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DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 9**

[T.D. ATF-456 ; Re: Notice No. 882]

RIN 1512-AA07

Diamond Mountain District Viticultural Area (99R-223P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will establish a viticultural area in Napa County, California, to be known as "Diamond Mountain District." This viticultural area is a result of a petition submitted by Rudy von Strasser of Von Strasser Winery on behalf of the Diamond Mountain Appellation Committee, representing 15 growers and vintners in the proposed area.

EFFECTIVE DATE: Effective July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716) 551-4048.

SUPPLEMENTARY INFORMATION:**1. Background on Viticultural Areas***What Is ATF's Authority To Establish a Viticultural Area?*

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Rulemaking Proceeding*Petition*

Rudy von Strasser of Von Strasser Winery petitioned ATF for the establishment of a viticultural area in Napa County, California, to be called "Diamond Mountain." The petition was filed on behalf of the Diamond Mountain Appellation Committee, whose 15 growers and vintners represent 87 percent of the total vineyard holdings in the viticultural area. The proposed viticultural area is located entirely in Napa County, California and encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

Notices of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 882, was published in the **Federal Register** on September 29, 1999, requesting comments from all interested persons concerning the proposed viticultural area. The comment period was to close on November 29, 1999. On November 15, 1999, ATF received a request from Fred and Mary Constant of Diamond Mountain Vineyard to extend the comment period an additional 60 days. Diamond Mountain Vineyard is located within both Napa and Sonoma Counties, partially within the boundaries proposed for the Diamond Mountain viticultural area. According to the winery, it had been unable to get timely and complete information on the specifics of the proposal and therefore it

needed additional time to prepare its comments. In view of this, on November 26, 1999, ATF published Notice No. 886 extending the comment period until January 28, 2000.

Comments

Thirty-nine comments were received in response to Notice 882. Thirty-seven of the comments favored adoption of the viticultural area as proposed. Twenty-five of these specifically supported the use of the Napa and Sonoma county line as one of the boundary lines for proposed area. These commenters maintained that because the name "Diamond Mountain" has always been associated with Napa Valley, the boundaries should not encompass any areas outside Napa County.

Fred and Mary Constant of Diamond Mountain Vineyards submitted two comments proposing two changes to the proposed viticultural area. First, they proposed changing the name to "Diamond Mountain District." The Constants argued that because the proposed area does not physically encompass all of Diamond Mountain, as identified on the U.S.G.S. map included in the petition, the name "Diamond Mountain" could be confusing. The Constants, who own a trademark for the name "Diamond Mountain Vineyard", also felt that "Diamond Mountain District" would reduce confusion and conflicts with their trademark, their winery name, and other Diamond Mountain trademarks. As evidence for the use of this name, the Constants submitted two documents in which "District" is used in association with "Diamond Mountain". One, a 1913 school board document, twice referred to the Diamond Mountain school district. The other, an article from the 12/4/99 issue of the Wine Business Insider on the proposed Diamond Mountain viticultural area, used the phrase "Diamond Mountain District".

The Constants also proposed amending the southwestern boundary of the viticultural area to include their Sonoma county property. Their vineyard, Diamond Mountain Vineyard, straddles the Napa and Sonoma county line. Fifty-five of its acres are located in Napa County within the proposed boundaries of the Diamond Mountain viticultural area, while 15 of its acres are in Sonoma county, just outside the proposed boundaries. The Constants argued that their Sonoma property is on Diamond Mountain and should therefore be included in any viticultural area bearing its name. Referring to the U.S.G.S. map submitted by the petitioners (Calistoga, CA 1993, 1:24,000), they pointed out that much of

Diamond Mountain, including its peak, is actually in Sonoma County.

Their proposal was supported by their assertion that the climate and soil of their Sonoma property is indistinguishable from that of their Napa property. They stated that it is unlikely for climate to vary dramatically over a distance of a few hundred feet on the same side of a mountain. The elevation of their Sonoma property is not an issue, according to the Constants, because the highest part of their Sonoma property is no higher than the highest part of their Napa property. The soil, they asserted, is also consistent between their Napa and Sonoma parcels. The Constants did not provide any evidence supporting this claim.

Additionally, the Constants stated that their vineyard, originally planted to vines around 1900 by Andrew Rasmussen, is one of the oldest on Diamond Mountain. They submitted several pieces of evidence which mention the Rasmussen vineyards as located on Diamond Mountain near the Napa-Sonoma County line. Because of the historical importance of their vineyard, the Constants felt it should be included in the viticultural area in its entirety.

