

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21227

Application 31304 of

Klein Foods Inc.
c/o Vino Farms, Inc.
1377 East Lodi Avenue
Lodi, CA 95240

filed on **March 14, 2002**, 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: Unnamed Streams	Tributary to: Dry Creek (Lake Sonoma) thence
	Russian River thence
	Pacific Ocean

within the County of **Sonoma**

2. Location of Points of Diversion (POD)

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POD 2 (Reservoir 2 West) Point of Diversion and Re-Diversion North 2,050,745 feet and East 6,237,656 feet	SE ¼ of NE ¼	24	11N	12W	MD
POD 4 Point of Diversion to Offstream storage North 2,049,795 feet and East 6,237,056 feet	NE ¼ of SE ¼	24	11N	12W	MD
POD 5 Point of Diversion to Offstream storage North 2,051,395 feet and East 6,239,206 feet	SE ¼ of NW ¼	19	11N	11W	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Irrigation	SW¹/₄ of NW¹/₄	19	11N	11W	MD	21
	NW¹/₄ of SW¹/₄	19	11N	11W	MD	14
	SE¹/₄ of NW¹/₄	24	11N	12W	MD	4
	SW¹/₄ of NE¹/₄	24	11N	12W	MD	7
	SE¹/₄ of NE¹/₄	24	11N	12W	MD	9
	NE¹/₄ of SE¹/₄	24	11N	12W	MD	10
					TOTAL	65
Recreation						
At Reservoir (POD 2)	SE¹/₄ of NE¹/₄	24	11N	12W	MD	

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **48** acre-feet per annum to be collected as follows:
 - (a) by onstream collection to storage at POD 2 to be collected from **November 1** of each year to **March 1** of the succeeding year;
 - (b) by direct diversion to offstream storage at POD 4: **1 cubic foot per second** from **November 1** of each year to **March 1** of the succeeding year; and
 - (c) by direct diversion to offstream storage at POD 5: **1 cubic foot per second** from **November 1** of each year to **May 1** of the succeeding year.

The total amount of water to be taken from the sources shall not exceed **48** acre-feet per water year of October 1 to September 30. (000005Q)

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 capacity of the reservoir covered under this permit shall not exceed **48** acre-feet. (000005N)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2019**.
9. Prior to diversion or use of water under this permit, Permittee shall install in-line flow meters, satisfactory to the Chief of the Division of Water Rights that measure the instantaneous rate and the cumulative amount of water withdrawn from the reservoir at Point of Diversion (POD) 2, and from diversion facilities at POD 4 and POD 5.

These in-line flow meters must be maintained in operating condition as long as water is being diverted or used under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of 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)

10. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from November 1 of each year through March 1 of each succeeding year bypass a minimum of 0.18 cubic foot per second (cfs) at Point of Diversion (POD) 2 and 0.23 cfs at POD 4. Under all bases of right Permittee shall bypass the total stream flow at POD 2 and POD 4 from March 2 through October 31 of each year. The total stream flow at POD 2 shall be bypassed whenever it is less than 0.18 cfs. The total stream flow at POD 4 shall be bypassed whenever it is less than 0.23 cfs.
(0140400)
11. For the protection of riparian and aquatic habitat, under all bases of right, Permittee shall during the period from November 1 of each year through May 1 of each succeeding year bypass a minimum of 0.06 cubic foot per second (cfs) at Point Of Diversion (POD) 5. Under all bases of right Permittee shall bypass the total stream flow at POD 5 from May 2 through October 31 of each year. The total stream flow at POD 5 shall be bypassed whenever it is less than 0.06 cfs.
(0400400)
12. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained.
(0060062AP)
13. Discharge of water to the Unnamed Stream from Reservoir 2 is prohibited between March 1 and September 1, unless warranted by emergency conditions or prior approval is granted by the Division of Water Rights.
(0400500)
14. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to the Permittee and opportunity for hearing.
(0000080)
15. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Resources Control Board, made after notice to interested parties and opportunity for hearing.
(0000090A)
16. Whenever the prior storage rights of Sonoma County Water Agency (under Permit 16596, issued pursuant to Application 19351) are not satisfied by April 1 of any year, Permittee shall release water collected to storage under this permit between November 1 of the preceeding year and March 31 of the current year. Permittee shall immediately release water at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release more water than is required to draw down the water levels in the reservoirs to the level of the November 1 staff gage readings for the prior calendar year unless Permittee has withdrawn water from the reservoirs for consumptive purposes since November 1 of the previous calendar year. In that event, Permittee shall be required to release sufficient amount of water to draw down the reservoir water levels to the levels existing on November 1 of the prior calendar year, as measured by the staff gage, and also

release any additional amount of water collected and withdrawn from the reservoirs for consumptive use purposes since November 1 of the previous calendar year.

