

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 19572, )  
Issued Pursuant to )  
Application 28156, of )  
J. E. JENSEN )  
\_\_\_\_\_ )

ORDER: WR 93-8  
SOURCE: Various Diversion  
Points in Harlan Creek  
Drainage  
COUNTY: San Benito

ORDER ACCEPTING STIPULATED PHYSICAL SOLUTION,  
RESOLVING OUTSTANDING ISSUE,  
AND ORDERING PERMIT AMENDMENTS

BY THE BOARD:

**1.0 INTRODUCTION**

J. E. Jensen filed change and time extension petitions for Permit 19572 (Application 28156). Protests were received and a field investigation conducted by the Division of Water Rights (the Division) on November 13, 1990, in accordance with Water Code Section 1704.1. A Staff Analysis was issued on July 17, 1991. Requests for hearing on unresolved issues were received from the petitioner and protestants pursuant to Water Code Section 1704.3. A public hearing was scheduled in accordance with a hearing notice dated April 2, 1992, which identified 11 key issues. The hearing was held on May 27, 1992, at which time the petitioner and protestants appeared. Shortly after the opening of the hearing, petitioner proposed a physical solution.

The hearing was recessed from time to time to afford the parties opportunity to negotiate. Ultimately a physical solution was agreed to by the parties. However, the physical solution left one important issue unresolved. The parties stipulated that this issue should be resolved by the State Water Resources Control Board (State Water Board) on the basis of the record of the hearing.

## 2.0 PERMIT 19572

Permit 19572 was issued on July 12, 1985 and authorized J. E. Jensen to appropriate: (1) a total of 25 acre-feet per annum (afa) of storage to be collected from January 1 to December 31 of each year as follows: 5 afa in Reservoir No. 1, 10 afa in Reservoir No. 2, 1.4 afa in Reservoir No. 3, and 1 afa in Reservoir No. 4, and combined total replenishment of 7.6 afa in any of the four reservoirs; (2) 1 cubic foot per second (cfs) by direct diversion from April 1 to September 1 of each year for irrigation purposes; and (3) 500 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic purposes. The maximum annual amount currently authorized under this permit for all uses cannot exceed 128.5 afa.

Reservoirs 1, 2 and 3 are located on Harlan Creek tributary to Pescadero Creek thence San Benito River in San Benito County. Reservoir 4 is located on an unnamed stream

tributary to Harlan Creek. The permit authorizes domestic and irrigation use on 100 acres within the following areas:

NW1/4 of SE1/4 of Section 23 T14S R5E MDB&M, 20 acres

NE1/4 of SE1/4 of Section 23 T14S R5E MDB&M, 20 acres

SE1/4 of NE1/4 of Section 23 T14S R5E MDB&M, 40 acres

SE1/4 of SE1/4 of Section 14 T14S R5E MDB&M, 20 acres

TOTAL 100 acres

Permit 19572 requires that construction work be completed by December 1, 1988. Complete application of the water to the authorized use shall be made by December 1, 1989.

### **3.0 CHANGE AND TIME EXTENSION PETITIONS**

#### **3.1 Time Extension**

On April 10, 1990, the permittee filed a Petition for Extension of Time to complete the project and develop full beneficial use of water. Construction work was said to have been delayed due to insufficient rainfall over the past three years which delayed the planting of vineyards.

#### **3.2 Change**

On May 31, 1990, the permittee filed a Petition for Change to add two points of diversion. The proposed new points of

diversion are shallow infiltration galleries which penetrate the alluvial material underlying the streambed of Harlan Creek at locations between Reservoirs 1 and 2 and between Reservoirs 2 and 3. The shallow infiltration galleries have been used to divert water from the subterranean stream during the recent drought because of the lack of surface flow.

### 3.3 Change Approval Criteria

A petitioner is required to show that: (1) the proposed change will not, in effect, initiate a new right (Title 23, California Code of Regulations, Section 791); and (2) the change will not operate to the injury of any legal user of the water involved (Water Code Section 1702).

## 4.0 SUMMARY OF THE 1991 STAFF ANALYSIS

### 4.1 The Record

The Division's 1991 Staff Analysis was completed pursuant to Water Code Section 1704.1, based on staff's evaluation of: (1) the files on the permitted project, (2) the petitions, (3) the protests received pursuant to the notice of

petitions, (4) the November 13, 1990 Field Investigation and (5) other publications or information referenced in the Staff Analysis.

