



State Water Resources Control Board

FINAL MITIGATED NEGATIVE DECLARATION

Pursuant to Section 21080(c)

Public Resources Code

To: Office of Planning & Research
State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
From: State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

PROJECT TITLE: Marino Water Right Project

APPLICANT: Gerald J. Marino, Joseph C. Nichelini,
and Christopher J. Harney
19419 Marna Lane
Sonoma, CA 95476

PROJECT LOCATION:

The 455-acre subject property is located approximately six miles northeast of Angwin in Napa County, California. The location can be found within Township 9N, Range 5W of the "Aetna Springs, California" and "Walter Springs, California" U.S. Geological Survey (USGS) 7.5 minute topographic quadrangles.

PROJECT DESCRIPTION:

Application 30384 proposes the diversion to storage of a total of 245 acre-feet of water per year. The collection season would be from December 15 through March 31 of the following year. Two reservoirs would store the collected water. An existing 46.8 acre-foot capacity onstream reservoir would be increased in capacity to 196 acre-feet. The enlarged reservoir would include the 35 acre-foot capacity licensed pursuant to License 10101 for stockwatering and recreational purposes; no changes in the purposes of use under License 10101 would occur. Diversion to the reservoir would be from Point of Diversion 1 (POD 1) located at the dam of the enlarged reservoir and at POD 2 on Pope Creek.

One offstream reservoir (Reservoir 4) would also be constructed with a 49 acre-foot storage capacity. Water would be diverted to storage in Reservoir 4 from PODs 1 and 2 via proposed pipelines between POD 1 and POD 2 and between POD 1 and the offstream reservoir. Water would be used for recreation, fire protection, wildlife enhancement, and irrigation, frost protection, and heat control of a 214-acre vineyard.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

DETERMINATION:

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less than significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

WATER RIGHT TERMS:

Acronyms used in permit terms:

BAAQMD	Bay Area Air Quality Management District
BMPs	Best Management Practices
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
DFW	Department of Fish and Wildlife
FESA	Federal Endangered Species Act
IS/MND	Initial Study/Mitigated Negative Declaration
POD	Point of Diversion
RWQCB	Regional Water Quality Control Board
USACE	Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
VELB	valley elderberry longhorn beetle

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Board.

1. In accordance with the requirements of Water Code section 1393, right holder shall clear the area covered by the proposed reservoir enlargement of all structures, trees, and other vegetation which would interfere with the use of the proposed reservoir for water storage and recreational purposes.
2. In order to minimize potential erosion impacts from construction activities, Best Management Practices (BMPs) for any disturbed areas should be included in any plan to control erosion for the proposed project. At a minimum, BMPs should include, but not be limited to the following measures:
 - a. Vegetation removal shall be limited to the minimum amount necessary to accommodate the proposed project. As the permanent vegetation cover is maturing, temporary vegetation or other erosion control measures sufficient to stabilize the soil shall be established on all disturbed areas. New plantings shall be protected by using such measures as jute netting, straw mulching, and fertilizing;
 - b. Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas;
 - c. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months; and

- d. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.
3. Prior to the start of construction or diversion or use of water under this permit, right holder shall obtain a grading permit and approval of an Erosion Control Plan prepared in accordance with Napa County's Conservation Regulations from the County of Napa. The Napa County Erosion Control Plan shall be consistent with the Napa County use requirements in areas with slopes greater than five percent. Copies of the approved grading permit and Erosion Control Plan from the County of Napa shall be submitted to the Deputy Director for Water Rights for approval prior to starting construction. If an Erosion Control Plan is not required, right holder shall provide the Division a copy of a waiver from Napa County prior to any project construction activity in the place of use.
4. In order to minimize potential air quality impacts, a dust control plan shall be developed and implemented for the proposed project. At a minimum, the plan shall include, but not be limited to the following measures:
 - a. Active construction areas shall be watered at least twice daily; all trucks hauling soil, sand, or other loose material shall be covered or required to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer);
 - b. Exposed stockpiles shall be covered or watered twice daily;
 - c. All construction vehicles and equipment shall be properly maintained and operated, and the use of construction equipment that meets the current emission standards for diesel engine-powered equipment shall be required; and
 - d. Traffic speeds on unpaved access roads shall be limited to 15 miles per hour.
5. Prior to the start of construction, right holder shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Right holder shall also submit a copy of the plan to the Bay Area Air Quality Management District (BAAQMD). The Emission Control and Mitigation Plan shall be consistent with BAAQMD's Air Quality Guidelines and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. Right holder shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Right holder shall also provide a copy of the evidence to BAAQMD upon request. Evidence may consist of, but is not limited to, photographs and construction records.
6. Construction activities within 100 feet of any drainage shall only occur between April 1 and October 15 to minimize the potential for rainfall events to mobilize and transport sediment to aquatic resources.

