

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21257

Application 29852 of **Beckstoffer Vineyard**
P.O. Box 405
Rutherford, CA 94573

filed on **October 25, 1990**, has been approved by the State Water Resources Control 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: (5) Huichica Creek	Tributary to: Hudeman Slough 2nd Napa Slough Sonoma Creek San Pablo Bay
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within the County of Napa

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
(5) Diversion to Offstream Storage North 1,842,491 feet and East 6,460,306 feet	NW¹/₄ of SW¹/₄	6*	4N	4W	MD

Location of point of rediversion

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
(2) Cabral Reservoir No. 1 North 1,842,391 feet and East 6,461,806 feet	NE¹/₄ of SW¹/₄	6*	4N	4W	MD

Location of place 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
Cabral Reservoir No. 2 North 1,842,991 feet and East 6,461,756 feet	NE$\frac{1}{4}$ of SW$\frac{1}{4}$	6*	4N	4W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NW$\frac{1}{4}$ of NE$\frac{1}{4}$	6*	4N	4W	MD	17
	NE$\frac{1}{4}$ of NE$\frac{1}{4}$	6*	4N	4W	MD	37
	SE$\frac{1}{4}$ of NE$\frac{1}{4}$	6*	4N	4W	MD	37
	SW$\frac{1}{4}$ of NE$\frac{1}{4}$	6*	4N	4W	MD	34
	NW$\frac{1}{4}$ of SW$\frac{1}{4}$	6*	4N	4W	MD	34
	NE$\frac{1}{4}$ of SW$\frac{1}{4}$	6*	4N	4W	MD	31
	SE$\frac{1}{4}$ of SW$\frac{1}{4}$	6*	4N	4W	MD	40
	SW$\frac{1}{4}$ of SW$\frac{1}{4}$	6*	4N	4W	MD	34
	NW$\frac{1}{4}$ of NW$\frac{1}{4}$	7	4N	4W	MD	14
	NE$\frac{1}{4}$ of NW$\frac{1}{4}$	7	4N	4W	MD	18
					Total	296

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

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **14 acre-feet** per annum to be collected to Storage in Cabral Reservoir No. 2 from **November 1** of each year to **April 30** of the succeeding year.

(0000005C)

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.

(0000005I)

7. The maximum rate of diversion to offstream storage from Huichica Creek Point of Diversion 5 shall not exceed **2 cubic-feet per second**. The combined maximum diversion rate from Huichica Creek Point of Diversion 5 to offstream storage under Applications 25630, 29852, and 30253 shall not exceed 3 cubic-feet per second.

(0000005N)

8. In recognition of the water rights held under Applications 25630, 30252 and 30253, the capacity of Cabral Reservoir No. 2 shall not exceed 84 acre-feet.

(0000005P)

9. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2020**. (0000009)

10. Prior to diversion or use of water under this permit, Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights, that measures the instantaneous rate and cumulative amount of water diverted from Huichica Creek. This in-line flow meter 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 the days and amounts of actual diversion, and shall submit these records with annual progress reports, and whenever requested by the Deputy Director for Water Rights. (0100900)

11. Before storing water in the reservoirs, Permittee shall install a staff gage in each reservoir satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in each reservoir. The staff gages must be maintained 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 and on October 15 annually. 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 annual progress reports, and whenever requested by the Division of Water Rights.

The State Water Resources Control Board may require release of water that cannot be verified as having been collected under a valid basis of right. (0100047)

12. 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, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Before starting construction, Permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Deputy Director for Water Rights for approval. Before storing water in the reservoir, Permittee shall furnish evidence which substantiates 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)

13. For the protection of fish and wildlife, Permittee shall from November 1 of each year to April 30 of the succeeding year, bypass a minimum of 15.5 cubic-feet per second as measured at the Napa County Resource Conservation District's stream gage located downstream adjacent to the California Department of Fish and Game refuge. The total streamflow shall be bypassed whenever it is less than 15.5 cubic-feet per second. From May 1 to October 31 of each year, the total streamflow shall be bypassed.

If Napa County Resource Conservation District discontinues operation and maintenance of its stream gage on Huichica Creek, within 30 days of that discontinuation Permittee shall provide to the Deputy Director for Water Rights a compliance plan identifying an alternative/replacement stream gage. (0140060)

14. Prior to the start of the diversion or use of water under this permit, the Permittee shall submit a Compliance Plan for approval by the Deputy Director for 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 streamflow 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; and
- 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 Deputy Director for Water Rights within 15 days upon request by the State Water Resources Control Board, the Deputy Director for 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)

15. To prevent degradation of the quality of water during and after construction of the project, Permittee shall file a report of waste discharge 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, San Francisco Bay Region, or by the State Water Resources Control Board.

(0000100)

16. Prior to the start of construction Permittee shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Permittee shall also submit a copy of the plan to the San Francisco Bay Area Air Quality Management District. The Emission Control and Mitigation Plan shall be consistent with the San Francisco Bay Area Air Quality Management District'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. Permittee shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Permittee shall also provide a copy of the evidence to the San Francisco Bay Area Air Quality Management District upon request. Evidence may consist of, but is not limited to, photographs and construction records.

(0450300)

17. 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)

18. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division of Water Rights files, riparian water has not been used on the Place of Use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the Place of Use authorized by this permit under basis of riparian right. With the Deputy Director of Water Rights approval, this information may be updated, and Permittee may use water under basis of riparian right on the authorized Place of Use, provided that Permittee submits reliable evidence to the Deputy Director for 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 Deputy Director for 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. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.

