from proposed reservoirs shall not apply to initial construction of the reservoir. Prior to ground disturbing activities adjacent to the setback areas, the right holder shall stake the setback and notify the California Department of Fish and Wildlife. Right holder shall not allow cattle or other domestic livestock access to the setback area, with the exception of existing stockwatering activities at Round Mountain Reservoir.

No ground disturbing activities shall occur within the setback area, including, but not limited to grading, herbicide spraying, roads, fencing, and use or construction of storage areas. *Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation.* Planting and irrigation of native riparian vegetation within the setback area are allowed if within the authorized place of use authorized by this water right and diversion are made in compliance with the terms and conditions of this water right, or as authorized under another basis of right.

These requirements shall remain in effect as long as water is being diverted under this right.

- **BIO-9: Oak Tree Replacement.** Right holder shall, for the maintenance of oak woodland, avoid oak tree removal to the extent possible. If avoidance is infeasible, Right holder shall plant three oak trees for every one oak tree removed. Trees may be planted in groves in order to maximize wildlife benefits and shall be native to Mendocino County. New plantings shall be protected by using such measures as jute netting, straw mulching, and fertilizing. Irrigation of planted trees, if necessary, can be made under this water right if within the authorized place of use and diversion is made in compliance with the terms and conditions of this water right, or as authorized under another basis of right. Within 30 days of completion of the final construction plan for the pipeline between Round Mountain Reservoir and the proposed offstream reservoir, the tree species and planting scheme shall be submitted to California Department of Fish and Wildlife for approval prior to planting. Right holder shall submit to the Deputy Director for Water Rights, a copy of the approved planting scheme within 15 days of approval by the California Department of Fish and Wildlife.

One year after completion of the tree planting program, photo documentation showing the trees shall be submitted to the Deputy Director for Water Rights. Right holder shall replace trees as needed to assure a 2/3rds survival rate three years after planting. Right

holder shall submit evidence of survival (e.g., before-and-after photos) with annual reports for three years after planting.

- **HAZ-1: Pesticide Application Standard Operating Procedures.** Right holder shall follow the following standard operating procedures when applying pesticides to the vineyard:
  - Purchase only enough pesticide that would be used per season.
  - Store all pesticides in their original containers in accordance with manufacturer's recommendations. Do not remove labels on the containers.
  - Keep pesticides in a well-ventilated locked area.
  - The best way to dispose of a small amount of pesticide is to use it. If a pesticide must be disposed of, contact the Mendocino County Agricultural Commissioner to locate a hazardous waste facility for proper disposal.
  - Never pour pesticides down the sink, toilet, or stream.
  - Utilize proper personal protection equipment when working with pesticides.

Right holder shall provide evidence to verify implementation of best management practices. Evidence shall be submitted with the annual report or whenever requested by the Division of Water Rights, and may consist of, but is not limited to, an affidavit signed by the right holder.

- **HAZ-2: Hazardous Materials Best Management Practices.** Right holder shall follow the following best management practices designed to reduce the potential for incidents involving hazardous materials:
  - Refueling shall be conducted only with approved pumps, hoses, and nozzles.
  - Catch-pans shall be placed under equipment to catch potential spills during servicing.
  - All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
  - Vehicle engines shall be shut down during refueling.
  - No smoking, open flames, or welding shall be allowed in refueling or service areas.
  - Refueling and all construction work shall be performed outside of any onsite stream buffer zones to prevent contamination of water in the event of a leak or spill.
  - Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.

In the event that contaminated soil and/or groundwater or other hazardous materials are generated, all work shall be halted in the affected area and the type and extent of the contamination shall be determined. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with federal, state, and local regulations. If containment and size of the spill is beyond the scope of the contractor, proper authorities shall be notified.

Right holder shall provide evidence to verify implementation of best management practices. Evidence shall be submitted with the annual report or whenever requested by the Division of Water Rights, and may consist of, but is not limited to, an affidavit signed by the right holder.

- **HAZ-3: Fire Avoidance Best Management Practices.** Right holder shall follow the following best management practices designed to reduce the potential for fire:
  - During fire season in designated State Responsibility Areas, motorized equipment shall have federal or state approved spark arrestors; all vehicles equipped with firefighting tools as appropriate and in accordance with all applicable laws, rules, regulations, orders and ordinances.
  - Right holder shall be responsible for checking and complying with the daily Project Activity Level (PAL) during fire season (PAL is a measure of fire weather conditions and, at certain levels, restricts activities otherwise permitted).
  - Smoking shall not be permitted during fire season, except in a barren area or in an area cleared to mineral soil at least three feet in diameter. Under no circumstances shall smoking be permitted during fire season while employees are operating light or heavy equipment, or walking or working in grass and woodlands.
- **CR-1: Archaeological Discoveries.** 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 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 Deputy Director for Water Rights shall be notified of the discovery and a professional archaeologist shall be retained by the right holder 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.
- **CR-2: Paleontological Discoveries.** If vertebrate fossils are discovered during project activities, all work shall cease within 100 feet of the find until a qualified professional paleontologist as defined by the Society of Vertebrate Paleontology's Conformable Impact Mitigation Guidelines Committee (2011) can assess the nature and importance of the find and recommend appropriate treatment. The Deputy Director for Water Rights will also be notified of the discovery and the qualified professional paleontologist's opinion within 48 hours of the initial finding. Treatment may include preparation and recovery of fossil materials, so that they can be housed in an appropriate museum or university collection, and also may include preparation of a report for publication describing the finds. Project activities shall not resume until after the qualified professional paleontologist has given clearance and evidence of such clearance has been submitted to the Deputy Director for Water Rights.
- **CR-3: Discoveries of Human Remains.** If human remains are encountered, then the right holder shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the 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.

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