

**EXHIBIT 16**

(916) 657-1965  
 FAX: 657-1485

In Reply Refer  
 to:331:YM:29977

JANUARY 24 1995

City and County of San Francisco  
 c/o Christiane Hayashi  
 Deputy City Attorney  
 Room 206 City Hall  
 San Francisco, 94102-4682

Dear Ms. Hayashi:

APPLICATION 29977 OF FAHEY, DEADWOOD SPRING AND COTTONWOOD SPRING IN  
 TUOLUMNE COUNTY

Your protest dismissal letter dated December 19, 1994 has been reviewed by the Division of Water Rights. During a subsequent telephone conversation, the applicant informed me of acceptance of all of the conditions described in the letter. Some of the narrative in your proposed conditions, however, is not consistent with our use of permit terms in that, for the most part, the narrative is either in the form of statements or a description of processes rather than specific requirements of, or actions to be taken by, the permittee. Accordingly, the following terms, substantially as written, will be included in any permit issued pursuant to Application 29977:

- o Diversion of water under this permit during the period from June 16 through October 31 of each year is subject to maintenance of the Water Exchange Agreement executed on December 12, 1992 between the permittee and the Modesto and Turlock Irrigation Districts. Pursuant to the Agreement, permittee shall provide replacement water to New Don Pedro Reservoir for all water diverted under this permit during the period from June 16 to October 31 of each year. The source, amount and location at New Don Pedro Reservoir of replacement water discharged to the reservoir shall be reported to the State Water Resources Control Board with the annual Progress Report by permittee.
- o Permittee shall comply with the following provisions which are derived from the City and County of San Francisco (San Francisco) letter dated December 19, 1994 filed with the State Water Resources Control Board:
  - (1) Permittee shall not interfere with San Francisco's obligations to the Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or the Fourth Agreement between the Districts and San Francisco.

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- (2) During the period of November 1 through June 15, permittee shall provide replacement water to New Don Pedro Reservoir 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 annually by the latter parties in accordance with water accounting procedures being used by said parties.

Permittee shall provide replacement water within one year of the annual notification by San Francisco of potential or actual water supply reduction caused by permittee's diversions. 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. 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 New Don Pedro Reservoir of replacement water discharged to the reservoir shall be reported to the State Water Resources Control Board with the annual Progress Report by permittee.

Permittee shall not provide replacement water, under this letter agreement or permittee's aforementioned Water Exchange Agreement, 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 New Don Pedro Reservoir (NDP). Permittee shall demonstrate that there is hydrologic separation between the groundwater extracted and groundwater flow from the east into NDP; or, alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDP is not substantial and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface inflow from the east to NDP.

Inclusion in this permit of certain provisions of the referenced letter agreement shall not be construed as disapproval of other provisions of the letter agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

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Unless you advise to the contrary within 20 days from the date of this letter, your protest will be dismissed with the understanding that the above described terms will be included in any permit issued pursuant to Application 29977.

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

Sincerely,

**ORIGINAL SIGNED BY:**

Yoko Mooring  
Sanitary Engineering Technician  
Application Unit #1

cc: G. Scott Fahey  
2418 Pleasanton Avenue  
Boise, ID 83702

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copy to Mr. Fahey  
this hand written note was added.  
Please forward a copy of any  
contract you have executed  
to provide makeup water to  
New Don Pedro Reservoir from  
out of basin sources.