

EXHIBIT 46



State Water Resources Control Board



Ajan C. Lloyd, Ph.D.
Agency Secretary

Division of Water Rights
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Arnold Schwarzenegger
Governor

JAN 31 2005

In Reply Refer
to:331:YM:31491

City and County of San Francisco
c/o Donn W. Furman
1390 Market Street, Suite 418
San Francisco, CA 94102

Dear Mr. Furman:

APPLICATION 31491 OF FAHEY, (1) WET MEADOWS SPRINGS TRIBUTARY TO HULL CREEK (2) UNNAMED SPRING (AKA MARCO SPRING) AND (3) UNNAMED SPRING (AKA POLO SPRING) BOTH TRIBUTARY TO UNNAMED STREAM THENCE HULL CREEK IN TUOLUMNE COUNTY

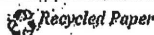
Thank you for your December 16, 2004 letter in which you stated that your protest can be dismissed with inclusion of two terms described in your letter. The applicant confirmed that he has no objection to inclusion of these terms in his November 15, 2004 letter. Accordingly, the following terms, substantially as written, will be included in any permit issued pursuant to Application 31491:

Permittee shall comply with the following provisions which are derived from the City and County of San Francisco (San Francisco) letter dated December 16, 2004 filed with the State Water Resources Control Board:

- (1) Permittee shall not interfere with San Francisco's obligations to Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or any implementing agreement between the Districts and San Francisco.
- (2) Permittee shall provide replacement water to New Don Pedro Reservoir (NDPR) for water diverted under this permit which is adverse to the prior rights of San Francisco and the Districts. A determination of whether permittee's diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made by the latter parties in accordance with water accounting procedures being used by said parties.

Permittee shall provide replacement water within one year of notification by San Francisco of potential or actual water supply reduction caused by permittee's diversion. Permittee shall provide replacement water in a manner that will offset the separate reductions in water supplies of San Francisco and the Districts. Replacement water may be provided in advance and credited to future replacement water requirements. Permittee shall not be obligated to provide replacement water for diversions that occur during periods when the Districts' and San Francisco's reservoirs are spilling or are being operated in anticipation of spill.

California Environmental Protection Agency



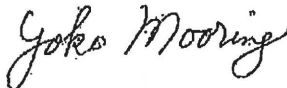
Permittee's obligations to provide replacement water under this letter agreement shall take into consideration permittee's obligations to provide replacement water under the Water Exchange Agreement executed on December 12, 1992 between Permittee and the Districts. The source, amount and location at NDPR of replacement water discharged into NDPR shall be mutually agreed upon by the permittee, the Districts, and San Francisco, and shall be reported to the State Water Resources Control Board with the annual Progress Report by permittee.

Permittee shall not provide replacement water from a source that is hydraulically connected to surface water tributary to the Tuolumne River. If permittee replaces water diverted pursuant to this permit with groundwater which it extracts, permittee shall demonstrate that any extracted groundwater which replaces diverted surface water is water which would not otherwise reach NDPR. Permittee shall demonstrate that there is hydrologic separation between the groundwater extracted and groundwater flow into NDPR; or, alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDPR is not substantial and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface flow to NDPR.

We believe that the inclusion of the above terms will alleviate your concerns; accordingly, your protest is hereby dismissed.

If you have any questions, please call me at (916) 341-5362.

Sincerely,



Yoko Mooring
Engineering Associate
Water Rights Processing

cc: G. Scott Fahey
2787 Stony Fork Way
Boise, ID 83706