
State Water Resources Control Board

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

State Clearinghouse Number: 2023080780

Project Title:

Water Right Application A029381 of Treasury Wine Estates

Applicant:

Treasury Wine Estates, 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 (State Water Board), Division of Water Rights (Division). 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.

Comments Received:

The Division received two comment letters regarding the Initial Study circulated for water right application A029381 of Treasury Wine Estates. The Division evaluated the comments received and responded individually to each commenter via letter. The

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Division's response letters outlined that the Initial Study included information to adequately address the concerns raised in the comment letters. No replies to the Division's response letters were received. No revisions were made to the Initial Study in response to the comments received.

Minor Revisions:

Insignificant modifications have been made to the Initial Study to clarify the types of diversion bypass systems allowed under mitigation measure BIO-2 and to document an administrative change in how the State Water Board will make a finding of water availability for the project. These changes do not qualify as "substantial revisions" under California Code of Regulations, title 14, section 15073.5, and therefore the State Water Board is not required to recirculate this negative declaration. These changes constitute either: conditions of project approval not required by CEQA that do not create new significant environmental effects (see Cal. Code. Regs. tit. 14, § 15073.5, subd. (c)(3)) or new information added to clarify, amplify, or make insignificant modifications to the negative declaration (see Cal. Code. Regs. tit. 14, § 15073.5, subd. (c)(4)).

The modified sections are appended to this Mitigated Negative Declaration. The minor revisions do not change the environmental impact findings presented in the Initial Study.

Determination:

The 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, as amended per the attached appendix.

Water Right Terms:

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 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.

Contact Person:

The contact person for this matter is Taylor Kunkel at (916) 327-8594 or Taylor.Kunkel@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Taylor Kunkel, P.O. Box 2000, Sacramento, CA, 95812-2000.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY: Amanda Montgomery for

Robert P. Cervantes, P.E.
Acting Assistant Deputy Director
Division of Water Rights

Dated: August 27, 2025

Revised Sections 4 and 10 of the Initial Study for Water Right Application 29381 of Treasury Wine Estates

**Prepared for:
State Water Resources Control Board
Division of Water Rights**

August 2025

This document contains the revised sections of the document entitled “Initial Study Water Right Application 29381 of Treasury Wine Estates”, dated June 2023. These minor changes do not qualify as “substantial revisions” under California Code of Regulations, title 14, section 15073.5, and therefore the State Water Board is not required to recirculate this negative declaration. These changes constitute either: conditions of project approval not required by CEQA that do not create new significant environmental effects (see Cal. Code. Regs. tit. 14, § 15073.5, subd. (c)(3)) or new information added to clarify, amplify, or make insignificant modifications to the negative declaration (see Cal. Code. Regs. tit. 14, § 15073.5, subd. (c)(4)). Page numbers for revised Sections 4 and 10 initiate on the corresponding numbers from the 2023 Initial Study. Revisions are shown using underlined text for additions and ~~strike through~~ for deletions.

4. BIOLOGICAL RESOURCES

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?

Special-Status Fish

Special-status fish have the potential to occur in Redwood, Foote, and La Franchi Creeks on the project site. During the 2009 field surveys, a juvenile salmonid was observed in Redwood Creek within the project site, but it could not be determined whether it was a resident rainbow trout or juvenile steelhead. Water diversion at the POD located on Redwood Creek could affect fish within and downstream of the project site and reducing flows could reduce or degrade suitable habitat in Redwood Creek. However, maintaining a minimum bypass flow of 56 cfs in Redwood Creek at the POD during the diversion season (December 15 to March 31) or 266 cfs as measured at the USGS gauge Maacama Creek Near Kellogg, CA [gauge No. 11463900], as included in Mitigation Measure BIO-1 below, would reduce the potential impact on these species to a less-than-significant level because sufficient flow would be maintained to allow for upstream passage, spawning, egg incubation, fry and juvenile rearing, and downstream movement and migration. Specifically, a Water Availability Analysis (WAA) conducted during 2008 and subsequent analysis conducted during 2009 showed that maintaining the minimum bypass flow requirement would provide adequate instream flow protection for fish passage and spawning at the POD (State Water Board 2009; MBK Engineers 2013). In addition, channel maintenance flows were evaluated to ensure proper flows are maintained for the purposes of cleansing fine sediments from coarse substrates, removing encroaching vegetation, and contributing to deposition of instream woody cover. The subsequent analysis conducted concluded that diversions should not occur when flow in Redwood Creek is above 583 cfs. Therefore, restricting diversions to times when flows are between 56 cfs and 583 cfs in Redwood Creek at the POD (or 266 cfs and 2,790 cfs as measured at the USGS gauge Maacama Creek Near Kellogg, CA [gauge No. 11463900]) during the diversion season (Mitigation Measure BIO-1) by use of a passive bypass device (Mitigation Measure BIO-2) would reduce the potential impacts on special-status fish species to a less-than-significant level. Detailed discussion of the WAA is provided in Section 9, "Hydrology and Water Quality."