(0000051)

17. Permittee shall allow the Sonoma County Water Agency and all successors in interest, or a designated representative, reasonable access to the reservoirs for the purpose of verifying staff gage readings and determining water levels in the reservoirs.

(0480900)

18. This permit is specifically subject to the prior rights of Louis D. Preston under License 4498 (Application 14043).

(0160300)

19. Before storing water in any reservoir identified in 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 must maintain the staff gage in operating condition as long as water is being diverted or used under this permit.

Permittee shall record the staff gage readings on the last day of each month. Permittee shall record the maximum and minimum water surface elevations and the dates that these water levels occur each water-year between October 1 and September 30. Permittee 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.

The State Water Resources Control Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

(0100047)

20. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoirs, which is not authorized for appropriation under this permit, can be released. Before starting construction, Permittee shall submit plans and specifications of the outlet pipes, or alternative facility, to the Chief of the Division of Water Rights for approval. Before storing water in the reservoirs, Permittee shall furnish evidence to substantiate that the outlet pipes have been installed in each dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043A)

21. 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 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 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 Resources Control Board, the Chief of the Division of Water Rights, or other authorized designees of the State Water Resources Control Board.

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

(0000070)

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

(0560300B)

23. Prior to diversion or use of water under this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights that demonstrates that the project has been constructed in accordance with the recommendations provided in the January 3, 2003 Geotechnical Investigation prepared for this project. Evidence shall include certification by a registered Geotechnical Engineer or registered Geologist that the project was constructed in accordance with the recommendations in the January 3, 2003 Geotechnical Investigation or that equally protective measures were implemented.

(0490500)

24. 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.

(0450500)

25. 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.

(0450500)

26. Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the Northern Sonoma Air Quality Management District. The Dust Control and Mitigation Plan shall identify how project construction and operation will comply with the California Air Resources Board's Asbestos Airborne Toxic Control Measure (ATCM) (Cal. Code Regs., Title 17, § 93105). 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 the Northern Sonoma Air Quality Management District has approved the Permittee's Dust Control and Mitigation Plan.

(0450500)

27. In order to prevent degradation of the quality of water during and after construction of the project, Permittee shall file a report pursuant to Water Code section 13260 prior to commencement of construction and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, North Coast Region, or by the State Water Resources Control Board.
(0000100)
28. 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)
29. The well casings for Points of Diversion (PODs) 4 and 5 shall be backfilled with native material, and channel contours shall be restored to pre-construction configurations. If shallow bedrock is encountered during trenching for the well casings, the streambed shall be excavated to design grade and the intake pipe shall be bedded in Class 2 permeable gravel up to top of bedrock. The remaining backfill shall consist of native gravels. Construction of PODs 4 and 5 shall occur only between June 15 and October 15. Wastewater generated from dewatering construction areas shall not be discharged to surface waters.
(9990900)
30. If the storage dams will be of such size to be within the jurisdiction of the Department of Water Resources (Department), Division of Safety of Dams, construction of the water supply project authorized by this permit and diversion and use of water under this permit shall not be commenced until the Department has approved the plans and specifications of the dam.
(0360048A)
31. In accordance with the requirements of Water Code section 1393, Permittee shall clear the sites of proposed reservoirs with capacities of 50 acre-feet or greater, of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.
(0120050A)
32. No construction shall be commenced and no water shall be diverted or used under these permits until all necessary federal, state, and local approvals have been obtained for the construction of the project facilities, planting of the place of use, and the diversion and use of water.
(0000203)
33. Permittee shall not conduct, or cause to be conducted, construction work within the bed or bank of a live stream channel while flowing water or foothill yellow-legged frogs are present.
(0400500)
34. If foothill yellow-legged frogs are encountered during construction, Permittee shall cease construction and ground-disturbing activities in areas within 250 feet of the location where foothill yellow-legged frogs are 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 Department of Fish and Game approval to continue construction.
(0400500)
35. Permittee shall not stock and shall not allow others to stock fish in any reservoir. Permittee shall monitor on a yearly basis the reservoirs authorized under this permit, to make sure that no fish, non-native, or other exotic aquatic predators are accidentally introduced into them. Permittee shall eliminate any fish or non-native frogs found by draining the reservoir where they are found and gigning non-native frogs by hand. Permittee shall prepare annually a report describing the methodology used to survey the

