

**EXHIBIT 17**

SURNAME

(916) 657-1965  
FAX: 657-1485

In Reply Refer  
to:331:YM:29977

FEBRUARY 1 1995

Mr. G. Scott Fahey  
2418 Pleasanton  
Boise, ID 83702

City & County of San Francisco  
c/o Ms. Christiane Hayashi  
City Hall, Room 287  
San Francisco, CA 94102

Dear Mr. Fahey and Ms. Hayashi:

APPLICATION 29977 OF FAHEY, DEADWOOD SPRING AND COTTON WOOD SPRING IN  
TUOLUMNE COUNTY

Enclosed for your information is a copy of our report of the field  
investigation which was conducted on September 29, 1994 pursuant to  
Section 1345 of California Water Code.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring  
Sanitary Engineering Technician  
Application Unit #1

Enclosure

YMOORING:ym:1/24/94:cover

SURNAME  
DWR 540 REV. 1/88

ym 1/31/95  
WV 1/31/95

DE 3910E

000254

REPORT OF FIELD INVESTIGATION UNDER WATER CODE SECTION 1345  
APPLICATION 29977 OF FAHEY  
UNNAMED SPRING TRIB. COTTONWOOD CREEK AND  
DEADWOOD SPRING TRIB. BASIN CREEK IN THE TUOLUMNE RIVER WATERSHED  
TUOLUMNE COUNTY

SUBSTANCE OF APPLICATION 29977:

Application 29977 was filed on July 12, 1991 to appropriate water from two springs as follows:

**SOURCE:** (1) Unnamed Spring (aka Cottonwood Spring) tributary to Cottonwood Creek thence Clavey River thence Tuolumne River, and (2) Deadwood Spring tributary to Unnamed Stream (aka Deadwood Creek) thence Basin Creek thence North Fork Tuolumne River in Tuolumne County

**AMOUNT SOUGHT:** 20,000 gallons per day (0.031 cubic foot per second) from Cottonwood Spring and 20,000 gallons per day from Deadwood Spring; Total of 40,000 gallons per day (0.062 cubic foot per second) not to exceed 44.82 acre-feet per year

**USE:** Industrial (Bottled Water)

**SEASON OF COLLECTION:** January 1 to December 31 of each year

**PLACE OF USE:** Not specified at this point. The water will be transported off-site to a bottled water plant.

DECLARATION OF FULLY APPROPRIATED STREAM SYSTEM:

In Order WR 91-07, the State Water Resources Control Board (SWRCB) declared the Tuolumne River fully appropriated from July 1 to October 31 (Decision 995) and Sacramento-San Joaquin Delta fully appropriated from June 15 to August 31 (Decision 1594). Section 5.1 of Order 91-07, however, provides some exceptions for the continued processing of certain applications, such as Application 29977.

Section 5.1

"...transactions may occur which, in effect, make water available for diversion and use by specific persons from stream systems wherein water is not otherwise available for appropriation. These transactions include water service contracts and water transfers, where a natural stream channel is used for delivery, and water exchanges. Under certain circumstances the Board requires that an application be filed and permit issued. In such cases, the Declaration should not preclude acceptance of the application nor should any such pending applications be canceled. The application process will help assure protection of other lawful users of water and instream uses."

The applicant has entered into a water exchange agreement with the Turlock Irrigation District and the Modesto Irrigation District for the period from June 16 to October 31 of each year. The agreement was executed on December 12, 1992. The Chief, Division of Water Rights, subsequently approved an exception to Order WR 91-07 pursuant to Section 5.1 of the order on January 15, 1993.

**PROTESTS:**

Application 29977 was noticed on January 29, 1993 and four protests were received against approval of the application. Two protests (Banta-Carbona Irrigation District and Central Sierra Environmental Resource Center) were withdrawn before acceptance. A protest by Tuolumne Group of the Sierra Club was accepted on March 16, 1993 and subsequently dismissed unconditionally on May 12, 1994. A protest by City and County of San Francisco (City) was accepted on March 23, 1993. The City protested the application based on injury to vested rights and environmental considerations. The City claims pre-1914 rights, and has filed Statements of Water Diversion and Use 2635, 2636, 2637 and 2638. The City contends that any diversion of water flowing into New Don Pedro Reservoir from the Tuolumne Basin could adversely affect the City's ability to meet its obligation to release water from the upstream facilities (Hetch Hetch Reservoir, Lake Eleanor, and Cherry Lake) into New Don Pedro Reservoir pursuant to the Raker Act of 1913. The City also alleges that Mr. Fahey's proposed pumping of groundwater into New Don Pedro Reservoir, pursuant to the applicant's water exchange agreement with the Modesto & Turlock Irrigation Districts, would occur in an area that the irrigation districts claim to be already overdrafted, thereby causing the potential for adverse environmental impacts. Due to the unresolved protest of the City, the matter of Application 29977 was scheduled for a field investigation.

