



**Alan C. Lloyd, Ph.D.**  
*Secretary for*

# State Water Resources Control Board

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## Division of Water Rights

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Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000  
FAX: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)



**Arnold Schwarzenegger**  
*Governor*

## NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

**APPLICATION:** 31400

**DATE FILED:** March 10, 2003

Notice is hereby given that Terry M. Bengard has filed an application for a water right permit to divert water from Alisal Creek tributary to Alisal Slough thence Salinas River in Monterey County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions are needed in the permit to protect the environment, the public interest, and downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of protests against the application. This notice may be viewed at the Division of Water Rights' (Division) website at [www.waterrights.ca.gov](http://www.waterrights.ca.gov). Any correspondence directed to the applicant should be mailed to:

Terry M. Bengard  
c/o Jesse Barton  
Law Offices of Dan Gallery  
926 J Street, Suite 505  
Sacramento, CA

### Description of Project

The applicant seeks a right to enlarge an existing reservoir (Bengard No. 1) from 42 acre-feet of storage annually (licensed Application 22489) to a total of 90 acre-feet annually. Application 31400 includes a 27 foot-high dam forming a 90 acre-foot off-stream reservoir with a surface area of 5.7 acres. Whether this project will be by gravity means or by pumping will be determined after the engineering work has been completed. In either case, the applicant proposes to install a concrete weir at the point of diversion to pool a small amount of water. In the event the water has to be pumped from the point of diversion, the weir will allow the applicant to install a pump so water can be conveyed via a 10-inch PVC buried pipeline that is 3,000 feet in length to the reservoir. The maximum rate of diversion to off-stream storage will be 2.9 cubic feet per second. Water collected to storage is used for irrigation and stockwatering purposes. The primary purpose of the water is to sprinkler irrigate 393 acres of pasture and vegetables year-round via a 10-inch pipeline to the place of use. Stockwatering purposes include a range operation of 300 cattle and 45 sheep. The project is located approximately five miles northeast from Salinas.

### Summary of Application 31400

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*California Environmental Protection Agency*



County: Monterey.  
 Source: Alisal Creek tributary to Alisal Slough thence Salinas River.  
 Point of Diversion: Located within the NW¼ of SE¼ of Projected Section 20, T14S, R4E, MDB&M.  
 Storage Amount: 48 acre-feet annually (afa) ( not to exceed a combined total of 90 afa under this application and Licensed Application 22489.)  
 Season: November 1 through March 31 of the succeeding year (irrigation purposes).  
 January 1 through December 31 (stockwatering purposes).  
 Purposes: Irrigation and Stockwatering.  
 Place of Use:

Use Within	Section	Township	Range	B & M	If Irrigated	
					Number of Acres	Presently Cultivated (Y/N)
NE¼ of NW¼	29	14S	4E	MD	20	*
NW¼ of NW¼	29	14S	4E	MD	15	*
NW¼ of NE¼	29	14S	4E	MD	2	*
SE¼ of SW¼	30	14S	4E	MD	38	*
SW¼ of SW¼	30	14S	4E	MD	18	*
NE¼ of SW¼	30	14S	4E	MD	12	*
SW¼ of SE¼	30	14S	4E	MD	35	*
SE¼ of SE¼	30	14S	4E	MD	6	*
NE¼ of SE¼	30	14S	4E	MD	20	*
NW¼ of SE¼	30	14S	4E	MD	40	*
SE¼ of NE¼	30	14S	4E	MD	18	*
SW¼ of NE¼	30	14S	4E	MD	17	*
SW¼ of SW¼	20	14S	4E	MD	22	*
SE¼ of SW¼	20	14S	4E	MD	24	*
SW¼ of SE¼	20	14S	4E	MD	20	*
NW¼ of SE¼	20	14S	4E	MD	16	*
NE¼ of SE¼	20	14S	4E	MD	3	*
NE¼ of NW¼	31	14S	4E	MD	3	*
NW¼ of NW¼	31	14S	4E	MD	28	*
NE¼ of NW¼	31	14S	4E	MD	25	*
NW¼ of NE¼	31	14S	4E	MD	3	*
SUBTOTAL					385	
NE¼ of NE¼	36	14S	3E	MD	8	*
<b>TOTAL</b>					<b>393</b>	<b>*</b>