reservoirs for the presence of exotic species, the dates when the surveys occurred, and what actions were taken if exotic species were found. These exotic species monitoring reports shall be submitted to the Division of Water Rights with all required Reports of Permittee, Reports of Licensee, or whenever requested by the staff of the Division of Water Rights. Permittee shall post signs in English and Spanish at each reservoir stating that the introduction of fish and frogs into the reservoir is prohibited.

(0400500)

36. Permittee shall not conduct construction activities within 50 feet of a drainage from October 16 of each year to April 30 of the succeeding year to reduce the likelihood of the presence of northwestern pond turtles in construction areas. If a northwestern pond turtle is encountered during construction, Permittee shall cease construction and ground-disturbing activities in areas within 250 feet of the location where northwestern pond turtles are 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 Department of Fish and Game approval to continue construction.

(0400500)

37. 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 buffer shall be established around the nest until all young have fledged.

(0400500)

38. All trees with a diameter greater than 6 inches breast height (dbh) within the place of use identified in this permit shall be avoided with a no disturbance buffer that extends to the dripline of the tree.

(0400500)

39. For the protection of riparian habitat, Permittee shall establish setbacks on watercourses within the places of use, as shown on Setback Maps SB-01, SB-02, and SB-03, dated July 10, 2007 on file with the Division of Water Rights. The setbacks shall be at least 100 feet wide along Class I watercourses, 50 feet wide along Class II watercourses, and 25 feet wide along Class III watercourses. Setbacks shall be measured from the top of the bank on both sides of the stream. 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 riparian vegetation within the setback area are allowed.

(0400500)

40. For the mitigation of disturbed riparian habitat, Permittee shall establish Stream Mitigation Areas as shown on Stream Mitigation Area Map SM-01, dated July 10, 2007 on file with the Division of Water Rights. Stream Mitigation Areas shall be at least 100 feet wide as measured from the top of the bank on both sides of the stream. Stream Mitigation Areas shall encompass at least 13,050 linear feet of Class I Watercourses. With exception of installation of a pipeline between POD 4 and POD 2 (as identified in Application 31362) and the installation of three standpipes, no ground disturbing activities shall occur within the Stream Mitigation Areas, including, but not limited to, grading, herbicide spraying, roads, and use or construction of storage areas. Planting, maintenance, and irrigation of native riparian vegetation within the Stream Mitigation Areas are allowed. Prior to diversion or use of water under this permit, the Permittee shall fence the perimeter of the Snow Creek mitigation area and shall fence vegetation planted within the Unnamed Stream mitigation area in order to restrict cattle or domestic stock access.

(0400500)

41. Permittee shall remove exotic vegetation and trash from the Stream Mitigation Areas on an annual basis for a period of five years from the time fencing is installed around the perimeter of the Snow Creek mitigation area and within the Unnamed Stream mitigation area.

(0400500)

42. Permittee shall mitigate for tree removal within riparian areas by planting at least three trees for every tree removed (a 3:1 mitigation ratio). Permittee shall plant trees at least 20 feet apart and within Stream Mitigation Areas as shown on Stream Mitigation Area Map No. SM-01 dated July 10, 2007 on file with the Division of Water Rights. Permittee shall plant trees in accordance with the provisions in the December 2006 Conceptual Riparian Zone Mitigation and Monitoring Plan prepared for the California Department of Fish and Game's Streambed Alteration Agreement (Notification Number 1600-2006-320-3) or a comparable mitigation plan, that has subsequently been approved by the Department of Fish and Game. At a minimum the following trees shall be planted and maintained until the plantings achieve an overall 5-year survival rate of 75 percent:

Species	Number of trees to be planted
Valley Oak	147
Coast Live Oak	111
California Laurel	108
Red Willow	3
Oregon White Oak	3
Black Oak	126
Pacific Madrone	51
Total	549

(0400500)

43. Prior to the start of construction or diversion or use of water under this permit, Permittee shall submit a Department of Fish and Game (DFG) approved Riparian Zone Mitigation and Monitoring Plan to the Chief of the Division of Water Rights. Prior to licensing of this permit, Permittee shall submit evidence to the Chief of the Division of Water Rights indicating that mitigation was completed in accordance with a Department of Fish and Game approved plan. Evidence shall include confirmation by the Department of Fish and Game or submittal of monitoring data verifying that required mitigation was implemented in accordance with the specifications in the approved Mitigation and Monitoring Plan.