**FIELD INVESTIGATION:**

An on-site investigation of the above application was conducted on September 29, 1994, pursuant to Water Code Section 1345. Parties present during the investigation were as follows:

G. Scott Fahey .....	Applicant
City & County of San Francisco.....	Protestant
represented by Christiane Hayashi	
Yoko Mooring.....	SWRCB
William Van Dyck.....	SWRCB

All parties met at the post office in Tuolumne City. Prior to proceeding to the proposed points of diversion, the investigation convened at a nearby picnic bench at the request of Ms. Hayashi.

Division staff explained the field investigation procedures under Water Code Section 1345 and also how staff wished to proceed with the investigation. Since the applicant and the protestant had been actively communicating with each other for the last few months in order to resolve the City's protest, the substance of the application and the protest were not summarized and the discussion was soon opened, starting with the applicant's presentation.

The applicant briefly explained his proposed project and how he had resolved the other protests. He stated that the protest filed by the Banta Carbona Irrigation District (prior vested right protest) was withdrawn because their concerns were alleviated based on a water exchange agreement. He also added that all environmental documents necessary for a water right permit had been completed.

Ms. Hayashi explained about the water bank accounting system in effect between the Irrigation Districts and the City, the flow release under the Raker Act of 1913, and the City's pre-1914 rights. She also presented an example of protest dismissal permit terms from Application 22980, which the City had protested and leading to Decision 1320 rendered in 1968. She stated that the applicant's diversion may be too insignificant to be able to assess any damage; nevertheless, his diversion would be in conflict with the City's interest. Therefore, the City could not ignore any diversion occurring in the Tuolumne watershed for its future protection.

The applicant questioned how his diversion would be counted on the City's water bank system because his streams are not listed and not measured on the City's schematic chart for accounting purposes. He also requested some revisions to the proposed dismissal conditions, especially wording regarding the collection season. Ms. Hayashi agreed to get back to him after discussing the matter with the City's consultant.

We next proceeded to the proposed points of diversion in one vehicle. On the way to the springs, we observed the location where the tanker fill station is proposed on USFS Roadway 1N04. The elevation is estimated to be approximately 3,300 feet on the Twain Harte quadrangle map. Since two springs are located at the elevation of approximately 5,300 feet, snow will prohibit access during the winter months. Accordingly, the project is proposed to divert water from the springs through a conduit, approximately 15,000 feet down to the tanker fill station. This would be the location where the applicant would actually sell the water to the bottling company. Company tanker trucks would transport the water from the fill station to their bottling plant site(s).

We next observed Deadwood Creek as it flowed down the rocky mountain side and passed underneath the highway. We also stopped at two locations affording a panoramic view facing Marble Mountain. The applicant pointed out the location of the springs and the pipe route. Photos showing this panoramic view with POD marked were submitted with the original application.

After approximately 11 miles, from Tuolumne City, on Forest Road 1N04 (Cottonwood Road), unpaved Forest Road 3N07 spurs to the north. A road sign at Road 3N07 turnoff indicates 3 miles to Fahey Meadow. The Deadwood Spring (Point of Diversion #2) is located approximately three miles north on Forest Road 3N07. Water was seeping from the spring and coming down the mountain side through a culvert underneath the road, then going down the hill forming a creek channel. Since the spring site was heavily covered by vegetation, the sound of water flowing down the mountain side could be heard, but water could not be seen until it entered the culvert.

The applicant explained that there were three springs and that the drainage of all three springs merged to create Deadwood Creek. He would divert only from one spring. He had documented the flow rate since 1989 at the discharge end of the culvert. The highest recorded flow was 24 gallons per minute and the lowest was 8 gallons per minute. Staff measured the undeveloped spring flow at 13 gallons per minute (bucket and stopwatch) at the discharge end of the culvert.