7. Right holder shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance from entering into or being placed where it may be washed by rainfall runoff into the waters of the State.
8. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 245 acre-feet per year by storage to be collected from December 15 of each year to March 31 of the succeeding year as follows: 196 acre-feet per year in Unnamed Reservoir, and 49 acre-feet per year in Reservoir #4.
9. The total quantity of water diverted under this permit, together with that diverted under the license issued pursuant to Application 20370, shall not exceed 245 acre-feet per annum.
10. No water shall be diverted to offstream storage under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.
11. Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

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

12. No water shall be diverted from under this right unless right holder is operating the water diversion facility for Pope Creek with a fish screen satisfactory to the Deputy Director for Water Rights. The fish screen shall be designed and maintained in accordance with the screening criteria of the Department of Fish and Wildlife. Right holder shall provide evidence that demonstrates that the fish screen is in good condition with the annual report and whenever requested by the Division of Water Rights.
13. For the protection of fish and wildlife, right holder shall during the period from December 15 through March 31 maintain a minimum bypass of 0.5 cubic foot per second at the Unnamed Reservoir and 45 cubic feet per second at the Pope Creek point of diversion. Right holder shall bypass the total streamflow from April 1 through December 14. The total streamflow at the Unnamed Reservoir shall be bypassed whenever it is less than 0.5 cubic foot per second and the total streamflow of Pope Creek shall be bypassed whenever it is less than 45 cubic feet per second at the Pope Creek point of diversion.
14. Several elderberry shrubs have been observed on the property at separate locations along Pope Creek (see Figure 4 of the IS/MND for the Marino Water Rights Project). Prior to any construction activities in the place of use, right holder shall consult with USFWS to establish a mitigation plan (Plan) for the elderberry shrubs. Right holder shall submit a plan approved by USFWS to the Deputy Director for Water Rights to protect valley

elderberry longhorn beetle (*Desmocerus californicus dimorphus* or VELB) prior to any project construction. If a plan is not required by USFWS, right holder shall forward a statement from USFWS indicating that a plan is not required to the Deputy Director for Water Rights prior to any construction activities related to this project. If construction-related disturbance will occur within 100-feet of elderberry shrubs, USFWS shall be consulted to determine if an impact will occur. If VELB are determined to occupy the site, no activities determined to have a potential to adversely affect the shrubs or any VELB shall be conducted without a Biological Opinion, Incidental Take Permit, or other authorization from USFWS, and findings shall be provided to the Deputy Director for Water Rights for approval 10 days prior to any project construction. If required, transplanting of elderberry shrubs or planting additional seedlings or cuttings shall be conducted consistent with the USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (1999).

