



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

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 30384

PERMIT 21357

Right Holder: Gerald J. Marino, Joseph C. Nichelini, and Christopher Harney
c/o Gerald J. Marino
19419 Marna Lane
Sonoma, CA 95476

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **July 21, 1994**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

The Deputy Director for Water Rights finds that the State Water Board and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved protests in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

The State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Right holder is hereby granted a right to divert and use water as follows:

1. Source of water: **(1) Unnamed Stream (2) Pope Creek**

tributary to: **(1) Pope Creek thence (2) Putah Creek thence the Yolo Bypass**

within the County of **Napa**.

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Unnamed Reservoir (1) North 1,996,768 feet and East 6,451,976 feet	NE ¼ of SW ¼	11	9N	5W	MD

Pope Creek (2) North 1,995,255 feet and East 6,451,543 feet	SE ¼ of SW ¼	11	9N	5W	MD
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Location of point of redirection

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Unnamed Reservoir (1) North 1,995,768 feet and East 6,451,976 feet	NE ¼ of SW ¼	11	9N	5W	MD

Location of places of storage

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Unnamed Reservoir (1) North 1,996,768 feet and East 6,451,976 feet	NE ¼ of SW ¼	11	9N	5W	MD
Reservoir 4 North 1,997,060 feet and East 6,454,276 feet	NE ¼ of SE ¼	11	9N	5W	MD

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Recreational, Fish and Wildlife Preservation and Enhancement	Unnamed Reservoir N ½ of SW ¼	11	9N	5W	MD	
	Reservoir 4 NE ¼ of SE ¼	11	9N	5W	MD	
Irrigation, Frost Protection, Heat Control, Fire Protection	SW ¼ of NW ¼	11	9N	5W	MD	7
	SE ¼ of NW ¼	11	9N	5W	MD	10
	NW ¼ of NE ¼	11	9N	5W	MD	1
	SW ¼ of NE ¼	11	9N	5W	MD	25
	SE ¼ of NE ¼	11	9N	5W	MD	19
	NW ¼ of SW ¼	11	9N	5W	MD	8
	NE ¼ of SW ¼	11	9N	5W	MD	33
SW ¼ of SW ¼	11	9N	5W	MD	8	

SE ¼ of SW ¼	11	9N	5W	MD	22
NW ¼ of SE ¼	11	9N	5W	MD	40
NE ¼ of SE ¼	11	9N	5W	MD	26
SW ¼ of SE ¼	11	9N	5W	MD	5
NW ¼ of SW ¼	12	9N	5W	MD	10
				Total	214

The place of use is shown on map filed on August 8, 2013 with the State Water Board.

Acronyms/abbreviations used in this permit: Department of Fish and Wildlife (DFW), United States Fish and Wildlife Service (USFS), Bay Area Air Quality Management District (BAAQMD), United States Bureau of Reclamation (Reclamation), United States Army Corp of Engineers (USACE), Initial Study/Mitigated Negative Declaration (IS/MND), Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA).

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **245 acre-feet per year** by storage to be collected from **December 15 of each year to March 31 of the succeeding year** as follows: **196 acre-feet per year** in Unnamed Reservoir, and **49 acre-feet per year** in **Reservoir 4**.
(000005D)
6. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(000005I)
7. The maximum rate of diversion to offstream storage shall not exceed **3 cubic feet per second**.
(000005J)
8. The capacities of the **Unnamed Reservoir** and **Reservoir 4** covered by this water right shall not exceed **196 acre-feet** and **49 acre-feet**, respectively.
(000005P)
9. The total quantity of water diverted under this permit, together with that diverted under the license issued pursuant to Application 20370, shall not exceed **245 acre-feet per annum**.
10. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2025**.
(000009)
11. The State Water Board reserves jurisdiction to impose conditions to conform this water right to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.
(000020)

12. Right holder shall install and maintain an outlet pipe of adequate capacity in the dam of the unnamed reservoir as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this right can be released.