#### 4.2 Recommendations

The Staff Analysis recommended: (1) That the permittee be granted a two year extension of time for the limited purposes of lining the reservoirs to stop leakage, and installing facilities to bypass water to satisfy downstream water rights; (2) denial of the petition for additional time to develop additional acreage for increased irrigation use; (3) revocation of the part of Permit 19572 which authorized direct diversion from April 1 to September 1 and summer replenishment, due to lack of availability of unappropriated water; and (4) denial of the petition to divert water from the underflow.

The Staff Analysis found that appropriation of water pursuant to the existing terms and conditions of Permit 19572 appears injurious to prior rights whenever the annual rainfall, per water year, as measured at the Hollister Gage is less than 12 inches. However, the Staff Analysis recommended implementation of a physical solution to address the water availability problem.

The 1991 Staff Analysis also included a special reserved jurisdiction term for the State Water Board to supervise diversions and use of water and to modify permit terms and conditions in the public interest to protect prior rights. If the physical solution implemented by the recommended permit conditions had proved inadequate to protect prior rights, by determination of the State Water Board, further field investigation was to be initiated and a revised staff analysis prepared and circulated. (Condition 5 in the 1991 Analysis.)

#### **5.0 REQUESTS FOR HEARING**

All interested parties were mailed a copy of the 1991 Staff Analysis.

- 5.1 Permittee requested that the State Water Board reopen the field investigation or conduct a hearing to consider and resolve unresolved issues.
- 5.2 A request for hearing was also filed by protestant Howard Harris. Harris asked that the State Water Board prohibit diversions to storage when visible surface flow in the streambed does not reach his property and that of other senior claimants. He also requested that the State Water Board impose restrictions on the use of

the infiltration galleries to divert and use water on non-riparian land.

### 5.3 Key Hearing Issues

Water Code Section 1704.3 restricts the issues to be considered during a hearing on minor protested petitions to those unresolved issues concerning the Staff Analysis, raised in the requests for hearing. Based on the issues identified in the requests for hearing, the April 2, 1992 notice of public hearing identified 11 such key issues.

5.4 Proposed physical solution. At the opening of the hearing, petitioner advised the Hearing Officer that all parties had essentially stipulated to a "Proposed Physical Solution" to resolve the unresolved issues with respect to the Staff Analysis. Petitioner's counsel proposed recess of the hearing to allow the participants to work out their differences (T,6:12-18). The Hearing Officer granted the recess (T,9:13-16), and the hearing was recessed from time to time to allow negotiations. The participants were unable to agree on one significant issue. Therefore, petitioner's counsel proposed a limited hearing on that "one very narrow issue". That outstanding issue "relates to the question of where on Harlan Creek we measure flows for

purposes of determining when Jensen can divert to storage, and there is disagreement on where that point should be." The participants agreed with this approach (T,16:10-21.)

## **6.0 TEXT OF JENSEN'S PROPOSED PHYSICAL SOLUTION**

Since there appeared to be only conceptual agreement on unresolved issues, the Hearing Officer asked petitioner's counsel to "go through the various points step by step." The following 14 items constitute petitioner's final "Proposed Physical Solution" (T,17:20-24).

6.1 Jensen's total storage right under Permit 19572 shall be limited to 22.4 acre-feet per annum, to be diverted to storage from naturally occurring surface flows to storage only during the season of October 1 to March 31. All direct diversion rights under Permit 19572 shall be deleted" (T,21:15-22:8).

6.2 Reservoirs Nos. 1 and 2 on Harlan Creek and Reservoir No. 4 on unnamed creek will be rebuilt to include a four-inch outlet pipe, equipped with a continuous recording measuring device. Data from the device will be made available for inspection by all parties" (T,22:14-23:5).