15. Within 14 days prior to the onset of construction activities within any and all areas that fall within 100 feet of suitable habitat for California red-legged frog and foothill yellow-legged frog (reservoirs and all drainages, as shown on Figure 4 of the IS/MND for the Marino Water Rights Project), a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights (approved biologist), shall conduct a pre-construction survey for these species. If either of these species is observed within the project site during the pre-construction survey, USFWS and/or DFW must be contacted and any and all construction activities must be delayed until an appropriate course of action can be established and approved by USFWS and/or DFW. If no California red-legged frog and/or foothill yellow-legged frog are observed within the project site during the pre-construction survey, construction activities may begin. If construction is delayed or halted for more than 14 days, another pre-construction survey for California red-legged frog and foothill yellow-legged frog shall be conducted.
16. Prior to the onset of construction activities, the approved biologist shall develop a worker sensitivity training program that addresses all issues associated with the assumed presence of California red-legged frog and foothill yellow-legged frog within the project site; including recognition of these species and their habitat. Any and all personnel that will be working within the vicinity of suitable habitat for these species shall take the sensitivity training program and sign an acknowledgement that he or she has received the training, understands that take of these animals and destruction of their habitats is a violation of the FESA and/or the CESA, and fully understands the contents of the sensitivity training program. The signed acknowledgments by project personnel for the worker sensitivity training program shall be attached with a report of the pre-construction survey and shall be submitted to USFWS and/or DFW with a copy to the Division.
17. Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) of at least 50 feet shall be established around any and all suitable California red-legged frog and/or foothill yellow-legged frog habitats within the project site (reservoirs and all drainages). The areas within these avoidance setbacks may not be developed as long as this permit or license remains active unless a formal habitat assessment and protocol determinant-level surveys are conducted for California red-legged frog and a biological opinion from the USFWS has been issued. The right holder may opt to proceed with a formal habitat assessment and protocol-level determinant surveys for special-status amphibians to avoid implementation of the permanent avoidance setbacks onsite. The

results of the assessment and USFWS consultation shall be submitted to the Deputy Director for Water Rights.

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

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

19. Once construction of the proposed project is complete, permanent avoidance setbacks (i.e., buffers) shall be established around all suitable western pond turtle habitats within the project site. These setbacks shall be 100 feet from the perimeter of Unnamed Reservoir and the confluence of the Unnamed Stream with the reservoir. The areas within these avoidance setbacks may not be developed as long as water is being diverted/stored under this right, unless approval from DFW has been issued and submitted to the Deputy Director of Water Rights.
20. Prior to beginning construction or diversion or use of water under this right, right holder shall submit a western pond turtle habitat enhancement plan for review and approval of the Deputy Director for Water Rights. The enhancement plan shall include the actions necessary to provide sufficient underwater refugia and basking habitat (e.g., submerged logs, downed trees and large rocks) for western pond turtles. Right holder shall develop the enhancement plan in consultation with DFW. The approved western pond turtle enhancement plan shall be implemented and right holder shall provide photographic documentation that the plan has been implemented within one year of enlargement of the reservoir.
21. If tree removal activities are to occur between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-construction survey for the purpose of identifying nesting bird species prior to construction and/or tree removal activities. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed tree removal activities. The survey shall be conducted no more than 14 days prior to the beginning of tree removal activities. If an active raptor or migratory bird nest is found during the pre-construction survey, the right holder shall notify DFW and the Deputy Director for Water Rights within three days of the find. If an active raptor nest is found during the pre-construction survey, a 500-foot no-

disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.

22. For the protection of riparian habitat and mitigation of disturbed riparian habitat, right holder shall establish a minimum 75-foot setback from Pope Creek and 50-foot setbacks from the three Unnamed Streams on the property (Figure 4 of the IS/MND for the Marino Water Rights Project). The setbacks shall be measured from the top of the bank of Pope Creek and the Unnamed Streams. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of access roads and occasional equipment access reasonably necessary for continued operation of the vineyard and management of the setback area. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting of native riparian vegetation within the setback area is allowed. These requirements shall remain in effect as long as water is being diverted under this permit.
23. For the protection of riparian habitat and mitigation of disturbed riparian habitat, right holder shall implement a riparian enhancement plan. Prior to beginning construction or diversion or use of water under this right, right holder shall submit a riparian enhancement plan for review and approval by the Deputy Director for Water Rights. The riparian enhancement plan shall specify: (1) the location of areas to be planted; (2) the number and species of plants to be planted; (3) planting methods; (4) success criteria and monitoring methods; and (5) a description of the actions that will be taken if success criteria are not met. The riparian enhancement plan shall require at least five years of monitoring to ensure identified success criteria are met. The riparian enhancement plan shall be implemented within two years of approval of the plan.
24. For the protection of wetlands, right holder shall establish minimum 50-foot setbacks within the places of use from the edge of any wetland (Figure 4 of the IS/MND for the Marino Water Rights Project). These setbacks shall be mapped by a qualified biologist acceptable to the Deputy Director for Water Rights (qualified biologist) and approved by the Deputy Director for Water Rights prior to the start of construction or diversion of water under this right. The 50-foot setback area shall be flagged by a qualified biologist prior to the start of construction activities. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. Planting, maintenance, and irrigation of native wetland vegetation within the setback area are allowed.
25. For the mitigation of disturbed wetlands, mitigation shall be conducted in accordance with the provisions in a Mitigation and Monitoring Plan that shall be prepared for USACE in association with the 404 Permit Application process. Prior to licensing of this permit, right holder shall submit evidence to the Deputy Director for Water Rights indicating that mitigation was completed in accordance with a USACE-approved mitigation plan. Evidence shall include confirmation by the USACE or submittal of a monitoring report verifying that required mitigation was completed.