(0050043BP)

13. No water shall be diverted to offstream storage under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

14. No water shall be diverted under this right unless right holder is monitoring and reporting the water surface elevation in the reservoirs. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of monitoring water surface elevations from the maximum water line to the minimum water line known to exist for the reservoirs and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the devices have been installed and the mark or reading corresponding to the maximum water line of the reservoirs with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the devices are functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of water surface elevations. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

(0100047)

15. For the protection of fish and wildlife, right holder shall during the period from **December 15 through March 31** maintain a minimum bypass of **0.5 cubic foot per second** at the Unnamed Reservoir and **45 cubic feet per second** at the Pope Creek point of diversion. Right holder shall bypass the total streamflow from **April 1 through December 14**. The total streamflow at the Unnamed Reservoir shall be bypassed whenever it is less than **0.5 cubic foot per second** and the total streamflow of Pope Creek shall be bypassed whenever it is less than **45 cubic feet per second** at the Pope Creek point of diversion.

(0140060)

16. No water shall be diverted from under this right unless right holder is operating the water diversion facility for Pope Creek with a fish screen satisfactory to the Deputy Director for Water Rights. The fish screen shall be designed and maintained in accordance with the screening criteria of DFW. Right holder shall provide

evidence that demonstrates that the fish screen is in good condition with the annual report and whenever requested by the Division of Water Rights.

(0000213)

17. In accordance with the requirements of Water Code section 1393, right holder shall clear the area covered by the proposed reservoir enlargement of all structures, trees, and other vegetation which would interfere with the use of the proposed reservoir for water storage and recreational purposes.

(0120050B)

18. In order to minimize potential erosion impacts from construction activities, Best Management Practices (BMPs) for any disturbed areas should be included in any plan to control erosion for the proposed project. At a minimum, BMPs should include, but not be limited to the following measures:

- a. Vegetation removal shall be limited to the minimum amount necessary to accommodate the proposed project. As the permanent vegetation cover is maturing, temporary vegetation or other erosion control measures sufficient to stabilize the soil shall be established on all disturbed areas. New plantings shall be protected by using such measures as jute netting, straw mulching, and fertilizing;
- b. Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;
- c. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and
- d. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

(0120500)

19. Prior to the start of construction or diversion or use of water under this permit, 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 for approval prior to starting construction. If an Erosion Control Plan is not required, right holder shall provide the Division a copy of a waiver from Napa County prior to any project construction activity in the place of use.

(0450300)

20. In order to minimize potential air quality impacts, a dust control plan shall be developed and implemented for the proposed project. At a minimum, the plan shall include, but not be limited to the following measures:

- a. Active construction areas shall be watered at least twice daily; all trucks hauling soil, sand, or other loose material shall be covered or required to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer);
- b. Exposed stockpiles shall be covered or watered twice daily;
- c. All construction vehicles and equipment shall be properly maintained and operated, and the use of construction equipment that meets the current emission standards for diesel engine-powered equipment shall be required; and

d. Traffic speeds on unpaved access roads shall be limited to 15 miles per hour. (0450500)

21. 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 the 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 Directory 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. (0450300)

22. Construction activities within 100 feet of any drainage shall only occur between April 1 and October 15 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources. (0400500)

23. Right holder shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State. (0000208)

24. Right holder shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Right holder is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this right for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this right shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The right holder shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- (3) Within one year of the construction of Unnamed Reservoir covered by this right, right holder shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the State Water Board.
- (4) Right holder shall install and properly maintain in Unnamed Reservoir a staff gage, satisfactory to the watermaster and the State Water Board, for the purpose of determining water levels in the reservoir. Right holder shall record the staff gage readings monthly starting October 1 of each year through April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the right holder.
- (5) Right holder shall maintain a device, satisfactory to the State Water Board, capable of measuring water diverted to storage under this right. Satisfactory devices shall include: (1) in-line flow meter having instantaneous and total flow reading capability, or (2) proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump.