(0490500)

44. For the protection of wetlands, Permittee shall establish setbacks within the places of use as shown on Setback Maps SB-01, SB-02, and SB-03, dated July 10, 2007 on file with the Division of Water Rights. The setback shall extend at least 50 feet from the edge of any wetland. 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)

45. For the mitigation of disturbed wetlands, 2.1 acres of wetlands shall be created and 7.3 acres of existing wetland shall be preserved. Mitigation shall be conducted in accordance with the provisions in the March 2007 Mitigation and Monitoring Plan prepared for the U.S. Army Corps of Engineers (USACE) in association with the 404 Permit application process or a comparable mitigation plan that has subsequently been approved by USACE and the Division of Water Rights. Prior to licensing of this permit, Permittee shall submit evidence to the Chief of the Division of 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 and that 2.1 acres of created wetlands meet the diagnostic environmental characteristics of a wetland as defined in the 1987 Corps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1).

(0400500)

46. 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 the Division of Water with a letter from the USACE affirming that a permit is not needed.

(0450500)

47. Prior to the start of construction or diversion or use of water under this permit, and only if a USACE permit is required, Permittee shall obtain Clean Water Act section 401 Water Quality Certification from the State Water Resources Control Board or the North Coast Regional Water Quality Control Board.

(0290500)

48. The prehistoric site identified as the Split Rock Shelter, by Tom Origer & Associates in the report titled "A Cultural Resource Survey of Portions of the Cooley Ranch, West of Cloverdale Sonoma County, California" shall be avoided during project construction, development, and operation. The site 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-vineyards). 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 boundaries of the site and placement of permanent fencing with concurrence of the Division's staff archeologist. The archeologist shall be present during installation of the fencing to prevent any inadvertent damage to the site. The boundaries of the permanent fencing shall include a buffer zone of fifteen feet at a minimum around the site. Permanent fencing, with a height of five feet at a minimum, to ensure that it is clearly visible for heavy equipment operators, shall be installed prior to project-related activities and shall remain in place for as long as water is being diverted. Any future project-related activities or developments at the location of the above listed site may be allowed only if 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 is retained to determine the significance of the site. If mitigation is determined to be necessary, then the archeologist shall design, conduct, and complete an appropriate mitigation plan that must be approved by the Chief of the Division of Water Rights prior to any activities related to any new developments. Permittee shall be responsible for all costs associated with the cultural resource related work.

(0380500)

49. The prehistoric petroglyphs identified as Rock 2 and Rock 3, by Tom Origer & Associates in the report titled "A Cultural Resource Survey of Portions of the Cooley Ranch, West of Cloverdale Sonoma County, California" shall be avoided during project construction, development and operation. They 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 of the place of use to vineyard). 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 boundaries of the petroglyphs and placement of permanent fencing, and shall be present during installation of the fencing to prevent any inadvertent damage to the petroglyphs. The boundaries of the permanent fencing shall include a buffer zone of ten feet at a minimum around the petroglyphs. Permanent fencing, with a height of five feet at a minimum, to ensure that it is clearly visible for heavy equipment operators, shall be installed prior to project-related activities and shall remain in place as long as water is being diverted.

(0380500)

50. 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 Chief of the Division of Water Rights shall be notified of the discovery and a professional archaeologist 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)

51. If human remains are encountered, then the Permittee 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 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 within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most likely descendants from the deceased Native American. The most likely descendent may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. 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)

52. Permittee 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 & G. 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 stream or lake alteration agreement between the State Department of Fish and Game 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 alteration 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 State Department of Fish and Game.

(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 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

Victoria A. Whitney,
Division Chief

Dated:

EIO: DCC: 10/16/08

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