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December 14, 2018

Ms. Jennifer Calles  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

**RE: Request for Exception to Policy for Maintaining Instream Flows in Northern California Coastal Streams for Application A032889 of Treehouse Vineyards, LLC, Sonoma County**

Dear Ms. Calles:

On behalf of the referenced Applicant, Treehouse Vineyards LLC (Treehouse), this is to request an exception to the Stream Class provision of the State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy). This request proposes that the State Water Resources Control Board (State Water Board) accept water right Application A032889 for processing. Below is a description of the project sought by Application A032889 and information to address the items that the Policy requires be included in an exception request.

## **PROJECT DESCRIPTION AND COMPLETED WORK**

Application A032889 proposes the diversion of up to 5.82 acre-feet from an unnamed stream tributary to Franz Creek thence Maacama Creek thence the Russian River. Diversion to storage is sought for the season of November 1 through May 31. Applicant understands that the diversion season will likely be reduced to December 15 through March 31 to comply with the Policy requirements, unless an earlier or longer season is desired by the resource agencies. Water will be used for irrigation of 52 acres of existing vineyards. The reservoir was constructed by a previous property owner prior to 1993 for irrigation of vineyard. The reservoir is located above the upstream limit of anadromy on a small unnamed stream having a watershed area of 32 acres with an average seasonal discharge of 46 acre-feet.<sup>1</sup>

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<sup>1</sup> Preliminary Water Availability Analysis submitted with the State Water Board as attachment 2 for Application 032889.

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When Treehouse purchased the property they voluntarily filed Water Right Application A032889 with the State Water Board in order seek a legal claim of right for the existing pond, that was constructed by a previous property owner.

Treehouse has performed the following actions to date in order to bring the pond into compliance with State Water Board regulations;

- Prepared and filed an Application to Appropriate Water on December 4, 2017
- Prepared and filed an Initial Statement of Water Diversion and Use
- Had pond surveyed by a registered engineer to determine capacity
- Installed a staff gage measuring device in the pond
- Worked with neighbors to obtain permission for the State Water Board staff to access lands to prepare the Stream Classification Report

The subject reservoir was constructed prior 1993 and is located on a Class II stream according to the Stream Classification Survey conducted by State Water Board staff. Treehouse purchased the property and voluntarily filed Application A032889 to bring the pond into compliance. To date, Treehouse has spent over \$200,000 to file and process Application A032889 and meet the monitoring requirements with the expectation that the water right application could be accepted and processed, and eventually a Permit be issued. Treehouse is requesting that an exception to the Stream Class criteria of the Policy be made such that Application 032889 can be accepted and processed for obtaining a water right Permit.

All water storage and conveyance facilities, and place of use are developed, and water use has been made since at least 1993. Accordingly, the project named in Application A032889 qualifies for a Categorical Exemption under Title 14, California Code of Regulations, Section 15301, Existing Facilities.

## **EXCEPTION REQUEST REQUIREMENTS**

Policy Section 9.0 sets forth four items that an exception request shall contain. These items are addressed below:

### Reason for Exception Request

The existing pond was built by a previous property owner over 25 years ago, and Treehouse was not advised that a water right permit was necessary when they purchased the property. When Treehouse understood that a water right permit was required, they took immediate steps to retain a competent engineering firm to assist them with the required actions to seek authorization for the pond. Treehouse is looking to authorize an existing pond that is located on the property that they purchased to use for cultivation of vineyard. Without the pond authorized to be used to serve the vineyard, all agricultural operations will be required to be ceased. There is a small groundwater

well on the property, however, it has since been determined that it does not provide adequate supply to provide for any vineyard operations.

Documentation of the Reasons Why the Exception Will Not Compromise Maintenance of Instream Flows in the Policy Area

If the exception is granted, the project will not compromise maintenance of instream flows in the Policy area. The pond is located approximately 1,500 feet upstream of the upper limit of anadromy. When the Water Supply Report and Cumulative Diversion analysis is completed for this project as required by the Policy, the appropriate minimum bypass flows and maximum diversion rates will be set at a level to specifically maintain instream flows. The Applicant will abide by the process set forth in the Policy for reservoirs located on Class II streams and will agree to terms and conditions that are determined necessary to maintain instream flows.

Explanation of How the Public Interest Will be Served by the Exception

If the exception is not granted, Treehouse will be required to either remove the pond or render the pond incapable of storing water subject to the State Water Board's permitting authority. This reservoir provides the sole source of water to serve the 52 acres of vineyard. There is no alternative or substitute source of water for these lands. Loss of the vineyard due to lack of irrigation supply would result in job elimination of the vineyard manager, supervisors, tractor drivers, truck drivers, foreman, and laborers for this project. The total annual payroll in connection with the vineyard operation in 2017 was \$350,000 – 400,000 and would be lost. Elimination of the vineyard will also result in a reduction of \$5,896 in property taxes for Sonoma County. Further the reservoir provides seasonal habitat for many species of birds and other wildlife in an area that is naturally devoid of water in the summer months.


Given the current economic and climatologic situation of Sonoma County and the state of California, it would seem that the public interest would be best served by accepting and processing Application A032889 to allow for Treehouse to obtain a legal right to continue to store water in the pond for use in its vineyard operation.

Conclusion

Based on the foregoing, we believe that Treehouse has provided information supporting a reasonable request for an exception to the stated Policy provisions, and that sufficient cause exists for this exception. If Application A032889 is accepted for processing, we understand that the project would still need to be evaluated for impacts in accordance with Policy provisions associated with Class II streams.

Please contact me if you have any questions regarding this matter.

Very truly yours,  
WAGNER & BONSIGNORE  
CONSULTING CIVIL ENGINEERS



Ryan Stolfus

cc: Emily Battle (via email)  
William Vyeniello (via email)