- 6.3 Stage recorders will be placed in Reservoirs Nos. 1, 2 and 4, for the purpose of determining changes in storage in the three reservoirs. Data from the recorders will be made available for inspection by all parties." (T,23:9-19).
- 6.4 "All diversions of water from Reservoirs 1, 2 and 4 will be metered. Data from the meters will be made available for inspection by all parties" (T,24:27).
- 6.5 "The actions contemplated in Paragraphs 2, 3 and 4 shall be completed on or about September 15, 1992. At the completion of the work, Mr. Jensen's engineer (Mr. James C. Hanson) shall certify to the State Water Board completion of the work. No diversions to storage shall be permitted unless and until Mr. Hanson provides the certification to the State Water Board and the protestants. Mr. Jensen shall allow Mr. Howard Harris to attempt an immediate physical solution regarding Reservoir No. 1, such as drilling a hole in the bottom of the reservoir or installing a siphon device the week of June 1, 1992, or, if Mr. Harris is unable to do this work the week of June 1, 1992 at such later time as is feasible" (T,24:10-25:2 & T,40:15-43:12).
- 6.6 "Reservoir No. 3 will be abandoned." (That means the dam will be breached--T,25:4-9).

6.7 "Jensen shall provide data from the recording devices described in Paragraphs 2 through 4 (Sections 9.2-9.4 above) on at least a monthly basis. The parties shall designate by written agreement one person who shall be responsible for receiving data provided by Jensen and for inspecting Jensen's water use. Such inspection shall occur without prior notice to Jensen, and such inspections may commence immediately. The cost of such inspection, if any, shall be shared between Jensen and the protestants, Jensen to pay 50 percent of such costs and the protestants to pay the remaining 50 percent on an equal basis as between the protestants. All records provided by Jensen shall be made available to all parties and the Division of Water Rights upon request" (T,29:2-30:4 & T,39:7-40;5).

6.8 "Jensen recognizes the principle that diversions of water from Harlan Creek to storage shall occur only at such time as there is some naturally occurring visible surface flow in Harlan Creek on the property owned by CSY Investments hereinafter the "CSY measuring point". Jensen shall not divert water from Harlan Creek to storage when there is no visible surface flow at the CSY measuring point. This requirement will be subject to a two-year trial period. At the end of such two-year trial period, the parties shall, by agreement, fix a minimum surface flow rate to be measured at the

Winkle Diversion Dam on Harlan Creek for purposes of determining when Jensen is entitled to divert to storage, which flow rate shall be correlated to the existence of visible surface flow at the CSY measuring point. If the parties cannot agree as to the proper flow rate at Winkle Diversion Dam, they shall submit the matter to the Division of Water Rights for determination" (T,30:6-31:5).

6.9 "Jensen shall, under no circumstances, utilize water from Harlan Creek or the unnamed creek by direct diversion on non-riparian lands" (T,30:7-10).

6.10 "Jensen shall devise a system for insuring that water utilized by direct diversion from Harlan Creek or the unnamed creek (under claim of riparian right) is not utilized on non-riparian lands. The proposed system will be submitted to the parties for approval within 60 days and then submitted to the State Water Board" (T,31:12-32:13).

6.11 "Jensen will examine the feasibility of a large capacity (50-100 acre-feet) off-stream storage reservoir within the Harlan Creek watershed" (T,32:14-18).

6.12 "The parties agree that Jensen may petition to add the 14-acre Jensen vineyard to the authorized place of use of Permit 19572, and they will not protest such petition, provided the petition seeks to delete from the place of use under Permit 19572, 14 acres of land selected by Jensen at his sole discretion" (T,32:22:36:5).

6.13 "Jensen's obligations under this agreement are in addition to those set forth in the Statement of Position filed by Jensen in this proceeding on May 15, 1992" (T,36:7-37:12).

6.14 "Nothing in this agreement constitutes an admission by Jensen, expressed or implied, as to the validity of any water right claimed by any protestant. Nothing in this agreement constitutes a waiver or constitutes an admission by any protestant as to the validity of any riparian water right claimed by Jensen. Nothing in this agreement shall constitute a waiver by any party of any remedy to which the party may be entitled to by law" (T,37:14-38:5).

## **7.0 AVAILABILITY OF UNAPPROPRIATED WATER**

### **7.1 Pre-hearing Statement**

Notwithstanding previous correspondence, petitioner's May 15, 1992 pre-hearing Statement of Position accepted essentially all of staff's proposed permit modifications including: 1) the reduction in amount of his storage right, 2) elimination of the right to refill his reservoirs, and 3) deletion of his direct diversion rights under Permit 19572. Petitioner also withdrew his change petition to utilize the two shallow wells under Permit 19572.

#### 7.2 Water Availability Stipulation

During the May 27, 1992 State Water Board hearing, the parties agreed that up to 22.4 acre-feet per annum is available for collection to storage in some years. However, they could not agree on a location where some naturally occurring visible surface flow in Harlan Creek must exist as a condition for Mr. Jensen's collection of water to storage. (See Section 9.0, Measuring Point Issues.)