26. Prior to the onset of construction activities, a formal arborist survey shall be conducted by a certified arborist or registered forester. Appropriate data (e.g., position, height, drip-line radius, diameter-at-breast-height (DBH), general health, etc.) shall be collected by the arborist for any potentially impacted trees and the data shall be submitted to Napa County and the Deputy Director for Water Rights prior to the onset of construction activities or diversion of water under this right.
27. An Oak Woodland Mitigation Plan (Plan) shall be developed in consultation with Napa County. The plan shall include mitigation measures to offset project impacts to native oak woodland through a combination of avoidance, preservation, and enhancement. The Plan shall specifically include how mitigation would be accomplished by: a) avoidance of oak woodlands of limited distribution within the project area and immediate vicinity; b) preservation and conservation of oak woodlands having the highest habitat values and qualities at a 2:1 preservation-to-vineyard ratio on a per acre basis; and c) restoration and enhancement of existing oak woodlands and associated shrub species. If (a) and (b) are not feasible, the Plan shall require replacement of removed oak woodlands at a 2:1 ratio and shall include planting methods, monitoring requirements, a maintenance plan, and success criteria. The draft Plan shall be provided to DFW for review and comment and suggestions be taken into consideration prior to submittal of the final Plan to the Deputy Director for Water Rights. The final Plan, once approved by Napa County, shall be submitted to the Deputy Director for Water Rights prior to implementation and before any water can be diverted under this water right. The oak woodland habitat included in the final Plan shall be maintained as wildlife habitat as long as water is being diverted under this water right. Any changes to the final Plan must be approved by the Deputy Director for Water Rights.
28. The six locations designated as cultural sites identified by Tom Origer and Associates in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384" dated October 2006 shall be avoided during project construction, development, and operation. The sites shall not be impacted by any of the features of the proposed project (e.g., water diversion, storage reservoirs, and distribution facilities, including installation of buried pipelines; and ripping, trenching, grading, or planting related to conversion and maintenance of the place of use). If future project-related activities or developments at the locations are unavoidable, then an archaeologist who has been approved by the California Historical Information System to work in the area and who is acceptable to the staff of the Division of Water Rights shall determine the significance of the sites. If mitigation is determined to be necessary, then the archaeologist shall design an appropriate mitigation plan and submit the plan for approval by the Deputy Director for Water Rights. After the plan has been approved, the mitigation must be completed to the satisfaction of the Deputy Director for Water Rights prior to activities in the area of the site. Right holder shall be responsible for all costs associated with the cultural resource related work.
29. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes and flaked stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus

fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archaeologist shall be retained by the right holder to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

30. If human remains are encountered, the right holder shall comply with Section 15064.5 (e)(1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the Napa County Coroner has been notified. If the Coroner determines that the remains are Native American, the Coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.
31. If current project design plans change to include any additional acreage or ground disturbing activities outside of the areas surveyed by Origer and Associates as identified in the report titled "A Cultural Resources Survey for Nichelini Vineyard Water Right Application 30384" dated October 2006, a cultural resources study shall be conducted of these areas. A report of findings shall be submitted to the Deputy Director for Water Rights for approval prior to construction of the project or diversion of water under this right.

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