The following terms (mitigation measures), substantially as follows, shall be included in any water right issued pursuant to Application 29381:

Mitigation Measure BIO-1

- 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

- No water shall be diverted under this water right unless right holder is bypassing the flow 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.

For purposes of this mitigation measure, the passive bypass system is considered to encompass an automated computer-controlled bypass system. While passive and automated bypass systems have different operational requirements outlined in the Policy, they achieve the same effect in ensuring compliance with the season of diversion, minimum and maximum bypass flow, and maximum cumulative diversion requirements of the Policy without requiring frequent human input.

10. HYDROLOGY AND WATER QUALITY

- k) Would the change in the water volume and/or the pattern of seasonal flows in the affected watercourse result in:**
 - i) a significant cumulative reduction in the water supply downstream of the diversion?**

In February 2008, MBK Engineers prepared a WAA for Application 29381 (2008 WAA), in accordance with the Draft Guidelines. Data and assumptions in the 2008 WAA were based on findings from a Maacama Creek Watershed WAA and a WAA for upstream Application 30745 (Permit 21312) of Peter Michael Winery, both prepared by Wagner & Bonsignore Consulting Civil Engineers (W&B 2005 and 2007). The POD for Application 30745 is located on an Unnamed Stream tributary to Kellogg Creek thence Redwood Creek, approximately 1.8 miles upstream from the POD for Application 29381. The purposes of the WAA are to provide information about water availability for appropriation, which the State Water Board takes into account along with the amount of water needed to protect instream beneficial uses, and to demonstrate that there is unappropriated water available to supply the applicant, pursuant to Water Code Sections 1243 and 1375(d). The 2008 WAA analyzed the impairment of flows at seven POIs, as described in Table 11. The February Median Flow at point of interest (POI) 1 (at the POD) was calculated to be approximately 14 cfs.

The 2008 WAA for the proposed project was prepared in accordance with Division requirements and the Draft Guidelines (MBK Engineers 2008), and it was submitted before the Policy was adopted. Division staff agreed with the methodology used to estimate the unimpaired flow volume, watershed demand, February Median Flow, and the Cumulative Flow Impairment Index (CFII) calculations in the report.

Table 11
POIs and Associated CFII Values for Application 29381

Point of Interest (POI)	Description of POI	Diversers Senior to, and Including Application
		CFII (%)
1	The point immediately below the POD on Redwood Creek	6.1
2	The point immediately below the confluence of Redwood Creek and Foote Creek	6.1
3	The point on Redwood Creek immediately below La Franchi Creek	7.5
4	The point on Redwood Creek immediately above its confluence with Maacama Creek	6.8
5	The point immediately below the confluence of Maacama Creek with Redwood Creek	2.5
6	The point on Maacama Creek immediately below the confluence with Franz Creek	3.0
7	The point on Maacama Creek immediately above the confluence with the Russian River	3.0

