EXHIBIT 40

CITY AND COUNTY OF SAN FRANCISCO



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November 8, 2004

State Water Resources Control Board

Attn: Yoko Mooring

Sacramento, California 95812-2000

Division of Water Rights

Engineering Associate, Water Rights Processing Unit

Re:

P.O. Box 2000

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. ကြိမ်းကြွေသင့် မေးသည်လောက်လောင်း ကြို့သည်။ မေးသည်သည်။ မေးသည် သည် သည် ကျောင်းကျော်သည် အကြောင့်

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Finally, we propose the following changes be made to the terms enumerated in permit conditions as they appear in the SWRCB's letter of January 24, 1995, which the City assumes are the same as those enumerated by the SWRCB in Permit 20784, Item 20.

Strike the word "annually" from the last sentence of the first paragraph of provision (2). That sentence would then read "A determination of whether permittee's diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made by the latter parties in accordance with water accounting procedures being used by said parties."

Strike the words "the annual" from the first sentence of the second paragraph of provision (2). That sentence would then read "Permittee shall provide replacement water within one year of notification by San Francisco of potential or actual water supply reduction caused by permittee's diversions."

Replace "and/or" with "and" in the last sentence of the second paragraph of provision (2). That sentence would then read "The source, amount and location at New Don Pedro Reservoir of replacement water discharged to the reservoir shall be mutually agreed upon by the permittee, the Districts and San Francisco."

San Francisco only intends to notify the applicant of the need to provide replacement water when necessary; that is, when their use has lead to a reduction, or has a strong potential of reducing, the supplies delivered San Francisco. The wide range of year-to-year hydrology on the Tuolumne River makes it impossible to predict whether or not the diversions of the applicant in one year will have a negative impact to San Francisco the next year or later. Short of notifying the applicant each and every year that their diversions potentially could affect the supplies of San Francisco, thus triggering replacement water each year, our requested modifications to the term will leave the notification to a judgment on our part as to whether the need for replacement water is critical.

Please call me if you have any questions or would like additional information,

Very truly yours,

DENNIS J. HERRERA

City Attorney

Donn W. Furman

Deputy City Attorney

cc:

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

Michael Carlin

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