### 8.0 DISCUSSION OF UNRESOLVED ISSUES

#### 8.1 Background

In Mr. Harris's August 10, 1991 request for hearing he states: "Evidence should be received on what the stream

behavior is in normal years, and agreement reached on how far the surface flow should go before any diversions to storage are made. It would not be fair to Jensen to require the stream to reach Pescadero Creek because it usually disappears in the sand just downstream from a Sycamore tree on the west side of the road and the Almaden Ranch" (Staff 1).

## 8.2 Reserved Jurisdiction

As stated above, the unresolved issue which the parties asked the State Water Board to resolve following the hearing concerns identifying the location on Harlan Creek where surface flow should be measured for purposes of determining when the petitioner may collect water to storage without injury to prior rights. It appears that the proposed Physical Solution should be tried for at least two years, with jurisdiction reserved to modify terms and conditions of the permits as appropriate.

## 8.3 Proposed Physical Solution

During the hearing, petitioner's Proposed Physical Solution, including its reference to petitioner's May 15, 1992, Statement of Position, gained the acceptance of all parties, except on Key Hearing Issue

No. 5 concerning prohibiting collection of water to storage until there is visible surface flow in Harlan or Pescadero Creeks at a specified location (T,45:8-45:13 & T,48:18-24). Petitioner insisted that the proposed interim location of the CSY Measuring Point for visible surface flow be at the CSY grant line (T,49:8-51:7). The protestants insisted that the measuring point be near a large "Sycamore Tree" near where Harlan Creek crosses the road downstream of the CSY grant line (T,59:17-63:20).

## 9.0 MEASURING POINT ISSUES

### 9.1 Requirements

The primary issue for the State Water Board to consider in resolving Key Hearing Issue 5 is the determination of when surface water is available for collection to winter storage in petitioner's existing reservoirs without injury to downstream prior rights. During the hearing, the parties agreed that in some years sufficient water is available in Harlan Creek to allow one filling of Jensen's reservoirs with up to 22.4 acre-feet of water (T.21:15-21). They also agreed that Jensen will examine the feasibility of a large capacity (50-100 acre-feet) off-stream storage

reservoir within the Harlan Creek watershed (T,32:15-18). However, the disagreement came in establishing where surface flow must exist (downstream) in Harlan Creek before Jensen is allowed to collect water to storage.

## 9.2 Hearing Record Augmentation

By letter dated January 28, 1993, Attorney Virginia A. Cahill submitted an aerial photo showing the current location of Harlan Creek. In addition, Ms. Cahill submitted a map from the U.S. Department of Agriculture, Soil Conservation Service November 1969 report "Soil Survey, San Benito County California" which shows the present channel location of Harlan Creek.

By letter dated February 5, 1993, parties were advised that the State Water Board would augment the record to include the aerial photo and Department of Agriculture report showing the present location of the streams and the Saling Well unless written objections were received by February 16, 1993. No objections were received.

## 9.3 Hydraulic Continuity and Underflow Issues

Comparison of the two USGS Quadrangle Maps indicate the Harlan Creek intermittent watercourse apparently dried



up or was diverted, after 1957 and before 1984, indicating a lack of natural surface flow hydraulic continuity between permittee's point of diversion on Harlan Creek and Pescadero Creek prior to Jensen's diversions from the underflow during the recent drought.

#### 9.4 The Measuring Point

Item 8 of the petitioner's Proposed Physical Solution had as its final objective to establish, within two years, a minimum surface flow rate at the Winkle Diversion Dam for determining when petitioner can collect water to storage in any of the three reservoirs.

The Winkle Diversion Dam is located downstream of Jensen's Reservoir No. 1, upstream of the intervening Harris/Sayers and Sayers parcels, and about a mile and a quarter upstream of the Land Grant Boundary Line. The parties agreed to replace the proposed natural visible surface flow requirement at the CSY measuring point, in two years, with the surface flow rate measured at the Winkle Diversion Dam. However, they were unable to agree on where the CSY measuring point should be located or how to correlate the flows. Staff met with the parties on February 24, 1993, however, the

parties were unable to agree on the measuring point or other conditions proposed by staff.

