

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

In the Matter of Application 30252

Beckstoffer Vineyards

**ORDER APPROVING MITIGATION MONITORING AND
REPORTING PLAN AND ISSUANCE OF PERMIT**

SOURCES: Unnamed Stream tributary to Mud Slough, thence Napa River, thence San Pablo Bay and Unnamed Stream tributary to Napa Slough, thence Sonoma Creek, thence San Pablo Bay

COUNTY: Napa

WHEREAS:

1. Application 30252 of Beckstoffer Vineyards (Applicant) was filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on February 26, 1993.
2. Application 30252, as filed, seeks authorization to divert 65 acre-feet (af) per annum of water to storage in one existing onstream reservoir (Las Amigas) and one proposed offstream reservoir (Las Amigas 2). Water will be collected from October 15 of each year to April 30 of the succeeding year. The Applicant currently impounds 60 af of water diverted under existing Licenses 11333 and 12902 (Applications 24493 and 25630 respectively). Application 30252, in combination with Applications 29852 and 30253, seeks to authorize an additional 79 af of water, for a total of 139 af.
3. The Division issued a public notice of Application 30252 on October 21, 1994. Downstream diverter, Avatar Wine Partners, filed a protest on the basis of potential injury to vested rights. The applicant agreed to 7 protest dismissal terms identified in a June 12, 1996 letter with the understanding that the terms, substantially as written, will be included in any permit issued pursuant to Application 30252.
4. The Applicant submitted a petition for change on June 30, 1997. The petition for change requested to: (1) drop the proposed 35 af offstream reservoir (Las Amigas 2); (2) add Cabral Reservoir No. 1 as a point of diversion to offstream storage; (3) add Cabral Reservoir No. 2 as a place of offstream storage; and (4) add Las Amigas reservoir as a point of rediversion.
5. The Division issued a public notice of the petition for change of Application 30252 on February 23, 1998. The California Sportfishing Protection Alliance (CSPA) and the California Department of Fish and Game (DFG) filed protests on the basis of potential impacts to the environment. The California Sportfishing Protection Alliance protest was dismissed on December 31, 1998 subject to terms for a mandatory minimum streamflow requirement and measuring device requirements. DFG submitted protest dismissal terms in a letter dated June 17, 2009 requiring a bypass flow of 15.5 cubic-feet per second (cfs) as

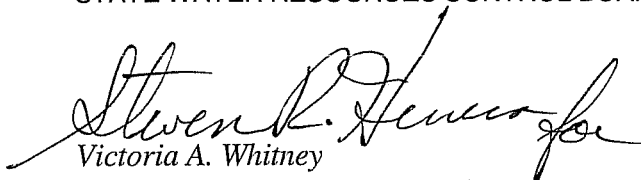
measured at the Napa County Resource Conservation Gage at the DFG Huichica Creek Unit, a restoration plan for a minimum of 1,000 linear feet of stream bank in Napa Slough, Mud Slough, or Huichica Creek, and a Lake and Streambed Alteration Agreement. The DFG protest was dismissed on September 17, 2009 subject to the identified protest dismissal terms.

6. Division staff prepared a water availability analysis dated November 20, 2000. This analysis concludes that there is sufficient water available for appropriation under Applications 29852, 30252, and 30253. The analysis shows that the full amount of water may not be available in the unnamed streams depending on water year type, however the Applicant will also have the ability to divert water from Huichica Creek for storage in the reservoirs. Division staff prepared an amendment to the November 20, 2000 water availability analysis to re-examine water availability in the unnamed streams, taking into account senior rights. The analysis concluded that the full amount of water requested under Application 30252 may not be available in every water year type for the unnamed streams individually. Unappropriated water may be available in wet years at Cabral Reservoir No. 1 and a portion of the requested 65 af may be available in wet years at Las Amigas Reservoir, however average year types do not appear to have adequate remaining supply. The Applicant requested the ability to divert a portion or all the 65 af identified under Application 30252 from Huichica Creek under companion Application 30253. The results of the amendment suggest that the Unnamed Stream tributary to Mud Slough containing Las Amigas Reservoir may be fully appropriated after approval of Application 30252.
7. The water will be diverted and used without injury to any lawful user of water. Protest dismissal terms agreed to by the Applicant will prevent injury to downstream diversions under Permit 20436 (Application 29096).
8. The water will be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses. In 2002, National Marine Fisheries Service (NMFS) and DFG developed Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Draft Guidelines), dated June 17, 2002. The Draft Guidelines were recommended for use by permitting agencies (including the State Water Board), planning agencies, and water resources development interests when evaluating proposals to divert and use water from northern California coastal streams. The Draft Guidelines apply to projects located in the geographic area of Sonoma, Napa, Mendocino, and Marin Counties, and portions of Humboldt County. The Draft Guidelines recommend that terms and conditions be included in new water right permits for small diversions to protect fishery resources in the absence of site-specific biologic and hydrologic assessments. Hanson Environmental, Inc. and EDAW performed site-specific evaluations and recommended project modifications in consultation with the Division, DFG, and NMFS. Permit conditions were included in the permit to conform the project to the Draft Guidelines.
9. The proposed water use is beneficial. The applicant requested to divert 65 af per annum to storage for irrigation of 296 acres of existing vineyard.
10. Pursuant to Resolution No. 2007-0057, the State Water Board has delegated authority to the Deputy Director for Water Rights to administer the duties required under the California Environmental Quality Act (CEQA) (Resolution No. 2007-0057, section 4.10). The Deputy Director for Water Rights has redelegated this authority to the Manager of the Permitting Section.
11. Pursuant to the provisions of CEQA, the State Water Board will adopt a Mitigated Negative Declaration (MND) pursuant to the California Code of Regulations, Title 14, section 15074. The MND determined that the above-proposed project will have a less than significant effect on the environment and will not result in significant cumulative impacts based on the reasons specified in the Initial Study (IS). The potential adverse impacts of the project were found to be less than significant and mitigated for with the inclusion of specific permit terms.

12. A Mitigation Monitoring and Reporting Plan (MMRP) has been prepared in conformance with CEQA (Public Resources Code § 21081.6). The MMRP has been developed based on the information and mitigation measures contained in the IS/MND. The MMRP lists mitigation measures recommended in the IS/MND for the proposed project and specifies implementation and monitoring responsibilities. Pursuant to Public Resources Code section 21081.6(b), each of the mitigation measures identified in the MMRP will be included as enforceable permit terms in any permit authorizing construction, diversion, or use of water pursuant to Water Right Application 30252.
13. The State Water Board will file a Notice of Determination for this project with the Governor's Office of Planning and Research within five days from the issuance of this order, in accordance with the California Code of Regulations, Title 14, section 15096.

NOW, THEREFORE, IT IS ORDERED THAT the Mitigation Monitoring and Reporting Plan is adopted and a permit is issued for Application 30252, subject to the conditions contained in the attached permit.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUN 3 0 2010

Attachment: Permit 21258