The applicant indicated that he eventually wished to drill a horizontal well to the spring for health purposes. However, this would be done in conjunction with a bottling company contract. The concept of developed water was discussed as a possible means to avoid infringement on prior rights at New Don Pedro Reservoir without having to provide makeup water. Mr. Fahey was advised to keep good records of the flow rate for different periods under natural conditions in order to establish a claim to developed water through a horizontal boring(s).

We then proceeded to Cottonwood Spring (Point of Diversion #1), which required a walk of approximately 1/4 mile. When we reached a flat area appearing as a wet meadow, a natural stream channel with about one foot width was observed immediately down from the spring. The water was flowing steadily, but the flow rate was not measured at this point. Because of dense vegetation we could not reach the spring source itself, which is almost on the southeast section corner of Section 16, T2N. R17E, MDB&M.

The applicant told us that there were also three springs here but he would divert only from one spring. He also mentioned that he was required to install a culvert at the intersection of Cottonwood Creek and the private dirt road immediately downstream from Cottonwood Spring.

Upon returning to Tuolumne City, Ms. Hayashi left the investigation. The applicant and staff then proceeded to the applicant's well site south of New Don Pedro Reservoir.

The applicant has purchased seven acres of land southeast of New Don Pedro Reservoir and has drilled a well for replacement water in order to enter into a water exchange agreement with the Modesto/Turlock Irrigation Districts. The well is located in the SW1/4 of the NE1/4 of the NE1/4 of Section 8, T3S, R15E, MDB&M. The applicant plans to discharge makeup water from this well, during the period of unavailability, into an unnamed stream tributary to the Roger Creek arm of New Don Pedro Reservoir. The water level in the well was measured at 67' below the ground surface which is at an elevation of approximately 1,030'. Spillway elevation of New Don Pedro Reservoir is 800' and the reservoir was down about 100' on September 29, 1994. The applicant advised us that the well was inspected by the Irrigation District's personnel before the water exchange agreement was executed. Yield of the well is only about 6 gallons per minute or 8,640 gallons per day and thus is considered an interim source of makeup water until the applicant can contract for bringing in out of basin water. The investigation concluded at the well site.

**SUBSEQUENT PROCEEDINGS:**

In December 1994, staff was advised by both Mr. Fahey and the City that they had come to an agreement on permit conditions for resolution of the City's protest.

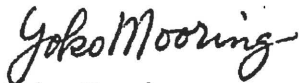
AVAILABILITY OF UNAPPROPRIATED WATER:

As a prerequisite to issuance of a permit to appropriate water, there must be water available to supply the applicant taking into consideration prior rights and instream needs.

Provisions, in any permit issued pursuant to Application 29977, requiring replacement water to New Don Pedro Reservoir for all water diverted from the springs during the period June 16 through October 31 will protect all prior rights at and below the reservoir during this period. Similar provisions during the period November 1 through June 15 will protect the prior rights of the Districts and the City at such times that diversion from the springs would be adverse to their rights at New Don Pedro Reservoir. Lastly, there are no prior rights of record between the springs and New Don Pedro Reservoir. Minimum instream bypass flows from the springs are required as part of the Streambed Alteration Agreement between the applicant and the Department of Fish and Game.

In view of the above, staff concludes that water is available for appropriation.

PREPARED BY:



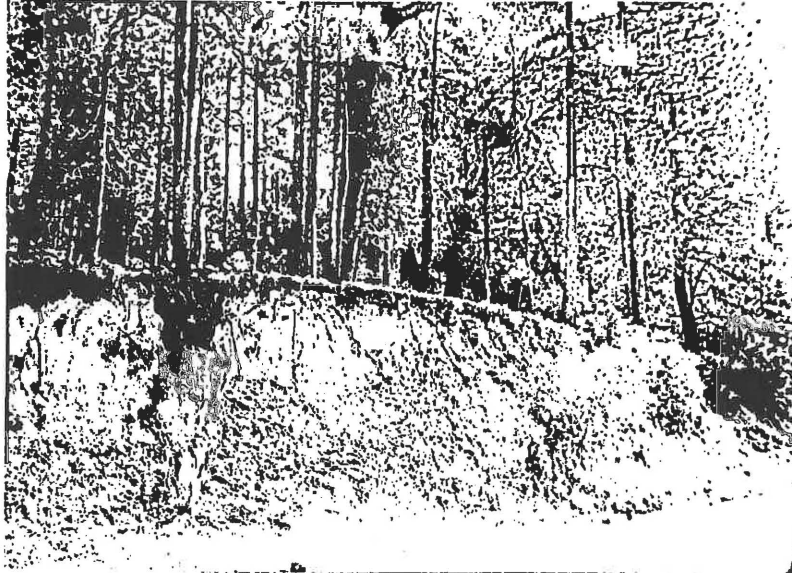
Yoko Mooring  
Sanitary Engineering Technician