(0560300b)

19. For the protection of habitat for the California red-legged frog along the reservoirs and to allow for the growth of riparian vegetation, Permittee shall:
- a. Establish and maintain, undisturbed, a 50-foot-wide strip [exact width subject to negotiation with United States Fish and Wildlife Service and Department of Fish and Game] of natural upland vegetation around each water storage reservoir. During replanting, no vines shall be replanted within a 50-foot-wide strip to establish the natural vegetation buffer.
 - b. Obtain approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and California Department of Fish and Game prior to any reservoir dredging operation. Permittee shall submit to the Deputy Director for Water Rights evidence of agency approval prior to any future reservoir dredging operations;
 - c. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
 - d. Make no introduction of non-native fish species into the reservoir; and
 - e. Consult with the United States Fish and Wildlife Service and California Department of Fish and Game should any bullfrogs or non-native fish be discovered at or near the reservoir to develop and implement an acceptable bullfrog eradication program. The eradication program may require periodic draining of the reservoirs.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Applications 25630, 29852, 30252, or 30253.

(0400500)

20. For the protection of riparian habitat along Huichica Creek, Permittee shall establish a setback of at least 30 feet along the creek for any new vineyard planting or vineyard replant. The stream setback shall be measured from the top of the bank on both sides of the stream. In areas where existing riparian vegetation extends beyond 30 feet from the top of bank, the setback shall be extended to the riparian vegetation dripline as shown in Figure 3 of the Initial Study document. Figure 3 establishes a minimum setback requirement which may be extended or otherwise altered per any Department of Fish and Game approved restoration plan associated with Applications 25630, 29852, 30252, and/or 30253. No activity shall occur within the setback area, including, but not limited to, grading, herbicide spraying, paved roads, fencing, storage areas, and irrigation, with the exception of occasional equipment access necessary for continued operation of the vineyard. Permitted equipment access shall be limited to only necessary activities with

efforts to minimize disturbance of vegetation and soils. Additionally, annual mowing of grasses to reduce fire hazard will be allowed in a 20-foot wide area adjacent to vineyards, provided that rooted vegetative cover is maintained year-round in mowed areas. The setback area shall be protected from disturbance to promote and encourage the recruitment of native riparian shrub and tree species. Planting of native riparian species is also encouraged to provide additional protection to the stream system.

For areas where existing agriculture encroaches on the buffer, the Permittee shall develop and implement an erosion control plan designed to stabilize stream banks and the adjacent corridor to minimize erosion potential and sediment inputs into the stream channels. Prior to diversion and use of water, Permittee shall submit an erosion control plan, approved by the County of Napa, to the Deputy Director for Water Rights.

(0400503)

21. In order to off-set impacts from expansion of the existing reservoirs on the unnamed tributaries, Permittee shall provide a restoration plan to California Department of Fish and Game for review and concurrence prior to diversion or use of water. The restoration plan shall include, at a minimum, 1,000 linear-feet of bank restoration, including but not limited to, activities such as invasive species removal, riparian planting and bank stabilization using bioengineering techniques. The plan shall include potential locations within the Napa Slough, Mud Slough, or Huichica Creek watersheds. Areas of restoration shall be managed and protected in perpetuity.

(0400504)

22. The Permittee shall obtain all necessary federal (including United States Army Corps of Engineers Section 404), state, and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.

(0000203M)

23. No water shall be diverted from Huichica Creek under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the California Department of Fish and Game and the National Marine Fisheries Service to protect Steelhead Trout, Coho Salmon, and Chinook Salmon listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code section 2050 to 2098) and the federal Endangered Species Act (16 U.S.C.A. section 1531 to 1544). Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.

(0000214)

24. All project construction activities shall be conducted between 7:00 a.m. and 7:00 p.m.

(0400503)

25. To minimize overall construction noise, construction equipment shall be properly maintained and equipped with appropriate noise control features, such as mufflers, in accordance with manufacturers' specifications.

(0400502)

26. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological 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; 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 archeologist shall be retained by the Permittee 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.

(0000215)

27. If human remains are encountered, then the Permittee shall comply with Section 15064.5(e)(1) of the California Environmental Quality Act Guidelines and the Health and Safety Code Section 7050.5. All project-related ground 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 Deputy Director for Water Rights.

(0380500)

28. Any non-compliance with the terms of the permit shall be reported by the Permittee to the Deputy Director for Water Rights within three (3) 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 until a license is issued.
- (0000010)
- C. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said State Water Resources Control 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 the State Water Resources Control 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 Resources Control 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 Resources Control 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 Resources Control 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 Resources Control 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 Resources Control Board if, after notice to the Permittee and an opportunity for hearing, the State Water Resources Control 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 Resources Control 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 or endangered 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 Resources Control 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 and Streambed Alteration Agreement between the California 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 Lake and Streambed 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 California Department of Fish and Game.

(0000063)

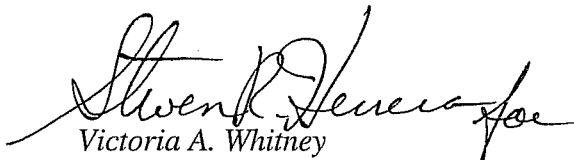
This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

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
Deputy Director for Water Rights

Dated:

JUN 30 2010