State ol Board

Terry Tamminen
Secretary for Environmental Protection

DWR Prosecuting Team
Exhibit 16

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SURNAME

Arnold Schwarzenegger
Governor

DEC 28 2004

In Reply Refer to:
KDM:A26306 & A26307

CERTIFIED MAIL

1830 7779

Emerson Investment Inc.
c/o Jack Frost
P.O. Box 496014
Redding, CA 96049-6014

Dear Mr. Frost:

PERMITS 19164 AND 19165 (APPLICATIONS 26306 AND 26307) – SHASTA RIVER IN SISKIYOU COUNTY

The State Water Resources Control Board (SWRCB), Division of Water Rights (Division) identified the next steps in processing the petitions for extension of time for Permits 19164 and 19165 in a November 16, 2004 letter to you. Your November 22, 2004 response did not adequately address some of the issues listed in the Division's letter.

The Division's November 16 letter requested that you respond to the Department of Fish and Game (DFG) protest regarding potential impacts to coho salmon, a federally threatened and State candidate species. Your response states that you met with DFG staff onsite and feel that progress has been made in addressing the DFG issues. A formal response is required for all protests. Thus, Division staff expected you to provide a response identifying the actions that you would be taking to address the protestant's concerns. The Division does not have a record of any issues discussed and agreements reached during your onsite meeting with DFG.

The 2001 DFG protest states that you have had 16 years to comply with the permit terms requiring installation of measuring devices and development of a record of actual beneficial use. The DFG protest also raises the issue of installing an adequate fish passage facility, and a screen to prevent fish from being diverted into the irrigation canal.

Your November 22 letter states that you feel that the upstream diversion point seems to meet DFG's requirements but still needs a little work. It is unclear from this information whether the upstream diversion works satisfactorily address DFG's protest. Your November 22 letter states that the second diversion point needs improving for year around fish passage. You state that you received a copy of the April 2002 Shasta River Preliminary Engineering Report for Fish Screening/Passage Improvement prepared by Cascade Earth Sciences. The estimated cost to replace the existing structure is $216,878 to $250,628. Thus, you have been investigating some alternative options. It is unclear whether any, or all, of the alternative options will address the DFG protest.

You indicate that you may relocate the point of diversion, put the water into a pipe and gravity feed it down to the irrigation system. A change petition must be approved by the SWRCB before you are authorized to move the point of diversion. Changing the point of diversion prior to receiving authorization may result in imposition of an Administrative Civil Liability fine.

Your letter does not contain any time schedule for complying with the permit requirement regarding installation of measuring devices. Division staff requests that you submit a work plan for complying with the permit requirements. To be acceptable, the work plan must identify all of the steps that you are taking to comply with the permit conditions and to address the DFG protest issues. The permittee is responsible for paying the costs to prepare the California Environmental Quality Act (CEQA) document for any petition action. The CEQA documentation issue was described in the Division's February 18, 2004 letter to you. Since the Division is unable to document any water diversion and use pursuant to these water rights, the baseline for the environmental document is non-use. The document must evaluate the impacts of using the full, permitted amounts of water throughout the diversion season. Your March 22, 2004 response did not indicate whether you are amenable to paying the costs to prepare the CEQA document. A response is requested within the next 30 days.

Permit 19164 authorizes diversion of 5 cubic feet per second (cfs) from February 1 to November 1 of each year. Permit 19165 authorizes diversion of 14 cfs from February 1 to November 1 of each year. Diversion is only authorized when there is water surplus to the quantities needed to serve the Shasta River Decree.

The Division's November 16 letter also asked you to document that there has been water available for use under Permits 19164 and 19165 since there has not been any water surplus to the Shasta River adjudication rights in the last few years. Thus Division staff requested that you document the frequency when water is available to serve these permits, and the months when water is available in order to document that there is sufficient water available to warrant granting a time extension. As noted in the letter, if there is no water available to serve the permits or for any increase in diversions pursuant to the petitions, it appears that you cannot show good cause for a time extension pursuant to Title 23, California Code of Regulations, section 681.

The DFG protest states that surplus water is available only in extremely wet years. Due to the critical shortages of water and listed species involved, DFG does not believe the time extension is in the public interest and would likely have direct adverse impacts on listed species.

Your November 22 response contained information from the Watermaster regarding the dates and quantities of water that you used in 2003. It is unclear whether this is water used pursuant to your adjudicated rights, or the permits. You need to identify the quantities that you used pursuant to your adjudicated rights, in order to clarify this issue. Permits 19164 and 19165 authorize direct diversion from the Shasta River. The notes on the data indicate that the watermaster was providing released stored water from Dwinell Reservoir to you during June, July, August and September. This water cannot be considered water used pursuant to the

permits, because the permits are for direct diversion only. Therefore, the information that you have provided thus far does not satisfactorily address the issues raised by Division staff.

To be acceptable, the water availability analysis should provide monthly data documenting the availability of unappropriated water to serve the priority of Permits 19164 and 19165. The analysis should use streamgage or other relevant records, and identify the quantities of water needed to serve prior rights, and the quantity remaining to serve Permits 19164 and 19165 after taking any required bypass flows into consideration. The data should be include critically dry, below normal, normal, above normal and wet hydrologic year types. The analysis must be multi-year.

The Division has not yet received your written response to the DFG protest, or the water availability information. As noted in the Division's February 18 letter, failure to provide an adequate response to the identified issues in a timely manner may result in cancellation of your petitions. If the petitions are cancelled, the Division may issue a Notice of Proposed Revocation of Permits 19164 and 19165 due to non-use. Division staff also requests that you respond to the issue of paying for preparation of a CEQA document for the time extension petitions.

Division staff will initiate petition cancellation if an adequate written response is not received within 30 days of receipt of this letter.

If you require further assistance, I can be contacted at (916) 341-5363.

Sincerely,

ORIGINAL SIGNED BY:

Katherine Mrowka, Chief
Watershed Unit #3

cc: Regional Manager
Department of Fish and Game
Northern Calif.-North Coast Region
601 Locust Street
Redding, CA 96001

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bcc: RAS, AM