SUPERVISED BY:



Wm. Van Dyck  
Associate WRC Engineer

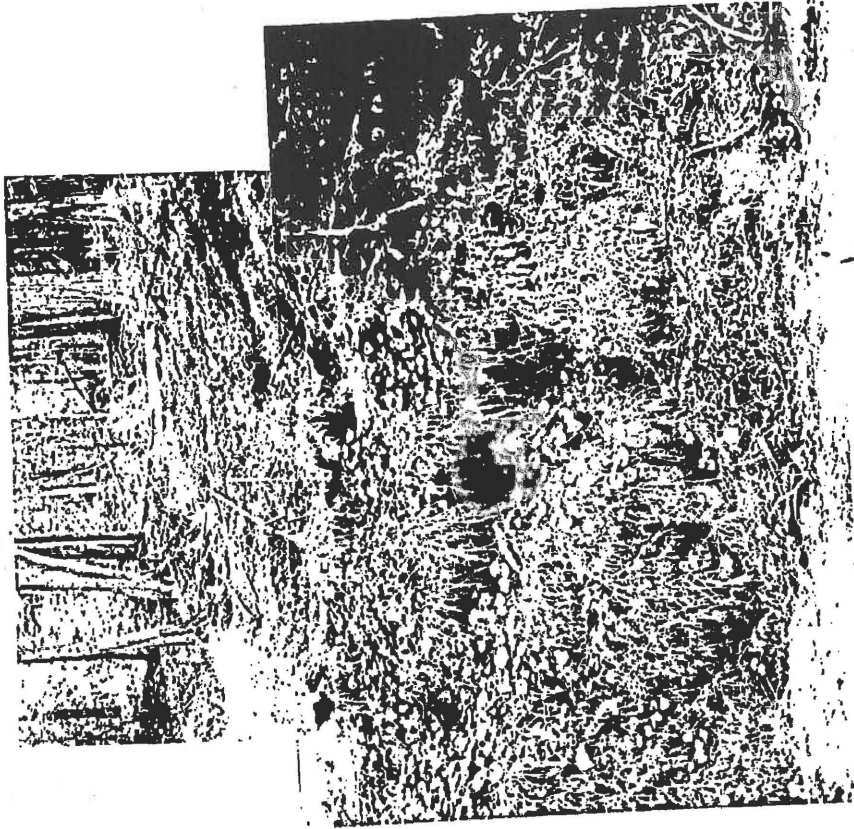
Attachments



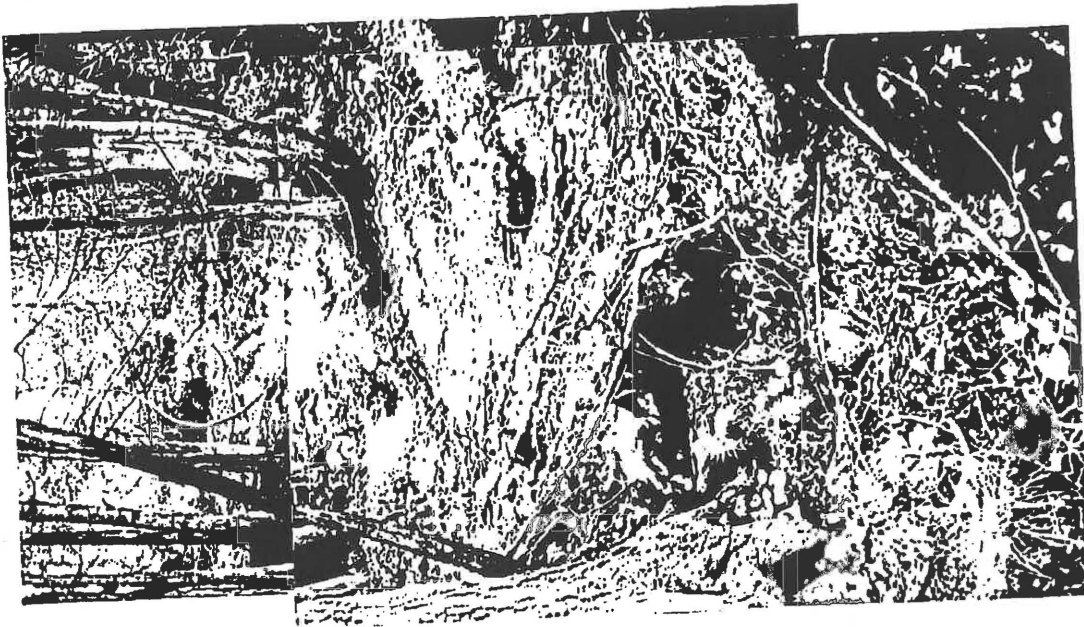
Proposed Tanker Fill Station Site  
Cottonwood Road (Forest Road 1N04)



