

**EXHIBIT 44**

12-2-04



Terry Tamminen  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000  
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger  
Governor

In Reply Refer  
to:331:YM:31491

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

Dear Mr. Furman:

APPLICATION 31491 OF FAHEY, WET MEADOWS SPRINGS  
TRIBUTARY TO UNNAMED STREAM THENCE HULL CREEK AND  
TWO UNNAMED SPRINGS TRIBUTARY TO UNNAMED STREAM THENCE  
HULL CREEK IN TUOLUMNE COUNTY

The Division of Water Rights (Division) received the November 8, 2004 letter from the City and County of San Francisco (City) regarding the notice of Application 31491 dated October 1, 2004. The City requests an extension of time to file a protest in the event some issues cannot be resolved without a formal protest. However, since the City's letter was submitted in response to the notice, the Division will accept its letter as a protest.

The Division concurs with your statement that the City was not a party to the water exchange agreement dated December 30, 1992. As you pointed out, the City had a separate agreement with the applicant to resolve its protest.

You also pointed out that on April 25, 1995, applicant submitted a draft agreement with Tuolumne Utilities District (District) to the Division, but the Division did not approve it as indicated in its letter of June 14, 1995 and you request clarification that the updated water exchange agreement is inclusive of the quantities required under Permit 20784 and Application 31491. On July 28, 1995, the Division accepted part of agreement where imported water is released from Phoenix Lake into the Tuolumne River System specifically as replacement for water consumed in the project. The updated contract with the District, executed on October 20, 2003 is to purchase 41 acre-feet of water as a replacement water supply for years when diversion pursuant to Applications 31491 and 29977 is injurious to the Modesto and Turlock Districts' prior right. Application 31491 seeks authorization to divert 0.089 cubic foot per second (cfs). At this rate of diversion, total of 24.1 acre-feet will be diverted during the period from June 16 through October 31 (total of 137 days). Application 29977 (Permit 20784) is for 0.062 cfs, 16.8 acre-feet, during the same period. The total combined quantities under Applications 29977 and 31491 are 40.9 acre-feet.

*California Environmental Protection Agency*



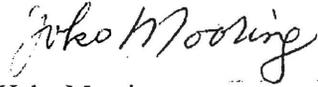
Donn W. Furman

- 2 -

During a November 15, 2004 telephone conversation, the applicant informed the Division that he accepts all of the conditions you proposed in your November 8, 2004 letter. It appears that his acceptance of the conditions alleviates your concern. If you agree, please advise this office and we will dismiss your protest.

If you have questions regarding this matter, please telephone me at (916) 341-5362.

Sincerely,



Yoko Mooring  
Engineering Associate  
Water Rights Processing Unit

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