

EXHIBIT 40

CITY AND COUNTY OF SAN FRANCISCO



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SRH/VM
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Fixed for
received
13:09 11/8/04

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Attn: Yoko Mooring
Engineering Associate, Water Rights Processing Unit

Re: *Application 31491 - (1) Wet Meadows Springs tributary to Hull Creek; (2) Unnamed Spring (aqua) Marco Spring, and (3) Unnamed Spring (aqua) Polo Spring, both tributary to Unnamed Stream thence Hull Creek in Tuolumne County*

Dear Engineering Associate Mooring:

On behalf of the City and County of San Francisco, I write to clarify errors in the Notice and to propose minor changes to the wording of certain terms. I also hereby request an extension of time to file a protest in the event these matters cannot be resolved without a formal protest.

On page one the Notice states that "[w]hen 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." The City was not a party to the water exchange agreement dated December 30, 1992 between the two districts and the applicant. The City applicant did agree to terms that were proposed by the City in its letter of December 19, 1994, which the SWRCB stated the applicant had agreed to in its letter of January 24, 1995.

In the same paragraph the Notice states that "...[a]pplicant 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." We are unaware that the applicant previously executed an agreement. On April 25, 1995 applicant submitted a draft agreement with Tuolumne Utilities District to the SWRCB, but the Board did not approve it as indicated in its letter of June 14, 1995. We seek confirmation that the "updated" water exchange agreement is inclusive of the quantities required under Permit 20784 and Application 31491.

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