Deadwood Spring Area



↓ Forest Road 3ND7





flow rate measurement site



Deadwood Creek

Cottonwood Spring  
and Cottonwood Creek

Spring  
inside  
forest



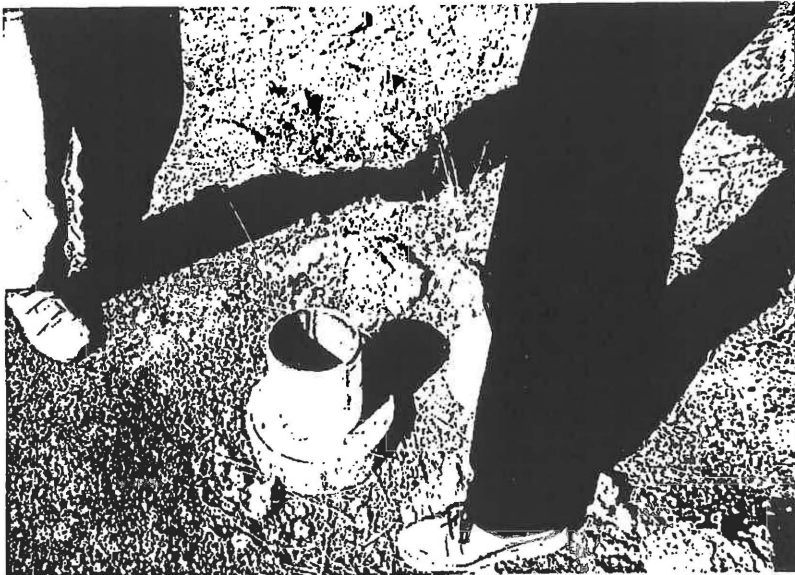
down stream  
from P.O.D





New Don Pedro Reservoir

to Well



Makeup Water Well Site



reflecting water surface  
on wristwatch

7. Permittee agrees not to interfere in any way with any of the City of San Francisco's obligations to the Modesto and Turlock Irrigation Districts pursuant to the Kaiser Act and/or the Pentith Agreement.

8. Permittee shall replace all water diverted pursuant to this permit which would otherwise have contributed to the inflow of New Don Pedro Reservoir. This replacement shall be done on at least an annual basis.

9. Permittee shall report to the State Water Resources Control Board its groundwater extractions to provide for replacement water along with its annual Report of Permittee.

10. If permittee replaces water diverted pursuant to this permit with groundwater which it extracts, permittee shall demonstrate that any such extracted groundwater which replaces the diverted surface water is water which would not otherwise reach either Don Pedro Reservoir or the groundwater basin to the west of New Don Pedro Reservoir. The permittee shall demonstrate that the geologic formations in which its well would be completed are different than those to the west where the Turlock and Modesto Irrigation Districts and Eastside Water District rely on groundwater supplies; alternatively, permittee shall demonstrate that there is hydrologic separation between the groundwater it extracts and groundwater flow from the east of New Don Pedro Reservoir into New Don Pedro or toward groundwater basins to the west of New Don Pedro; or, alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to New Don Pedro and to the west of New Don Pedro is very slight and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface inflow from the east to New Don Pedro and to the basins west of New Don Pedro.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22980 )  
of Western Lake Properties, Inc., )  
to Appropriate from Big Creek in )  
Tuolumne County )

Decision 1320

DECISION APPROVING APPLICATION

Western Lake Properties, Inc., having filed Application 22980 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on July 30, 1968; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 22980 is for a permit to appropriate 9,000 acre-feet per annum by storage in two reservoirs from October 1 of each year to May 31 of the succeeding year for irrigation and recreational purposes from Big Creek, tributary to Tuolumne River in Tuolumne County. The points of diversion are to be located in Sections 14, 15, and 23, in T1S, R16E, MDB&M.