Finally, the Constants stated that the division of their vineyards by the viticultural area boundaries will create an administrative and financial burden for them by forcing them to track the origin of their grapes.

Petitioners' Response

The petitioners, in counter comments, initially disagreed with both the proposed name change and the proposal to include Sonoma County property in the viticultural area, calling the evidence cited for these changes weak.

On January 22, 2001, the petitioners wrote to ATF stating that they had reconsidered and now wished to change the name of the viticultural area to "Diamond Mountain District." However, they stated that they were against any change in the proposed boundaries.

While the petitioners acknowledged that Diamond Mountain's peak is in Sonoma County, they argued that historical and current usage of the name is strongly associated with Napa, not Sonoma, County. The petitioners submitted, as part of either the petition or counter comments, over 40 articles referencing Diamond Mountain as a grape growing area in Napa Valley or Napa County. The petitioners felt that including Sonoma County land in a viticultural area associated with Napa Valley would be confusing to the public.

The petitioners also submitted, as part of their counter comments, a document written by wine historian William F. Heintz titled "Diamond Mountain—An Overview of its History & the Rasmussens on Diamond Mountain Napa County, California." Mr. Heintz found historical records indicating that "Diamond Mountain" was a Napa County region name and road name before it was used for the mountain peak. According to Mr. Heintz's research, the earliest use of the name on a Sonoma County map was in 1970. Thus, the petitioners argued, "Diamond Mountain" is historically a Napa County name.

Mr. Heintz also researched the history of the Rasmussen's vineyards by examining Napa and Sonoma County assessment records and interviewing individuals familiar with the Rasmussen/Constant property. He concluded that the Rasmussens never grew grapes on the Sonoma portion of their property. Two commenters concurred, stating their personal observations of the property in question showed that, prior to the Constants' ownership, it was heavily forested and contained no evidence of old grape plantings.

Finally, the petitioners argued that the division of the Constants' vineyards by the viticultural area boundary would not create a financial or administrative burden. They pointed out that this boundary is already one of the boundaries of the Napa Valley viticultural area. They argued that the Constants knowingly purchased a parcel in Sonoma, on the other side of the present Napa Valley boundary, thus choosing to divide their vineyard holdings. Their financial and administrative burden, the petitioners maintained, would not change with the establishment of the proposed Diamond Mountain District boundaries.

ATF Analysis of Comments

After careful review of the comments, ATF has concluded that the evidence provided supports the creation of the viticultural area with the name "Diamond Mountain District" and with the boundaries as originally proposed.

Name

ATF finds that sufficient evidence has been submitted to support the name "Diamond Mountain District." In addition to insuring that the viticultural name is that by which the area is locally and/or nationally known, ATF must also insure that the name is not false or misleading to the consumer. While the evidence shows that the area has also been called "Diamond Mountain", ATF

finds that this name could be confused with the Constants' winery, Diamond Mountain Vineyards. ATF therefore feels that the name "Diamond Mountain District" is a better choice. This name is known to refer to the viticultural area and is not misleading.

Boundaries

ATF finds that the evidence provided by Fred and Mary Constant is not sufficient to change the boundaries as originally proposed. In order for ATF to adopt their proposal, the evidence would need to show that: (1) Their Sonoma County property is recognized by consumers and the wine industry as part of the viticultural area, and (2) their Sonoma County property shares geographic characteristics with the viticultural area. Both of these elements must be proved by the evidence for the proposal to be adopted.

First, the Constants did not establish that their Sonoma County property is recognized as part of the viticultural area. To provide name recognition and boundary evidence, the petitioners submitted over forty articles from newspapers, magazines, and reference books referring to Diamond Mountain as a wine region in Napa Valley or Napa County. None of these articles mention wineries or vineyards in Sonoma County.

Both the petitioners and the Constants referenced an article from the January-February 1977 issue of *Connoisseurs' Guide to California Wine* titled "Napa Valley Appellations." This article identifies Diamond Mountain as one of several Napa Valley areas having unique grape-growing characteristics. In their comments, the Constants quote this article, "We would identify the whole mountain area west of the Valley and north of Spring Mountain as Diamond Mountain," and argue that it supports the inclusion of their vineyard in the viticultural area. However, because of the vagueness of this description, and the fact that this article is clearly referencing Napa Valley areas, ATF does not find this article to be sufficient evidence for the Constants' proposed boundaries.