- (6) Right holder shall maintain monthly records of diversion to offstream storage from October 1 of each year to April 30 of the succeeding year, or such other period as may be specified with written notice to the right holder by the watermaster. Right holder shall submit these records with annual progress reports to the Division.
- (7) Right holder shall report to the watermaster annually, all diversions under this right by September 1 of each year on forms approved by the watermaster.
- (8) Right holder shall allow the watermaster reasonable access to the project covered by this right to inspect measuring equipment and to observe compliance with these water right terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as right holder may prescribe.
- (9) Right holder is hereby put on notice that there may be years when diversion of water under this right will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this right, and that releases of stored water may be required.
- (10) Right holder is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:
 - a. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.
 - b. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.
 - c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- (11) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, right holder shall have three years, starting in the next Accumulation Season, to make up or repay right holder's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, right holder shall have one year, starting in the next Accumulation Season, to make up or repay right holder's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, right holder shall be excused from any further obligation for repayment of the overage.
- (12) Right holder shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- (13) Right holder shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the water right.
- (14) Right holder is hereby put on notice of right holder's right, upon reasonable prior notice, to inspect and to copy, at right holders own expense, all records and reports of the watermaster.

- (15) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is **245 acre-feet per annum** as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Right holder shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the right of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this right.

(000024)

The State Water Board shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(000012)

(0220087)

25. Several elderberry shrubs have been observed on the property at separate locations along Pope Creek (see Figure 4 of the IS/MND for the Marino Water Rights Project). Prior to any construction activities in the place of use, right holder shall consult with USFWS to establish a mitigation plan (Plan) for the elderberry shrubs. Right holder shall submit a plan approved by USFWS to the Deputy Director for Water Rights to protect valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) or VELB) prior to any project construction. If a plan is not required by USFWS, right holder shall forward a statement from USFWS indicating that a plan is not required to the Deputy Director for Water Rights prior to any construction activities related to this project. If construction-related disturbance will occur within 100-feet of elderberry shrubs, USFWS shall be consulted to determine if an impact will occur. If VELB are determined to occupy the site, no activities determined to have a potential to adversely affect the shrubs or any VELB shall be conducted without a Biological Opinion, Incidental Take Permit, or other authorization from USFWS, and findings shall be provided to the Deputy Director for Water Rights for approval 10 days prior to any project construction. If required, transplanting of elderberry shrubs or planting additional seedlings or cuttings shall be conducted consistent with the *USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (1999)*.

(0400500)

26. Within 14 days prior to the onset of construction activities within any and all areas that fall within 100 feet of suitable habitat (reservoirs and all drainages, as shown on Figure 4 of the IS/MND for the Marino Water Rights Project) for California red-legged frog (*Rana draytonii*) and foothill yellow-legged frog (*Rana boylei*), a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist), shall conduct a pre-construction survey for these species. If either of these species is observed within the project site during the pre-construction survey, USFWS and/or DFW must be contacted and any and all construction activities must be delayed until an appropriate course of action can be established and approved by USFWS and/or DFW. If no California red-legged frog and/or foothill yellow-legged frog are observed within the project site during the pre-construction survey, construction activities may begin. If construction is delayed or halted for more than 14 days, another pre-construction survey for California red-legged frog and foothill yellow-legged frog shall be conducted.

Prior to the onset of construction activities, the approved biologist shall develop a worker sensitivity training program that addresses all issues associated with the assumed presence of California red-legged frog and foothill yellow-legged frog within the project site; including recognition of these species and their habitat. Any and all personnel that will be working within the vicinity of suitable habitat for these species shall take the sensitivity training program and sign an acknowledgement that he or she has received the training, understands that take of these animals and destruction of their habitats is a violation of the FESA and/or the CESA, and fully understands the contents of the sensitivity training program. The signed acknowledgments by project personnel for the worker sensitivity training program shall be attached with a report of the pre-construction survey and shall be submitted to USFWS and/or DFW with a copy to the Division.

(0400500)

27. Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) of at least 50 feet shall be established around any and all suitable California red-legged frog and/or foothill yellow-legged frog habitats within the project site (reservoirs and all drainages). The areas within these avoidance setbacks may not be developed as long as this permit or license remains active unless a formal habitat assessment and protocol determinant-level surveys are conducted for California red-legged frog and a biological opinion from the USFWS has been issued. The right holder may opt to proceed with a formal habitat assessment and protocol-level determinant surveys for special-status amphibians to avoid implementation of the permanent avoidance setbacks onsite. The results of the assessment and USFWS consultation shall be submitted to the Deputy Director for Water Rights.

