STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 24578 and 24579 to Appropriate from the Underflow of the Santa Ynez River SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1, Applicant, UNITED STATES BUREAU OF RECLAMATION ET AL. Protestants.	Decision 1486

DECISION APPROVING
APPLICATIONS 24578 AND 24579

BY BOARD MEMBER ADAMS:

Santa Ynez River Water Conservation District, Improvement District No. 1, having filed Applications 24578 and 24579 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 9 and 10, 1978; applicant, protestants and interested parties having appeared and presented evidence and having filed briefs subsequent to the hearing; the evidence having been received at the hearing and the briefs having been duly considered, the Board finds as follows:

Substance of Applications

1. Application 24578 is for a permit to appropriate 3.2 cubic feet per second (cfs) from March 1 to November 15 of each

year for irrigation purposes and to appropriate 0.8 cfs from January 1 to December 31 of each year for municipal purposes from the underflow of the Santa Ynez River in the County of Santa Barbara. Points of diversion are located in SW 1/4 of SW 1/4 and SE 1/4 of SW 1/4, Section 20, T6N, R30W, SBB&M.

2. Application 24579 is for a permit to appropriate 4.5 cfs from March 1 to November 15 of each year for irrigation purposes and to appropriate 1.5 cfs from January 1 to December 31 for municipal purposes from the underflow of the Santa Ynez River in the County of Santa Barbara. Points of diversion are located in NE 1/4 of SE 1/4 and SE 1/4 of NE 1/4, Section 22, T6N, R31W, SBB&M and NW 1/4 of SW 1/4 and SW 1/4 of NW 1/4, Section 23, T6N, R13W, SBB&M.

Applicant's Project

3. The applicant proposes to construct eight shallow wells, three under Application 24578 and five under Application 24579. The three wells under Application 24578 are ultimately expected to produce 4 cfs from that portion of the Santa Ynez River alluvium near the town of Santa Ynez referred to as node 22. (The United States Bureau of Reclamation, hereinafter referred to as the "Bureau" has divided the river alluvium for purposes of its studies into storage units called nodes.) The five wells under Application 24579 are ultimately expected to produce 6 cfs from nodes 19 and 20 located south of the town of Solvang. The applicant plans to develop, construct, and use the water in four stages as follows:

Stage	Application No.	Acre-Feet per Annum	No. of Wells	Year
1	24579	2100	3	1980
2	24579	1300	2	1985
3	24578	800	1	1990
4	24578	1420	2	1995

4. About 80 percent of the water will be used for irrigation of up to 3,200 acres of farmland. Since this land has an average duty of water of 2 acre-feet (af) per acre, other sources will supplement the water sought to be appropriated under Applications 24578 and 24579. The remaining 20 percent of the water will be used for municipal purposes. Among the communities served by the applicant are Santa Ynez, Solvang, and Los Olivos.

Background

5. On March 25, 1946, the Bureau filed Applications 11331 and 11332 to appropriate unappropriated water from the Santa Ynez River. On February 28, 1958, the State Water Rights Board, this Board's predecessor in function, adopted Decision 886 approving Applications 11331 and 11332 and subsequently Permits 11308 and 11310 were issued on said applications. These permits constitute the water right entitlements for the Bureau's Cachuma Reservoir, a facility of the Cachuma Project.

6. The Cachuma Project consists of Bradbury Dam and Cachuma Reservoir on the Santa Ynez River, Tecolote Transmountain Diversion Tunnel, hereinafter referred to as "Tecolote Tunnel", and a 26-mile south coast conduit. Tecolote Tunnel is a 6.4-mile

tunnel through the Santa Ynez Mountains.[1/] Tecolote Tunnel conveys water from the Santa Ynez River Watershed to the south coast area of the County of Santa Barbara. Cachuma Reservoir has a present capacity of 204,900 af and the Cachuma Project has a firm yield of 27,800 acre-feet per annum (afa). Since 3,000 afa of this yield is obtained from groundwater infiltration into Tecolote Tunnel, Cachuma Reservoir has a firm yield of 24,800 afa.[2/] The Santa Ynez River Water Conservation District, hereinafter referred to as "SYRWCD", has a contract for 2,800 afa; the south coast area receives the remaining 22,000 afa firm yield of the Cachuma Reservoir.

7. The Cachuma Project was authorized in 1948 by a U. S. Department of Interior report and finding of feasibility pursuant to federal reclamation law (House Document No. 587, 80th Congress, 2d session). Said document indicates that the

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1. The headwaters of the Santa Ynez River are in the Santa Ynez Mountains, which traverse the southeastern portion of the County of Santa Barbara and the western portion of the County of Ventura. The Santa Ynez River follows a course slightly north-of-west for 70 miles to a point of discharge into the Pacific Ocean near the town of Surf. The Santa Ynez Mountains form the southern boundary of the Santa Ynez River Watershed. The San Rafael Mountains and Purisima Hills form the northern boundary of said watershed. The geology and hydrology of the Santa Ynez River Watershed were discussed extensively in Decision 886 and will not be repeated here.