Both the Constants and the petitioners presented arguments on whether the Rasmussens grew grapes on the Constants' Sonoma parcel on Diamond Mountain. The petitioners submitted several pieces of evidence that persuasively indicated that while the Rasmussens did grow grapes on their Napa property, they did not grow any on their Sonoma property. The Constants' evidence was more general and merely established the site of the Rasmussens' property, and not that they

grew grapes in Sonoma County. After analysis of the combined evidence, ATF finds that the Sonoma County portion of Diamond Mountain does not share the viticultural history of the Napa County portion.

Second, the Constants did not establish that their Sonoma County property shares geographic characteristics with the proposed viticultural area. It is indisputable that the geographic feature called "Diamond Mountain", as depicted on the petitioners' U.S.G.S. map, includes part of Sonoma County and the Constants' vineyard. However, ATF has created other viticultural areas named for a mountain that do not encompass the entire mountain. In many cases, separate areas of a mountain may have varying climates, soils, or other geographic features, thus creating different grape growing conditions. For example, when establishing the Bell Mountain viticultural area (T.D. ATF-238), ATF cited the soils and topography in its decision to include only the south and southwestern slopes of Bell Mountain in the viticultural area. In another example, the higher elevations of Sonoma Mountain were not included in the Sonoma Mountain viticultural area (T.D. ATF-196) because of climate and topography. In cases such as these, the viticultural area should not encompass the entire mountain since geographic features (climate, soil, elevation, physical features) should be similar within the viticultural area. In the case of Diamond Mountain District, the petitioners have submitted persuasive evidence that the soil and climate in the Napa County part of Diamond Mountain are different from those in the adjacent part of the mountain in Sonoma County. In view of this, the evidence must show that the Constants' Sonoma parcel not only is physically on Diamond Mountain, but also shares similar soil and climatic conditions with the petitioner's proposed viticultural boundaries. Because the Constants have not submitted any evidence regarding the climate or soils of their proposed boundaries, ATF cannot determine if they are similar to those in the proposed viticultural boundaries proposed by the petitioner.

Taken as a whole, the historic and current evidence regarding the boundaries supports the original boundaries proposed by the petitioners. No evidence was present that associated Sonoma County or the Constants' Sonoma vineyard with the grape growing area known as "Diamond Mountain District." ATF's conclusion is that the Diamond Mountain District is

locally and nationally known as referring to that part of Diamond Mountain in Napa County. This, along with the petitioners' climate and soil evidence, supports designating only the Napa County part of Diamond Mountain as the viticultural area "Diamond Mountain District."

Evidence That the Name of the Area Is Locally or Nationally Known

The Diamond Mountain District has been home to vineyards and wineries since the 1860's. According to the petitioner's evidence, a Mr. Joseph Schram planted his first vines as early as 1863 and had a hundred acres of vineyards by 1892.

According to the petitioner, the evolution of Diamond Mountain into a Napa Valley regional name began in the early decades of the 20th century, with Diamond Mountain School and Diamond Mountain Road being the first features in the region to bear the name. The naming of the school took place in 1909, with the major access road in the region designated as Diamond Mountain Road shortly thereafter. The petitioner has also presented substantial evidence that the Diamond Mountain District began to gain national renown in the early 1970's, as expanding consumer interest in California wines resulted in new vineyards, new wineries and a greater awareness of regional wine character. As evidence for this national name, the petitioner included an excerpt from the second edition of *The Wines of America* by Leon Adams that states, "Diamond Mountain, like Mt. Veeder and Spring Mountain also on the west side of Napa Valley, is regarded as a viticultural district separate from the rest of Napa Valley."

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, precise boundaries for the region being proposed have never been delineated. The evidence submitted, however, shows that the Diamond Mountain District's viticultural history and identity are strongly associated with Napa Valley. For this reason, the boundaries of the viticultural area are entirely within Napa County. According to the petitioner, the petition took a conservative approach to establishing boundaries for the Diamond Mountain District. The petitioner stated that special care was taken to assure that the boundaries encompass only those lands that meet both the historic and geographic criteria for inclusion in the viticultural area. Also, the boundaries have been drawn to respect neighboring

regions with separate names, histories, geographic features and political boundaries. The petitioner cited the Fourth Edition of *The Connoisseurs' Handbook of the Wines of California and the Pacific Northwest* for a description of the proposed area "* * * a portion of the Napa Valley's western hills between St. Helena and Calistoga". This citation was accompanied by a map which shows the rough limits of the region: Spring Mountain to the south, the 400 foot elevation that generally parallels Highway 29 to the east, Petrified Forest Road to the north and the Napa-Sonoma County line to the west.