Source: MBK Engineers 2008

CFII = Cumulative Flow Impairment Index

The purpose of the WAA is to evaluate the availability of water to satisfy the water right application and to investigate potential changes in stream flows attributable to diversions. Consistent with the requirements of the Draft Guidelines, a calculation of the CFII for POIs in Redwood Creek and Maacama Creek relative to the proposed project was completed (Table 11; also see discussion in the “Biological Resources” section). In the 2008 WAA, CFII values calculated for the seven POIs ranged from 2.5% to 7.5% for diversers senior to and including Application 29381 (Table 11). The CFII values at POIs 5 through 7 were under 5%; therefore, there is little chance of significant cumulative impacts (Draft Guidelines). The CFII values at POIs 1 through 4 (located on Class I streams) were between 5% and 10%; given these values, Division staff and MBK Engineers conducted an additional hydrologic analysis to calculate a minimum bypass flow that would provide minimum depth for fish passage and spawning in 2009. The analysis considered the minimum upstream passage and spawning depth requirements of 0.7 feet and 0.8 feet respectively, which is consistent with the recommendations made in the Policy sections C.1.1.2.1.1 and C.1.1.2.1.2. The analysis determined that 56 cfs in Redwood Creek at the POD during the diversion season would be protective of passage and spawning flows. These calculations are based on the minimum

bypass equation for computing regionally protective bypass flows from the 2010 Policy⁵ (State Water Board 2010 and 2013). In addition to passage and spawning flows, the analysis evaluated channel maintenance flows by estimating the 2-year storm return flow at the POD by prorating historical gauge data from the Maacama Creek gauge calculating the 2-year return flow using a peaks-over-threshold method. The analysis concluded that the unimpaired 2-year storm return flow at the POD is 583 cfs. Therefore, to protect the frequency and magnitude of moderate and high flows used by migrating and spawning fishes and to protect the natural hydrograph, diversions should only occur when flow at the POD is between 56 cfs and 583 cfs.

In addition to the senior diverters analyzed in the 2008 WAA, Application 29381 is also subject to the senior demand of SFA 21181SF on Maacama Creek which has a priority date of March 7, 1963. SFA 21181SF is currently fully unassigned and held in trust by the State Water Board for 300,000 acre-feet per year for diversion to storage in Sonoma County from January 1 to December 31.

In March 2022, Division staff used the assumptions and calculations provided in the project's 2008 WAA to assess the potential cumulative impacts the water diversions will have on the stream hydrograph when SFA 21181SF is accounted for as a senior diverter. When the senior demand of SFA 21181SF is accounted for, the CFII values are greater than 10%, which would indicate a likelihood of significant cumulative impacts and preclude a finding that there is unappropriated water available to for the project under Water Code section 1375.

To avoid the need to account for the senior demand of SFA 21181SF, the Applicant has chosen to submit a request for a release from priority of the SFA from the State Water Board. A release from priority operates as a limited exception to the rule of priority, precluding any eventual assignee of the SFA from asserting priority against the water right holder who obtained the release. As discussed above in the Regulatory Setting section, the State Water Board must hold a public hearing and make certain findings before any application can be released from priority. If granted by the State Water Board, a release from priority would no longer subject Application 29381 to the senior demand of SFA 21181SF. Accordingly, the demand for SFA 21181SF could be removed from the CFII values calculated by Division staff in March 2022, and the project could proceed with the 2008 WAA and the 2009 bypass analysis.

As discussed above, the State Water Board cannot issue a water right permit absent a finding that there is unappropriated water available. Therefore, the impact conclusions in this section and in section 10(k)(ii) pertain to a scenario where ~~a release from priority is granted and the~~ State Water Board makes a finding that there is unappropriated water available.

⁵ The minimum bypass equation in the 2010 Policy is the same as in the 2013 Policy (see Policy Appendix B).

Rather than pursuing their release from priority, the Applicant has accepted a water right permit term which would allow the Board to make a conditional water availability finding without the need for a release from priority. This permit term allows for the revocation of the right requested by Application 29381 in the case of a future assignment of SFA 21181SF, where the State Water Board determines that sufficient water is no longer available for appropriation under the right associated with Application 29381.

If the State Water Board makes ~~such a finding~~ that there is water available to serve the right requested by Application 29381 by implementing the conditional water availability permit term described above, and the Applicant implements the bypass term discussed in the “Biological Resources” section question (a), the proposed project would not result in a significant cumulative reduction in the water supply downstream of the diversion. This impact would be less than significant.

ii) a significant reduction in water supply, either on an annual or seasonal basis, to senior water right holders downstream of the diversion?

As discussed in 10(k)(i) above, if the Applicant obtains a release from priority or the Board implements the water right permit term to allow for potential revocation in the case of a future assignment of SFA 21181SF, the proposed project would not result in a significant reduction in water supply, either on an annual or seasonal basis, to senior water right holders downstream of the diversion. This impact would be less than significant.