## 10.0 SITE INSPECTION AND RECOMMENDATIONS

10.1 On August 10, 1993, Staff Engineer Dave Cornelius conducted an informal field investigation of the project and the resources affected by the petitions. In the morning, he was accompanied by Mr. Jensen's engineer, John Hanson, and Dennis English who is preparing a report on the project area under Dr. Curry at U.C. Santa Cruz. They inspected the Harlan Creek watercourse at the Winkle Diversion Dam and near Reservoir No. 1. The flow measurement equipment and water conveyance facilities associated with Reservoir No. 1 and old Reservoir No. 4 were also inspected.

In the afternoon of August 10, 1993, Mr. English showed Mr. Cornelius the Harlan Creek Falls (Falls), the new flow measurement weir installed by Mr. Harris near the base of the Falls and the additional weirs set in Harlan Creek at several locations between the Falls and the Land Grant Boundary Line (CSY Grant Line), and at CSY Grant Line. All of these weirs have been installed by Mr. Harris since the close of the hearing record.

10.2 In light of the observations and discussions with parties, staff recommends that the Winkle Diversion Dam gage identified in Mr. Jensen's Proposed Physical Solution (Item No. 8) be replaced with a permanent flow recorder at the new weir near the base of the Falls in Harlan Creek adjacent to Ms. Sayers' home. The flow requirement at the CSY Grant Line would be used to set the flow rate as measured at the Falls Weir, which must be present in order for Mr. Jensen to collect water to storage. The permanent bypass flow rate at the Falls (when Mr. Jensen can collect to storage) would be set by order of the Chief of the Division of Water Rights, after staff evaluation of two years of flow records at the Falls and flow at the CSY Grant Line Weir.

10.3 By letter dated October 13, 1993 the record for the May 27, 1992 hearing was opened to include additional information submitted by Mr. Jensen's engineer on May 25, 1993 and photographs of the CSY Grant Line Weir and the Harlan Creek Falls Weir. No one objected to including the specified information for the limited purpose of resolving the issue concerning the location of the measuring point as discussed in Section 9.4 above. Therefore, that information has been included in the hearing record.

## 11.0 CONCLUSIONS

- 11.1 In a hearing resulting from a challenge to a staff analysis on a minor protested petition (Water Code Section 1704 et seq.), the hearing is restricted to unresolved issues raised by the parties in their request(s) for Hearing (See Section 5.1 and 5.2 above).
- 11.2 Most of the significant unresolved issues raised in the requests for hearing on the 1991 staff analysis were resolved by Jensen's Proposed Physical Solution and the resulting required permit amendments. Since the parties were unable to agree on where Harlan Creek flows should be measured for purposes of determining water availability for storage during the interim flow correlation period, the Hearing Officer asked staff to work to resolve that issue and corollary issues in a draft Board order.
- 11.3 On February 8, 1993, staff circulated a revised draft order and met with the parties on February 24, 1993. The February 8, 1993 draft order did not resolve the remaining issues between the parties.
- 11.4 We conclude that the October 13, 1993 Staff Recommendation to establish a recording gage and set minimum flow rate at the Falls Weir constitutes the

most reasonable method of determining when naturally occurring surface flow is available for collection to storage in Mr. Jensen's Reservoirs on Harlan Creek under Permit 19572.

- 11.5 Based on the augmented hearing record, it is further concluded that until the Falls Weir flow rate is finally established by the Chief of the Division of Water rights, at least two years of streamflow records are needed in order to compare the flow at the Falls Weir with the flow present at the CSY Grant Line Weir.
- 11.6 In view of: (1) the competition for water within the basin, (2) questions regarding the amount of water available for diversion, particularly in dry years, and (3) the fact that the dams for Reservoirs 2, 3 and 4 have been breached, approval of the Chief of the Division of Water Rights should be required prior to constructing any new reservoirs under Permit 19572.
- 11.7 The State Water Board concludes that good cause has been shown for a time extension as specified below in this order. The time extension is justified for the reasons discussed in the July 1991 Staff Analysis, and to comply with the provisions of Mr. Jensen's Proposed Physical Solution.

11.8 The State Water Board concludes that Mr. Jensen's petition to add the points of diversion from the underflow of Harlan Creek should be denied for the reasons discussed in the July 1991 Staff Analysis, and to comply with the provisions of Mr. Jensen's Proposed Physical Solution.

