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## State Water Resources Control Board

### Proposed Mitigated Negative Declaration

Pursuant to Section 21080(c) of the Public Resources Code

To: Office of Planning & Research, State Clearinghouse, 1400 Tenth Street, Sacramento, CA 95814

From: State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95812-2000

#### **Project Title:**

Water Right Application A029381 of Treasury Wine Estates

#### **Applicant:**

Treasury Wine Estates Americas, 555 Gateway Drive, Napa, CA 94558

#### **Project Location:**

The project associated with Application A029381 for Treasury Wine Estates is located immediately south of State Route 128 and approximately 8 miles northwest of the town of Calistoga in Sonoma County, California. This project site is within Township 9N, Range 7W and 8W of the "Mount St. Helena, California" U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle.

#### **Project Description:**

On December 14, 1988, Treasury Wine Estates filed an application to appropriate water by permit (A029381) with the State Water Resources Control Board, Division of Water Rights. Application A029381 requests a permit for the diversion to storage of up to 30 acre-feet of water from Redwood Creek, tributary to Maacama Creek thence the Russian River, in Sonoma County. The point of diversion (POD) is a Ranney-type collector beneath the invert of Redwood Creek and the place of storage is an offstream reservoir. The appropriated water will be used for irrigation and frost protection of 479 acres of vineyard. The proposed season of diversion is from December 15 of each year to March 31 of the succeeding year.

#### **Determination:**

The State Water Resources Control 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.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

**Water Right Terms:**

Mitigation measures have been incorporated into the project to avoid potentially 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 Resources Control Board pursuant to Application A029381.

**Mitigation Measure BIO-1 – Minimum and Maximum Bypass Flow Requirement**

No water shall be diverted under this water right unless the flow is between 56 cfs and 583 cfs in Redwood Creek at the POD during the diversion season or 266 cfs and 2,790 cfs as measured at the U.S. Geological Survey's gauge Maacama Creek near Kellogg, CA (gauge No. 11463900). In the event that said monitoring device is no longer available for streamflow measurements, right holder shall within 15 days submit a plan, satisfactory to the Deputy Director for Water Rights, to install an equivalent monitoring device as near as practicable to the location of the current monitoring device.

**Mitigation Measure BIO-2 – Passive Bypass Device Requirement**

No water shall be diverted under this water right unless right holder is bypassing the flows required by this water right by use of a passive bypass device.

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 year after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights. Evidence required by this condition shall include current photographs of the system in place and a statement, signed by the right holder, certifying that the system is still operating as designed.

**Mitigation Measure BIO-3 – Protection of California Red-Legged Frog, Western Pond Turtle, and Riparian Vegetation**

To protect habitat for the California red-legged frog (*Rana aurora draytonii*) and western pond turtle (*Emys marmorata*) and to allow for the growth of riparian vegetation, right holder shall:

- a. Establish and maintain a 50-foot wide strip of natural upland vegetation around Reservoir 3 as shown on Exhibit 8 of this Initial Study for Application A029381. Right holder shall refrain from activities within the setback area, including, but not limited to, grading, herbicide spraying, fencing, cultivating crops or landscape areas, installing pipelines or increasing storage areas. Pre-existing features within the setback area that are excluded from the requirements of this term, include, but are not limited to: existing vineyard access roads and existing vineyard as shown in Exhibit 8. Planting and irrigation of native riparian vegetation within the setback area is allowed if the area is part of the authorized place of use and irrigation is conducted in compliance with the terms and conditions of this water right, or as authorized under another basis of right;

- b. Obtain approval of the Deputy Director for Water Rights prior to dredging the reservoir. As part of obtaining approval, right holder shall: (1) provide evidence of approval of dredging operation from the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Wildlife; and (2) provide a plan to avoid disturbing the fringe of emergent (wetland) vegetation around the reservoir during dredging operations; and
- c. Make no introduction of non-native species into the reservoir.

#### **Mitigation Measure BIO-4 – Implementation of a Non-Native Species Eradication Plan**

No water shall be diverted under this right unless right holder is operating in accordance with a mitigation plan satisfactory to the Deputy Director for Water Rights. The mitigation plan shall address eradication of non-native species. Right holder shall submit a report on mitigation plan activities in accordance with the time schedule contained in the mitigation plan, and whenever requested by the Division of Water Rights. The Deputy Director for Water Rights may require modification of the mitigation plan upon a determination that the plan is ineffective or unsuccessful or provide relief from this term upon a determination that the mitigation plan is no longer required.

#### **Mitigation Measure BIO-5 – Establishment of Setbacks for Riparian Habitat Protection**

For the protection of riparian habitat, right holder shall establish setbacks along the streams within the project site as shown on Exhibit 8 of this Initial Study for Application A029381. The stream setbacks shall be measured from the top of the bank on both sides of the stream and shall extend a minimum of 75 feet from Class 1 streams. No activity shall occur within the setback area, including, but not limited to grading, herbicide spraying, roads, fencing, and use or construction of storage areas. Right holder shall restrict cattle or other domestic stock access to the riparian area. Pre-existing features including features within the setback area for the vineyard that are excluded from the requirements of this term, include, but are not limited to: Reservoir 2, existing vineyard access roads, and existing vineyard as shown in Exhibit 8. Planting and irrigation of native riparian vegetation within the setback area are allowed if within the place of use authorized by this water right and diversions are conducted in compliance with the terms and conditions of this water right, or as authorized under another basis of right; however, no plantings of non-native vegetation or new cropland shall occur. These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application A029381.

#### **Mitigation Measure BIO-6 – Regulatory Compliance**

No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in

compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Within 90 days of the issuance of this right or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & Game Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act Section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

#### **Mitigation Measure BIO-7 – Installation and Maintenance of a Fish Screen**

No water shall be diverted under this right unless right holder is operating the water diversion facility for the POD 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 National Marine Fisheries Service. 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.

#### **Mitigation Measure CUL-1 – Protection of Prehistoric Sites**

The prehistoric sites identified as CA-SON-1946, CA-SON-1947, CA-SON-1948, CA-SON-1949, CA-SON-1950, and CA-SON-1974 (Stoyka and Werner 1991 on file with the Division of Water Rights) shall not be impacted by subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Routine maintenance of existing vineyard, including shallow discing and weed mowing will continue to be allowed. When vine replacement is necessary, vine removal shall be done as non-invasively as possible, by pulling the vines vertically with a chain attached to the hydraulic system on a tractor. Vine removal shall occur only while the soil is moist down to 6 inches, and new vines shall be replanted in the same location as the vines which were removed. The right holder shall mark the locations of CA-SON-1946, CA-SON-1947, CA-SON-1948, CA-SON-1949, CA-SON-1950, and CA-SON-1974 with permanent line stakes extending a maximum of 2 feet above the height of the existing line stakes. The delineation of the site areas shall be determined by a qualified archeologist in consultation with the State Water Board. Global positioning system (GPS) coordinates shall be used to identify the boundaries of the sensitive areas and be submitted to the Deputy Director for Water Rights. Right holder shall be responsible for all costs associated with the cultural resource related work.

**Mitigation Measure CUL-2 – Cultural Resources Protection**

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; 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 archeologist 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.

**Mitigation Measure CUL-3 – Consultation with County Coroner and Native American Heritage Commission**

If human remains are encountered, then the right holder shall comply with the California Environmental Quality Act (CEQA) Guidelines Section 15064.5(e)(1) (Cal. Code Regs. tit. 14, § 15064.5(e)(1)) and the Health and Safety Code Section 7050.5 (Public Resources Code § 5097.99). 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 CEQA Guidelines Section 15064.5(e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.