\*Crops irrigated in sections 30 and 31 are currently being served by groundwater wells. Due to water quality issues, the applicant proposes to utilize the water sought under this application. Twenty acres in sections 20 and 29 are being irrigated under Licensed Application 22489. The applicant intends to utilize this water as a conjunctive use project.

**Environmental Information**

The lead agency will prepare the appropriate environmental documents for the project according to the California Environmental Quality Act (CEQA) and its guidelines, and will determine whether or not the project will cause a significant effect on the environment. If you are not filing a protest, but wish to submit information that indicates the project may cause a significant effect on the environment, please send this information to Steven Herrera; SWRCB, Division of Water Rights; P.O. Box 2000; Sacramento, CA 95812-2000. This information will be reviewed in accordance with CEQA.

## **PROTEST SUBMITTAL INFORMATION**

### **Protest Requirements**

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. There must be a clear link between the proposed project and the objection to its approval. If the objection is based on interference with prior water rights, the protest must describe specifically what injury would result if the application is approved. In addition, the party claiming interference with prior rights must provide specific information describing the basis of the prior right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to vested water rights and will include conditions to protect such rights.

If the protest is based on an allegation that the proposed appropriation would not be within the SWRCB's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation.

For example, public interest protests should clearly indicate how the appropriation will affect the public; environmental protests should identify specific impacts and provide supporting recitals on the effect of the proposed project on plants, animals, fish, erosion, pollution, aesthetics, etc.; public trust protests must identify the navigable waters and public trust values that would be affected by the proposed project and how the project will impact public trust values.

All protests should include a description of any measures that could be taken to resolve the

protest. The protest also must indicate the manner in which the protestant served upon the applicant a duplicate copy of the protest.

If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

### **Procedure for Submitting Protests**

Protests should be submitted on standard protest forms available from the Division of Water Rights' website at [www.waterrights.ca.gov/forms/](http://www.waterrights.ca.gov/forms/) or upon request from the Division of Water Rights. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the engineer listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the applicant.**

### **Protest Submittal Deadline**

Protests submitted in response to this notice must be received by the Division by 3:00 p.m. on the **40<sup>th</sup>** day after the date of this notice (the close of the protest period). Protests may be submitted by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000; Sacramento, CA 95812-2000
2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading "Contact Person"
4. Hand-delivered to the Division office located at 1001 "I" Street, 14<sup>th</sup> Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division of Water Rights in order for the protest to be accepted. The SWRCB will respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

For good cause, the SWRCB may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as "Contact Person" to request the extension prior to the end of the protest period.

### **Resolution of Protests**

The applicant will have 30 days to respond to a protest once it is accepted by the Division of  
APP-NOT (3-03)

Water Rights. The protestant and the applicant are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

This is a “minor” project (the proposed diversion is 3 cubic feet per second or less by direct diversion or 200 acre-feet or less per year by storage) as defined by section 1348 of the Water Code. Therefore, any protest issues not resolved by the applicant or by provisions of section 1335 of the Water Code will be decided by the Chief, Division of Water Rights, following a field investigation.

### **CONTACT PERSON**

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Patricia Meroney by phone at (916) 341-5354 or by electronic mail at [pmeroney@waterrights.swrcb.ca.gov](mailto:pmeroney@waterrights.swrcb.ca.gov). Information and protest forms are also available at the Division’s website: [www.waterrights.ca.gov/forms/](http://www.waterrights.ca.gov/forms/).

Date of Notice: **December 24, 2004**