



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIQUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**State Water Resources Control Board**

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

<p>To: Office of Planning &amp; Research State Clearinghouse P.O. Box 3044 Sacramento, CA 95812-3044</p>	<p>From: State Water Resources Control Board Division of Water Rights P.O. Box 2000 Sacramento, CA 95812-2000</p>
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**PROJECT TITLE:** Application 31279 Joseph Emil Usibelli Trust to Appropriate Water by Permit

**APPLICANT:** Joseph Emil Usibelli Trust  
c/o Nicholas Bonsignore, P.E.  
Wagner & Bonsignore  
2151 River Plaza Dr. Ste 100  
Sacramento, CA 95833-4311

**PROJECT LOCATION:**

The proposed project area is situated in the Napa River watershed approximately three miles southeast of the town of St. Helena in Napa County, California. The site is within Sections 3 and 4 of Township 7 North, Range 5 West of the "Rutherford, California" U.S. Geological Survey 7.5-minute topographic quadrangle.

**PROJECT DESCRIPTION:**

Water Right Application 31279 proposes the diversion to offstream storage of 35 acre-feet per annum of water from November 1 through May 14. Water would be diverted from an existing Point of Diversion located on Conn Creek tributary to the Napa River thence the San Pablo Bay, to existing offstream Reservoir 1. The existing diversion facility includes an intake screen in Conn Creek where water travels via a gravity pipe to an existing offset sump. Water is then pumped 1,200 feet through an existing 8-inch PVC pipe to the offstream reservoir. The maximum rate of diversion to storage would be 2.9 cubic feet per second (cfs).

Reservoir 1 has a capacity of approximately ten to 15 acre-feet. In order to accommodate storage, Reservoir 1 would be enlarged by up to 25 acre-feet to store 35 acre-feet of water through balanced cut-and-fill earthwork. Approximately 1.5 acres of vineyard would be removed to accommodate the footprint of the enlarged reservoir. The proposed project would also require the clearing of vegetation on the hillside along the southwesterly side of the existing

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reservoir. The proposed place of use is fully developed in 75 acres of vineyard. Water appropriated under Application 31279 would be used for irrigation and frost protection of the existing vineyard, as well as for incidental recreation.

**DETERMINATION:**

The 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 pursuant to Application 31279:

1. No water shall be diverted under this permit, and no construction related to such diversion shall commence, until right holder obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized development schedule, until right holder complies with the requirements of this term.

Within 90 days of the issuance of this permit 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 California 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.); or, (5) local grading permits.

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

2. Prior to the commencement of construction activities, right holder 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 prior to starting construction. If an Erosion Control Plan is not required, right holder shall provide the Deputy Director for Water Rights a copy of a waiver from Napa County prior to any project construction activity.
3. No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions

of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.

4. Any non-compliance with the terms of the permit shall be reported by the right holder to the Deputy Director for Water Rights within three days of identification of the violation.
5. Prior to the start of construction, right holder shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Right holder shall also submit a copy of the plan to by the San Francisco Bay Area Air Quality Management District (BAAQMD). The Emission Control and Mitigation Plan shall be consistent with BAAQMD's Air Quality Guidelines and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. 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 BAAQMD upon request. Evidence may consist of, but is not limited to, photographs and construction records.
6. 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.
7. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per year by storage to be collected from November 1 of each year to May 14 of the succeeding year.
8. The maximum rate of diversion to offstream storage shall not exceed 2.9 cubic feet per second.
9. No water shall be diverted under this water right unless the flow over the Lake Hennessey spillway is at or above 67.5 cubic feet per second from November 1 to March 14 and 74.1 cubic feet per second from March 15 to May 14, as measured at the City of Napa's stage gage located on the spillway of Lake Hennessey. In the event that said monitoring device is no longer available for streamflow measurements, right holder shall within 15 days submit a plan, satisfactory to the Deputy Director for Water Rights, to install an equivalent monitoring device as near as practicable to the location of the current monitoring device.
10. During the period between March 15 and May 14 water may be collected to storage under this permit only when there are no restrictions imposed by the Watermaster on diversions from the Napa River.
11. Prior to the onset of construction activities, a qualified biologist shall conduct a pre-construction survey for regionally occurring special status plant species during their bloom periods. The results of the survey shall be submitted to the Deputy Director for Water Rights prior to any 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 United States Army Corps of Engineers, Section 404 permit (33 U.S.C. § 1344.) and the California Department of Fish and Wildlife Lake and Streambed Alteration Agreement (DFG Code 1600 et seq.) requirements.

12. Within 14 days prior to the onset of construction activities, a qualified biologist shall conduct pre-construction surveys for Western pond turtle within all areas that fall within 100 feet of any suitable aquatic and upland nesting habitat for this species as shown in Figure 8 of the Usibelli Trust Initial Study/Mitigated Negative Declaration. If Western pond turtles are 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. If no Western pond 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 the California Department of Fish and Wildlife with a copy to the Deputy Director for Water Rights.

