

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21217

Application 30978 of

**Estate of Frank Teixeira
 1035 Stage Gulch Road
 Petaluma, CA 94954**

filed on **October 14, 1999**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Tributary to:

Unnamed Stream

**Petaluma River
 San Pablo Bay**

within the County of **Sonoma**

2. Location of point 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
North 1,848,592 feet East 6,408,856 feet	SW¼ of NW¼	33	5N	6W	MD

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
Irrigation	Within SE¼ of SE¼	28	5N	6W	MD	5
Frost Protection	Within SE¼ of NW¼	32	5N	6W	MD	5
	Within NE¼ of NE¼	32	5N	6W	MD	30
	Within NW¼ of NE¼	32	5N	6W	MD	14
	Within SW¼ of NE¼	32	5N	6W	MD	36
	Within SE¼ of NE¼	32	5N	6W	MD	30
	Within NE¼ of SE¼	32	5N	6W	MD	35
	Within NW¼ of SE¼	32	5N	6W	MD	20
	Within SE¼ of SE¼	32	5N	6W	MD	8
	Within NE¼ of NW¼	33	5N	6W	MD	4
	Within NW¼ of NW¼	33	5N	6W	MD	30
	Within SW¼ of NW¼	33	5N	6W	MD	20
	Within SE¼ of NW¼	33	5N	6W	MD	15
	Within NE¼ of SW¼	33	5N	6W	MD	3
	Within NW¼ of SW¼	33	5N	6W	MD	35
	Within SW¼ of SW¼	33	5N	6W	MD	10
Stockwatering	Within SW¼ of NW¼	33	5N	6W	MD	
	Within SE¼ of NW¼	33	5N	6W	MD	

The place of use is shown on map on file with the State Water Board.

5. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 164 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year. (000005C)
6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)
7. The total quantity of water collected to storage under this permit and Licenses 7228 (A018476) and 8283 (A021284) shall not exceed 164 acre-feet per year. (000005L)

8. The capacity of the reservoir covered under this permit shall not exceed 164 acre-feet. (000005N)
9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2018. (0000009)
10. The State Water Board reserves jurisdiction to impose conditions to conform this permit to the State Water Board's 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. (0000020)
11. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir that is not authorized for appropriation under this permit can be released. Before storing water in the reservoir, Permittee shall furnish to the Division of Water Rights evidence, substantiating that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043B)
12. Before storing water under this permit, Permittee shall install a staff gage in the reservoir, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. The Permittee/Licensee must maintain the staff gage in operating condition as long as water is being diverted or used under this permit.

Permittee/Licensee shall record the staff gage readings on the last day of each month. Permittee/Licensee shall record the maximum and minimum water level surface elevations and the dates that these water levels occur, each water-year between October 1, and September 30. Permittee/Licensee shall maintain a record of all staff gage readings and shall submit these records with all required Reports of Permittee, Reports of Licensee or whenever requested by the staff of the Division of Water Rights. (0070500)
13. Prior to diversion or use of water under this permit, Permittee shall install an in-line flow meter satisfactory to the Chief of the Division of Water Rights that measures the instantaneous rate and the cumulative amount of water withdrawn from the reservoir at the POD. The in-line flow meter must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee/Licensee shall maintain a record of the end-of-the-month meter readings and the days of actual diversion, and shall submit these records with all required Reports of Permittee, Reports of Licensee, or whenever requested by the staff of the Division of Water Rights. (0100900)
14. For the protection of fish and wildlife, under all bases of right, Permittee/Licensee shall during the period from December 15 of each year through March 31 of each succeeding year bypass a minimum of 0.33 cubic feet per second (cfs) at the POD. Under all bases of right the Permittee/Licensee shall bypass the total streamflow from April 1 through December 14 of each year. The total streamflow at the POD shall be bypassed whenever it is less than 0.33 cfs. (0140060)
15. Prior to the start of construction or diversion or use of water under this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will

demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
- b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity, including any necessary calibration.
- c) A time schedule for the installation and rating of these facilities.
- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.
- f) A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

The Permittee/Licensee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

Permittee/Licensee shall maintain all measurements and other monitoring required by this condition. Permittee shall provide measuring and monitoring records to the Chief of the Division of Water Rights within 15 days upon request by the State Water Board, the Division Chief, or other authorized designees of the State Water Board.

Diversion of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0490500)

16. Based on the information contained in the Division's files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee/Licensee diverts water under riparian right. With the Chief of the Division's approval, Permittee/Licensee may use water under basis of riparian right on the authorized place of use, provided that Permittee/Licensee submits reliable evidence to the Chief of the Division quantifying the amount of water that Permittee/Licensee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by Permittee/Licensee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300B)

17. Prior to the start of construction or diversion or use of water under this permit, Permittee shall file a notice of vineyard planting or replanting with the Sonoma County Agricultural Commissioner. The notice shall conform to applicable provisions of the Sonoma County Vineyard Erosion and Sediment Control Ordinance (Ord. No. 5216 §§ 2, 2000). The notice shall include: 1) maps, plans, drawings, calculations, photographs, and other information as may be necessary or required by the Agricultural Commissioner to verify that the vineyard planting qualifies as a Level II or III authorized vineyard planting, or that the vineyard replanting qualifies as a Level II authorized vineyard replanting; and 2) an erosion and sediment control plan, certified pursuant to Section 30-74 of the Sonoma County Vineyard Erosion and Sediment Control Ordinance, for the vineyard planting or replanting. Prior to the start of construction or diversion or use of water under this permit, Permittee

shall submit evidence to the Chief of the Division of Water Rights verifying that the Sonoma County agricultural commissioner has authorized the vineyard planting or replanting to proceed.

