

EXHIBIT 39



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Division of Water Rights
1001 J Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

Arnold Schwarzenegger
Governor

NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

APPLICATION: 31491

DATE FILED: January 28, 2004

Notice is hereby given that G. Scott Fahey has filed an application for a water right permit to divert water from (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. 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. Any correspondence directed to the applicant should be mailed to:

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

Description of Project

Applicant proposes to construct facilities to develop three springs in order to divert 0.089 cubic foot per second (cfs) from January 1 to December 31 for industrial purposes. A total diversion from three springs will not exceed a rate of 0.089 cfs (39.9 gallons per minute) and 64.5 acre-feet per year. Three springs (Wet Meadows Springs, Marco Spring, and Polo Spring) will be developed by first excavating a pit approximately 15 to 25 feet in depth, boring a five-inch diameter hole by a horizontal-boring machine for a maximum boring length of 800 feet, and then installing the diversion pipeline system of a three-inch diameter PVC pipe. The water from the three springs will be conveyed through the pipeline system by gravity into the existing buried stainless steel holding tank downstream, then to a tanker-truck filling point approximately 2,000 feet away, where the water will be transported off-site to a bottled water plant. The facilities for the holding tank and the tanker-truck filling point were constructed under Permit 20784 (Application 29977) which authorizes the applicant to divert 0.062 cfs from other springs in the area; therefore, no new construction is proposed for this part.

When Application 29977 was processed for Permit 20784, applicant entered into a water exchange agreement with Turlock Irrigation District, Modesto Irrigation District, and the City and County of San Francisco for the period from June 16 to October 31 of each year when water is not available for appropriation in the Tuolumne River and the Sacramento-San Joaquin Delta systems. Applicant accepts and understands that Application 31491 shall be conditioned and subjected to the same terms and conditions as the previous agreements. Further, applicant recently updated the previous water exchange agreement with Tuolumne Utilities District. The updated agreement was executed on October 20, 2003 and submitted to the SWRCB. The project is located approximately four miles southeast of Wil-Wuk Village.

California Environmental Protection Agency

SURNAME

Jim 9/9/04

Recycled Paper
MIT 09/09/2004

000650

Summary of Application

County: Tuolumne,
Source: (1) Wet Meadows Spring
(2) Unnamed Spring (aka Marco Spring)
(3) Unnamed Spring (aka Polo Spring).
Points of
Diversion: Located within the NW ¼ of SW ¼ of Section 11, T2N, R17E, MDB&M
Located within the NW ¼ of NE ¼ of Section 22, T2N, R17E, MDB&M
Located within the NE ¼ of NE ¼ of Section 22, T2N, R17E, MDB&M.
Amount: 0.089 cubic feet per second of direct diversion,
not to exceed a total of 64.5 acre-feet per year.
Season: January 1 to December 31 for direct diversion.
Purpose: Industrial.
Place of Use: SE ¼ of NW ¼ of Section 30, T2N, R17E, MCB&M

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.