During construction, a qualified biological monitor who has been approved by the California Department of Fish and Wildlife to relocate Western pond turtles shall be onsite to ensure that no Western pond turtles are harmed. If Western pond turtles 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 until such a time as a turtle has left the construction zone of its own volition or the approved biologist relocates the turtle. If a siting occurs during construction, the biologist shall prepare a report of the event and submit it to California Department of Fish and Wildlife.

13. Within 14 days prior to the onset of construction activities, a qualified biologist shall conduct pre-construction surveys for California red-legged frog and foothill yellow-legged frog within all areas that fall within 100 feet of suitable habitat for these species as shown in Figure 8 of the Usibelli Trust Initial Study/Mitigated Negative Declaration. If either of these species are observed within the project site during the pre-construction survey, Division of Water Rights, United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife shall be contacted and any and all construction activities must be delayed until an appropriate course of action can be established and approved by United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife. If no California red-legged frog and/or foothill yellow-legged frog are observed within the project site 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 pre-construction survey for California red-legged frog and foothill yellow-legged frog shall be conducted.

For construction activities within 100 feet of suitable habitat as shown in Figure 8 of the Usibelli Trust Initial Study/Mitigated Negative Declaration, exclusion fencing shall be

erected for exclusion for California red-legged frog and foothill yellow-legged frog. 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 is observed within the project site during construction, the Division of Water Rights, United States Fish and Wildlife Service and/or California Department of Fish and Wildlife must be contacted and all construction activities must be delayed until an appropriate course of action can be established and approved by United States Fish and Wildlife Service and/or California Department of Fish and Wildlife.

14. For the protection of potential California red-legged frog and the Western pond turtle habitat and to allow for the growth of riparian vegetation along the reservoir, right holder shall:
  - a. Once construction of the proposed project is complete, right holder shall maintain a 50-foot wide setback around the enlarged reservoir. Except for the exclusions stated herein, no ground disturbing activities shall occur within the 50-foot wide setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the 50-foot wide setback area established herein all existing planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the 50-foot wide setback area shall be limited to 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;
  - b. Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Wildlife prior to any reservoir dredging operation. Right holder shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations;
  - c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
  - d. Make no introduction of non-native fish species into the reservoir;
  - e. Consult with the United States Fish and Wildlife Service and California Department of Fish and Wildlife to develop and implement an acceptable bullfrog eradication program. The eradication program may require periodic draining of the reservoir.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 31279.

15. 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. 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 United States Fish and Wildlife Service. 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. A report of the findings and actions taken shall be submitted to the Division of Water Rights prior to construction activities.
16. Right holder shall, for the maintenance of oak woodland, plant three oak trees for every one oak tree removed during reservoir enlargement. Trees may be planted in groves in order to maximize wildlife benefits and shall be native to Napa County. The tree species and planting scheme shall be approved by the California Department of Fish and Wildlife prior to planting. Right holder shall submit to the Deputy Director for Water Rights a copy of the approved planting scheme.

Five years after completion of the tree planting program, photo documentation showing the trees shall be submitted to the Deputy Director of the Division of Water Rights. Right holder shall replace plants as needed to assure a 75% survival rate.

Right holder shall prepare a long-term wildlife habitat maintenance plan for the re-planted oak woodland in consultation with the California Department of Fish and Wildlife; right holder shall submit a copy of this plan to the Deputy Director of the Division of Water Rights. Any changes to this plan must be approved by the California Department of Fish and Wildlife; right holder shall submit a copy of any approved changes to the Deputy Director of the Division of Water Rights. The re-planted oak woodland shall be maintained as wildlife habitat as long as water is being diverted under any permit or license issued pursuant to Application 31279.

17. The archeological site identified as CA-NPA-371 in the 2004 report entitled "A Cultural Resources Survey for the Usibelli Trust Water Right Application Near St. Helena, Napa County, California" shall be avoided by all ground-disturbing activities that are beyond the historic layer of disturbance (i.e., the plow or disc zone). Routine vineyard maintenance shall be limited to the existing disc zone (~25cm below surface), and not include deep ground disturbance such as ripping, as recommended by the previous site investigator. If vines are to be removed for replanting or changing to another crop, then techniques for removal of vines in areas of the sites shall be restricted to using mechanical non-invasive techniques (i.e., pulling the vines with a chain attached to a backhoe, rather than excavation of vines). Vines shall be pulled when the soils are not muddy, but while the soil is moist down to six inches, and vines shall be replanted in the same location as the vines which were removed to avoid excessive disturbance that can be caused using heavy equipment. If future project-related activities or development at the location is unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the Deputy Director for Water Rights is retained and the significance of the site is determined. If mitigation is determined to be necessary, then the archaeologist shall

design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Right holder shall be responsible for all costs associated with the cultural resource related work.

18. 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.
19. If human remains are encountered, the right holder shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act 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.
20. 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.

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