(0400500)

28. A biologist whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist) shall conduct a pre-construction survey for western pond turtles (*Actinemys marmorata*) no more than 30 days prior to construction within all areas that fall within 100 feet of suitable aquatic habitat for this species as shown in the habitat map (Figure 4 of the IS/MND for the Marino Water Rights Project). A combination of visual and trapping surveys may be performed with authorization from DFW.

If western pond turtle is found near any proposed construction areas, impacts on individuals and their habitat shall be avoided to the extent feasible. If avoidance of occupied habitat is feasible, an exclusion zone around the habitat shall be established using temporary plastic fencing with "Sensitive Habitat Area" signs posted and clearly visible on the outside of the fence. If avoidance of occupied habitat is not possible, the approved biologist, with approval from DFW, shall capture turtles prior to construction activities and relocate them to nearby, suitable habitat a minimum of 300 feet downstream from the work area. Exclusion fencing should then be installed if feasible to prevent turtles from reentering the work area. For the duration of work in these areas, the approved biologist shall conduct monthly follow-up visits to monitor the effectiveness of exclusionary measures.

(0400500)

29. Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) shall be established around all suitable western pond turtle habitats within the project site. These setbacks shall be 100 feet from the perimeter of Unnamed Reservoir and the confluence of the Unnamed Stream with the reservoir. The areas within these avoidance setbacks may not be developed as long as water is being diverted/stored under this right, unless approval from DFW has been issued and submitted to the Deputy Director of Water Rights.

(0400500)

30. Prior to beginning construction or diversion or use of water under this right, right holder shall submit a western pond turtle habitat enhancement plan for review and approval of the Deputy Director for Water Rights. The enhancement plan shall include the actions necessary to provide sufficient underwater refugia

and basking habitat (e.g., submerged logs, downed trees and large rocks) for western pond turtles. Right holder shall develop the enhancement plan in consultation with DFW. The approved western pond turtle enhancement plan shall be implemented and right holder shall provide photographic documentation that the plan has been implemented within one year of enlargement of the reservoir.

(0400500)

31. If tree removal activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-construction survey for the purpose of identifying nesting bird species prior to construction and/or tree removal activities. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed tree removal activities. The survey shall be conducted no more than 14 days prior to the beginning of tree removal activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the right holder shall notify DFW and the Deputy Director for Water Rights within three days of the find. 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.

(0400500)

32. For the protection of riparian habitat and mitigation of disturbed riparian habitat, right holder shall establish a minimum 75-foot setback from Pope Creek and 50-foot setbacks from the three Unnamed Streams on the property (Figure 4 of the IS/MND for the Marino Water Rights Project). The setbacks shall be measured from the top of the bank of Pope Creek and the Unnamed Streams. 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, with the exception of access roads and occasional equipment access reasonably necessary for continued operation of the vineyard and management of the setback area. 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 of native riparian vegetation within the setback area is allowed. These requirements shall remain in effect as long as water is being diverted under this permit.

(0400500)

33. For the protection of riparian habitat and mitigation of disturbed riparian habitat, right holder shall implement a riparian enhancement plan. Prior to beginning construction or diversion or use of water under this right, right holder shall submit a riparian enhancement plan for review and approval by the Deputy Director for Water Rights. The riparian enhancement plan shall specify: (1) the location of areas to be planted; (2) the number and species of plants to be planted; (3) planting methods; (4) success criteria and monitoring methods; and (5) a description of the actions that will be taken if success criteria are not met. The riparian enhancement plan shall require at least five years of monitoring to ensure identified success criteria are met. The riparian enhancement plan shall be implemented within two years of approval of the plan.

(0400500)

34. For the protection of wetlands, right holder shall establish minimum 50-foot setbacks within the places of use from the edge of any wetland (Figure 4 of the IS/MND for the Marino Water Rights Project). These setbacks shall be mapped by a qualified biologist acceptable to the Deputy Director for Water Rights (qualified biologist) and approved by the Deputy Director for Water Rights prior to the start of construction or diversion of water under this right. The 50-foot setback area shall be flagged by a qualified biologist prior to the start of construction activities. 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. Planting, maintenance, and irrigation of native wetland vegetation within the setback area are allowed.