9. San Francisco, which also protested the application, could suffer injury only if it were required to release water to the districts to make up for depletion of flow by the applicant. Since the permit will be conditioned so as to prevent any injury to the districts, no special permit term need be included to protect San Francisco.

10. Protestant Waterford Irrigation District has direct diversion rights which are prior to the rights of Turlock and Modesto irrigation districts to store water in New Don Pedro Reservoir. Evidence was introduced that there has always been more water flowing downstream at La Grange Dam, below Waterford Irrigation District's diversion, than was flowing in Big Creek, so any storage in applicant's Big Creek reservoirs under present conditions would not deprive Waterford Irrigation District of any water required to satisfy its needs. Permit conditions protecting the rights of Turlock and Modesto irrigation districts for the New Don Pedro Project will necessarily protect all prior rights, including those of Waterford Irrigation District, in the future.

11. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.



3. Permittee shall submit annually to the State Water Resources Control Board, with copies to Turlock and Modesto irrigation districts, on or before December 1, a report to reflect actual rainfall, runoff, water consumption, and water salvage conditions during the water year ending September 30. Each report shall list the amount of water purchased, the amount of flow into permittee's upper reservoir and out of its lower reservoir, and shall adhere to the assumptions and form contained in applicant's Exhibit 12 submitted at the hearing on Application 22980 and attached hereto as Exhibit A, or such other assumption as may later be determined to be more accurate.

4. The data to be reported on annually as required by the next preceding paragraph will constitute the basis of determining invasion of the rights of Turlock and Modesto irrigation districts. If permittee's operations result in a net loss to the flow of Big Creek into Tuolumne River for the water year and all of the flow of the Tuolumne River available to the districts during the water year has been diverted or stored by the districts pursuant to valid rights or released to comply with minimum fish-flow requirements, an invasion of the districts' rights will be deemed to have occurred. No invasion will be deemed to have occurred if at any time during the water year covered by the report water spilled or was released from New Don Pedro Reservoir to

provide flood control storage space and which was not used to generate power or was not diverted by the districts for beneficial use pursuant to valid rights or released from La Grange Dam to provide minimum required fish flows. In any year when invasion of the rights of said districts is deemed to have occurred, permittee shall, unless the districts agree otherwise, make up the net loss by releasing water from storage or supplying water by purchase from Groveland Community Services District.

5. Permittee shall install and maintain an outlet pipe in each of its dams as near as practicable to the bottom of the natural stream channel, of adequate capacity to comply with the preceding paragraph and with paragraph No. 7.

6. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of its upper reservoir and (b) immediately below its lower storage dam or provide other suitable means in order that accurate measurement can be made of the quantity of water flowing into and out of its reservoirs.

7. Permittee shall maintain a flow of 8 gallons per minute or the natural flow of Big Creek, if less, in the channel of Big Creek at the upstream property line of the Crook Ranch.

Attachment 4

Meeting Attendance Record  
APPLICATION AND HEARING SECTION

Date: 9-29-94 Time: \_\_\_\_\_ Place: TUOLUMNE Co.

Subject of Meeting: Water Code Section 1345 Field Invest. on A-29977 of FAHEY

NAME	ORGANIZATION	ADDRESS
Yoko Mooring	SWRCB	Street _____ City/State _____ Telephone No. _____
Wm. Van Dyck	SWRCB	Street _____ City/State _____ Telephone No. _____
CHRISTIANE HAYASHI	SF PUC	Street _____ City/State _____ Telephone No. _____
G Scott Fahey	applicant	Street _____ City/State _____ Telephone No. _____
		Street _____ City/State _____ Telephone No. _____
		Street _____ City/State _____ Telephone No. _____
		Street _____ City/State _____ Telephone No. _____
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