(0490300A)

18. Prior to licensing of this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights verifying that the project was constructed in compliance with the requirements of the certified erosion and sediment control plan and the Sonoma County Vineyard Erosion and Sediment Control Ordinance.

(0490300B)
19. Prior to construction or diversion or use of water under this permit, Permittee shall obtain any required grading permits from Sonoma County.

(0120300)
20. Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the San Francisco Bay Air Quality Management District. Prior to the start of construction or diversion or use of water under this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights showing that San Francisco Bay Air Quality Management District has approved the Permittee's Dust Control and Mitigation Plan.

(0450300A)
21. Permittee 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)
22. Construction activities within 100 feet of any drainage shall only occur between May 15 and October 31 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources.

(0400500)
23. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

(0450300B)
24. For the protection of habitat of the western pond turtle (*Clemmys marmorata*) and to allow for the continued growth of riparian vegetation, the Permittee/Licensee shall:
 - a) Maintain a 50-foot-wide setback around the reservoir as shown on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. No new ground-disturbing activities shall occur within the setback area, with the exception of livestock access and occasional equipment access necessary for continued operation of the reservoir. Equipment access within the setback area shall be limited to only 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 Game prior to any future

reservoir dredging operations. Permittee/Licensee shall submit to the Chief of the Division of Water Rights evidence of agencies approval prior to any future reservoir dredging operations.

- c) Refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation

(0600500A)

26. For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall establish a setback as shown on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. The setback shall be at least 50 feet wide along the unnamed intermittent stream within the Place of Use as measured from the top of the bank on both sides of the stream and at least 25 feet wide along the ephemeral streams within the Place of Use as measured from the top of the bank on both sides of the 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 livestock access 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.

(0600500B)

27. For the protection of riparian habitat and mitigation of disturbed riparian habitat, Permittee shall implement a riparian enhancement plan. Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a riparian enhancement plan for review and approval of the Chief of the Division of Water Rights. The riparian enhancement plan shall specify: (1) the location of area 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 of the vigor and abundance of riparian plantings. The riparian enhancement area specified in the plan shall encompass at least 500 linear feet and 50,000 square feet of the setback identified on Setback Map No. SB-01 dated February 25, 2008 on file with the Division of Water Rights. Prior to beginning construction or diversion or use of water under this permit, the 50,000 square feet enhancement area shall be fenced to exclude livestock access. The riparian enhancement plan shall be implemented within two years of approval of the plan.

(0490500A)

28. Permittee shall not conduct construction activities within 50 feet of drainages from October 16 of each year to April 30 of the succeeding year to reduce the likelihood of the presence of western pond turtles in construction areas. If a western pond turtle is encountered during construction, Permittee shall cease construction and ground-disturbing activities in areas within 250 feet of the location where the western pond turtle is present and shall contact the California Department of Fish and Game. Prior to restarting construction activities, Permittee shall submit to the Chief of the Division of Water Rights evidence of DFG approval to continue construction.

(0490500B)

29. Prior to beginning construction or diversion or use of water under this permit, Permittee shall submit a western pond turtle habitat enhancement plan for review and approval of the Chief of the Division of 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. Permittee shall develop the enhancement plan in consultation with California Department of Fish and Game. The approved western pond turtle enhancement plan shall be implemented within one year of enlargement of the reservoir.

(0490500C)

30. In accordance with the requirements of Water Code section 1393, Permittee 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 reservoir for water storage and recreational purposes.
(0120050B)
31. If tree removal activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to Division of Water Rights staff shall conduct a pre-construction survey for the purpose of identifying nesting bird species prior to tree removal. 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 Permittee shall notify the California Department of Fish and Game. 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 wide buffer shall be established around the nest until all young have fledged.
(0000210)
32. Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with Division of Water Rights. If a permit from the USACE is not necessary for this permitted project, the Permittee shall provide to the Division of Water Rights a letter from the USACE affirming that a permit is not needed.
(0520300)
33. If the project requires a permit from the USACE, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Resources Control Board prior to the start of construction, or diversion or use of water under this permit.
(0300300)
34. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators can include, but not necessarily be limited to: stone tools and flaking debris; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles); and locally darkened midden soils containing artifactual material such as bone and shell fragments, stone tools, or fire-cracked rock. Historic period site indicators can include: fragments of glass, ceramic, and metal objects; milled and split lumber; structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery, and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of 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 Chief of the Division of Water Rights.
(0000215)
35. If human remains are encountered, then the Applicant 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 Chief of the Division of Water Rights.

(0380500)

36. Prior to and during any ground disturbing activities, the Permittee/Licensee shall comply with the requirements of the Treatment Plan titled *Final Treatment Plan for Application 30978*, dated June 12, 2008, on file with Application 30978 at the Division of Water Rights. This includes all activities associated with any features of the proposed project (e.g., water diversion works, storage reservoirs, and distribution facilities, related to conversion of the place of use to vineyard).
(0380300)
37. Permittee/Licensee shall report any non-compliance with the terms of the permit to the Chief of the Division of Water Rights within three days of identification of the violation.
(9990999)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued.
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee 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 permit 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 the Permittee 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)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee 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)

- F. This permit does not authorize any act that results in the taking of a threatened, endangered, or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used 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)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a lake or streambed alteration agreement between the State Department of Fish and Game (DFG) and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by the DFG.

(0000063)

This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

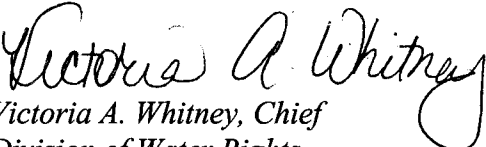
Section 1392. Every Permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

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 therefore 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


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JUN 27 2008**