(0400500)

35. For the mitigation of disturbed wetlands, mitigation shall be conducted in accordance with the provisions in a Mitigation and Monitoring Plan that shall be prepared for USACE in association with the 404 Permit Application process. Prior to licensing of this permit, right holder shall submit evidence to the Deputy Director for Water Rights indicating that mitigation was completed in accordance with a USACE-approved mitigation plan. Evidence shall include confirmation by the USACE or submittal of a monitoring report verifying that required mitigation was completed.
- (0400500)
36. Prior to the onset of construction activities, a formal arborist survey shall be conducted by a certified arborist or registered forester. Appropriate data (e.g., position, height, drip-line radius, diameter-at-breast-height, general health, etc.) shall be collected by the arborist for any potentially impacted trees and the data shall be submitted to Napa County and the Deputy Director for Water Rights prior to the onset of construction activities or diversion of water under this right.
- (0400500)
37. An Oak Woodland Mitigation Plan (Plan) shall be developed in consultation with Napa County. The plan shall include mitigation measures to offset project impacts to native oak woodland through a combination of avoidance, preservation, and enhancement. The Plan shall specifically include how mitigation would be accomplished by: a) avoidance of oak woodlands of limited distribution within the project area and immediate vicinity; b) preservation and conservation of oak woodlands having the highest habitat values and qualities at a 2:1 preservation-to-vineyard ratio on a per acre basis; and c) restoration and enhancement of existing oak woodlands and associated shrub species. If (a) and (b) are not feasible, the Plan shall require replacement of removed oak woodlands at a 2:1 ratio and shall include planting methods, monitoring requirements, a maintenance plan, and success criteria. The draft Plan shall be provided to DFW for review and comment and suggestions be taken into consideration prior to submittal of the final Plan to the Deputy Director for Water Rights. The final Plan, once approved by Napa County, shall be submitted to the Deputy Director for Water Rights prior to implementation and before any water can be diverted under this water right. The oak woodland habitat included in the final Plan shall be maintained as wildlife habitat as long as water is being diverted under this water right. Any changes to the final Plan must be approved by the Deputy Director for Water Rights.
- (0400500)
38. The six locations designated as cultural sites identified by Tom Origer and Associates in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384" dated October 2006 shall be avoided during project construction, development, and operation. The sites shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use). If future project-related activities or developments at the locations are 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 staff of the Division of Water Rights shall determine the significance of the sites. 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.

(0380500)

39. 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 flaked 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.
- (0380500)
40. If human remains are encountered, the right holder shall comply with Section 15064.5 (e)(1) of the CEQA 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.
- (0380500)
41. If current project design plans change to include any additional acreage or ground disturbing activities outside of the areas surveyed by Origer and Associates as identified in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384", dated October 2006, a cultural resources study shall be conducted of these areas. A report of findings shall be submitted to the Deputy Director for Water Rights for approval prior to construction of the project or diversion of water under this right.
- (0380500)
42. The State Water Board reserves jurisdiction in the public interest to modify the terms and conditions of this right, including imposition of requirements to alter project facilities or operations and to modify instream flow releases, in the event of unforeseen adverse impacts to fish or wildlife. Board action will be taken only after notice to interested parties and opportunity for hearing.
- (000000M)
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THIS RIGHT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.) (0000016)
- B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) (0000017)
- C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board. (0000018)
- D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions prior to submitting a time extension petition and obtaining approval of the State Water Board. (0000019)
- E. Only the amount of water applied to beneficial use during the authorized diversion season, as determined by the State Water Board, shall be considered when issuing a license. (Wat. Code, § 1610.) (0000006)
- F. Right holder shall maintain records of the amount of water diverted and used under this right to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605. (0000015)
- G. Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and use under this right and documentation of compliance with the terms and conditions of this right. (0000010)
- H. 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. (0000070)
- I. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
 - 1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

- J. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

- K. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

- L. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

- M. 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); (5) Bay Area Air Quality Management District Air Quality Permit Requirements; (6) Regional Water Quality Control Board, San Francisco Bay Region or State Water Board section 401 certification; and (7) 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.

(0000203)

- N. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An “urban water supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

Agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An “agricultural water supplier” means a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

- O. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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 State Water Board may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- P. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- Q. This right does not authorize any act which results in the taking of a candidate, 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall obtain any required authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(0000014)

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN FOR

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: JAN 27 2015