The petitioner chose the 400-foot contour line for the northeastern boundary to accurately reflect the lowest elevation of vineyards historically associated with the Diamond Mountain District. The use of the Napa-Sonoma County line as the southwestern boundary acknowledges the historic association of the Diamond Mountain District viticultural area with Napa County and Napa Valley, and also recognizes the differences in history and geography that distinguish Diamond Mountain from adjacent slopes of the Mayacama Mountains in Sonoma County.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

There is evidence in the record that the geographical features in the Diamond Mountain District viticultural area clearly distinguish it from surrounding areas. The Diamond Mountain District is situated in the Napa Valley on the eastern slope of the Mayacamas Mountains. The region consists entirely of residual upland soils derived from volcanic parent material. These soils are very different from the alluvial soils on the floor of the Napa Valley to the east and northeast and are also significantly different from the sedimentary upland soils prevalent in the Spring Mountain viticultural area to the south. These soils are significantly different from the shallow, dry soils in Sonoma County to the west and southwest. According to the petitioner, the viticultural area's topography and aspect contribute to a special microclimate. Hillside topography and valley temperature inversions combine to give the region an unusually moderate temperate regime during a growing season, with lower maximum temperatures and higher minimum temperatures than nearby locations on the floor of the Napa Valley. The

petitioner stated that the microclimate of the Diamond Mountain District is clearly distinctive when compared to the surrounding areas. The region's microclimate is slightly warmer than that of the Spring Mountain District to the south, but somewhat similar due to comparable upland locations, northeastern (eastern, in Spring Mountain's case) aspects, and cooling influence of marine breezes from the Pacific Ocean. The microclimate is significantly cooler than the floor of the Napa Valley to its northeast and north, due to various tempering influences primarily associated with its upland location. So too is it cooler than adjacent land to the west in Sonoma County, due to its predominantly northeastern aspect which provides oblique sun and shade in the afternoon, while the western aspect of the Mayacamas Mountains adjacent to the region in Sonoma County is clearly hotter and drier.

Boundaries

The viticultural area is located in Napa County, California. The approved USGS maps for determining the boundary of the Diamond Mountain District viticultural area are, "Mark West Springs, Calif.", 7.5 minute series, edition of 1993, and the "Calistoga, Calif.", 7.5 minute series, edition of 1993. The northeastern boundary follows the 400-foot contour line from Ritchey Creek northwest to the Petrified Forest Road and the northern boundary follows the Petrified Forest Road west from the 400-foot contour line to the Napa-Sonoma county line. The southwestern boundary follows the official boundary line between Napa and Sonoma counties southeast from Petrified Forest Road to the east-west boundary between Sections 18 and 19 in Township 8 North, Range 6 West, Mount Diablo Range and Meridian. The southern boundary follows the boundary between Sections 18 and 19, Sections 17 and 20 and Ritchey Creek east from the Napa-Sonoma county line to the 400-foot elevation line. It also corresponds with the Northern Boundary of the Spring Mountain District viticultural area.

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Rule?

These regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.166 to read as follows:

§ 9.166 Diamond Mountain District

(a) Name. The name of the viticultural area described in this section is "Diamond Mountain District."

(b) Approved Map. The appropriate maps for determining the boundary of the Diamond Mountain District

viticultural area are two 1:24,000 Scale U.S.G.S. topography maps.

They are titled:

(1) Mark West Springs, CA 1993

(2) Calistoga, CA 1993.

(c) Boundaries. The viticultural area is located in Napa County, California. The beginning point is where the boundary between Napa and Sonoma counties intersects Petrified Forest Road in Section 3 of Township 8 North, Range 7 West, Mount Diablo Base and Meridian on the Mark West Springs map;

(1) Then north and east along Petrified Forest Road approximately 1.9 miles to the point where it intersects the 400-foot contour just east of Section 35 of Township 9 North, Range 7 West, Mount Diablo Base and Meridian, in the Mallacomes land grant;

(2) Then generally east southeast along the 400-foot contour approximately 6.5 miles to the point where it intersects Ritchey Creek in Section 3 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(3) Then west southwest along Ritchey Creek approximately 2.2 miles to the point where it intersects the boundary between Sections 17 and 20 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(4) Then due west in a straight line along the section boundary approximately 0.8 miles to the point where it intersects the boundary between Napa and Sonoma Counties between Sections 18 and 19 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(5) Then generally northwest along the boundary between Napa and Sonoma Counties approximately 4.2 miles to the point where it intersects Petrified Forest Road, to the point of beginning.

Signed: April 13, 2001.

Bradley A. Buckles,

Director.

Approved: April 19, 2001.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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