11.9 The State Water Board concludes that the permitted size of Reservoir No. 1 should be increased from 5 acre-feet to 10 acre-feet pursuant to recommendations contained in the July 1991 Staff Analysis.

#### ORDER

1. The May 31, 1990 petition to authorize use of the two existing underflow galleries in Harlan Creek within the South 1/2 of Section 23, Township 14 South, Range 5 East, MDB&M as points of diversion under Permit 19572 is denied.
2. The location for the interim CSY Measuring Point pursuant to Item 8 in petitioner's Proposed Physical Solution shall be at the CSY Grant Line Weir.
3. The natural surface flows in Harlan Creek shall be continually measured during the diversion season October 1 through March 31, and daily flows at the Falls Weir reported to the State Water Board and the designee under Item 7 of Jensen's Proposed Physical Solution.

4. Prior to rebuilding Dams 2 and 4, or submittal of a new application, (pursuant to Item 11 of petitioner's Proposed Physical Solution), permittee shall submit a project feasibility report acceptable to the Chief of the Division of Water Rights and provide copies of any such project feasibility report to the protestants at the same time permittee first submits such report to the State Water Board.

5. Permit 19572 shall be amended as follows:

(a) Condition 2 of the permit be amended to delete the existing point of diversion (3) at Reservoir # 3.

(b) Condition 3 of the permit be amended to delete domestic use.

(c) Condition 4 of the permit be deleted and amended by replacement of paragraph (1) below with paragraph (2) below:

(1) The place of use is shown on map filed with the State Water Board.

(2) The place of use is as shown on the map filed with the State Water Board dated March 1993.

(d) Condition 5 of the permit be amended to read:

5. The water appropriated shall be limited to naturally-occurring surface flow and to the quantity which can be beneficially used, and shall not exceed a total of 22.4 acre-feet per annum to be collected to storage from October 1 of each year to March 31 of the succeeding year in Reservoir 1 and, upon approval of the Chief of the Division of Water Rights, in Reservoirs 2 and 4.

Water may be collected to storage only during times when there is flow over the CSY Grant Line Weir, or when flow at the Harlan Creek Falls Weir is equal to or greater than the rate specified by the Chief of the Division of Water Rights.

Following a two year evaluation period, the parties shall, by agreement, fix a minimum surface flow rate to be measured at the Falls Weir required before the permittee may collect water to storage under Permit 19572. If the parties cannot agree as to the proper flow rate, they shall submit the matter to the Division of Water rights for determination.

(e) Existing Condition 7 of the permit be deleted.



(f) Condition 8 of the permit be amended to read:

8. Complete application of the water to the authorized use shall be made by December 31, 1996.

(g) Existing Condition 13 of the permit be deleted.

(h) Conditions 16 through 22 be added to the permit as follows:

16. Permittee shall comply with the following provisions which are derived from the stipulation between permittee and other participants at the State Water Board hearing on May 27, 1992.

(1) Continuous Stage recorder(s) will be placed in any reservoir storing water under this permit, for the purpose of determining times of changes in storage in the reservoir(s). Data from the reservoir(s) will be made available for inspection by all parties.

(2) All diversions of water from the Reservoir(s) will be metered. Data from the meters will be made available for inspection by all parties.

17. Permittee shall furnish evidence which substantiates that the bypass facilities and outlet pipes (with measuring devices approved by the Chief Division of Water Rights) have been installed through the dams prior to collection of any water to storage in that reservoir. Evidence shall include photographs showing completed works in accordance with the plan of operation by a registered civil or agricultural engineer, for each reservoir as approved by the Chief of the Division of Water Rights for each reservoir.
  
18. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the reservoir withdrawals, the flow(s) or release(s) required by the conditions of this permit. Said measuring devices shall be properly installed and maintained at all times.
  
19. The State Water Board reserves jurisdiction to include a storage release term in this permit based on lack of flow in Pescadero Creek as agreed to between the parties or as directed by a court of law.

20. This permit does not authorize collection of water to storage outside of the specified diversion season to offset evaporation and seepage losses or for any other purpose.

21. No construction or selective clearing shall be commenced and no water shall be collected to storage or used under this permit until all necessary federal, state and local approvals have been obtained.

#### CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the forgoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 1993.

AYE: John Caffrey  
Mary Jane Forster  
John W. Brown

NO: None

ABSENT: Marc Del Piero  
James M. Stubchaer

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board