2. House Document No. 587, 80th Congress, 2d session, constitutes the project report on the Cachuma Project. On page 11 thereof, the capacity of Cachuma Reservoir was estimated to be 210,000 af, the total project yield was estimated to be 33,000 afa; the yield from Tecolote Tunnel was estimated to be 1,800 afa; the yield of Cachuma Reservoir was estimated to be 31,200 afa. The present figures represent the capacities and yields of the Cachuma Project, as constructed.

Cachuma Project was a multipurpose project including the following purposes: Irrigation, municipal and industrial uses, recreation, and flood control but that the primary purpose was for providing irrigation water (see pages 31 and 35 of said document).[3/]

8. In 1966 the Solvang Municipal Improvement District, Buellton Community Services District, and the Petan Company filed Applications 22423, 22516 and 22454, respectively. Applications 22423 and 22516 sought to appropriate unappropriated water from the underflow of the Santa Ynez River downstream of the Cachuma Project. Application 22454 sought to appropriate unappropriated water from the surface flow of a tributary to the Santa Ynez River also downstream of the Cachuma Project. The Bureau, City of Santa Barbara, and the Goleta, Montecito, Summerland and Carpenteria County Water Districts[4/] filed protests to the approval of the above applications. Following a hearing the Board concluded in Decision 1338 that the

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3. Benefits in said document were calculated utilizing the following prices for water: $35/acre foot for municipal water used in the south coast area; $25/acre foot for irrigation water used in the south coast area, and $10/acre foot for irrigation water used in the Santa Ynez River watershed. Goleta, Montecito, Summerland, and Carpenteria County Water Districts purchased water for the price of $25/acre foot. The City of Santa Barbara purchased water for the price of $35/acre foot. The part of the estimated cost of the Cachuma Unit, which was allocated to irrigation, was $16.5 million; the part of the estimated cost allocated to municipal water supply was $12.1 million. There was no allocation for flood control or recreation.

4. In 1973, the City of Santa Barbara and the Goleta, Montecito, Summerland, and Carpenteria County Water Districts formed a joint powers agency called the Cachuma Conservation Release Board, hereinafter referred to as the "CCRB". Its function is to promote the common objective of its member entities of maximizing the amounts of water which they can obtain from the Cachuma Project or from other sources.

Bureau's permits did not entitle it to object to the proposed appropriations from the underflow of the Santa Ynez River but that later appropriations from the surface flow would be junior to the water right entitlements for the Cachuma Project.

Protests

9. The California Department of Fish and Game, Bureau and CCRB filed protests to the approval of Applications 24578 and 24579. Bryant and Patricia Myers filed a protest to the approval of Application 24578. Protestant Department of Fish and Game withdrew its protest on September 29, 1975. Protestants Myers withdrew their protest upon condition that any permit issued on Application 24578 include a specifically identified agreement between Myers and the applicant. Protestants Bureau and CCRB alleged both an injury to vested water rights for the Cachuma Project and an injury to the public interest. The applicant and the SYRWCD[5/] objected to the protests by a letter from the SYRWCD to the Board on the basis that Board Decision 886 as interpreted by Decision 1338 precluded any protest by the Bureau or the CCRB. The applicant and the SYRWCD renewed their objection at the hearing on this matter. The Hearing Officer reserved this issue for resolution in the Board decision.

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5. The Santa Ynez River Water Conservation District is the parent district for the applicant. The SYRWCD appeared in these proceedings as an interested party.

10. The precise meaning and scope of Condition 11 contained in the order of Decision 886[6/] is the critical inquiry in this case. Condition 11 states:

> "Permittee shall release water into the Santa Ynez River channel from Cachuma Reservoir in such amounts and at such times and rates as will be sufficient, together with inflow from downstream tributary sources, to supply downstream diversions of the surface flow under vested prior rights to the extent water would have been available for such diversions from unregulated flow, and sufficient to maintain percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that operation of the project shall not reduce natural recharge of ground water from the Santa Ynez River." (Emphasis added.)

11. The position of the applicant and the SYRWCD is that, under Condition 11 of Decison 886 as interpreted by Decision 1338, the Bureau is required to release sufficient water for replenishment of the underflow of the Santa Ynez River including replenishment made necessary by appropriations under permits issued on applications filed subsequent to Applications 11331 and 11332 of the Bureau, and that, accordingly, since no vested right of the Bureau will be affected by such appropriations, protests on vested right grounds should be rejected. Further, the SYRWCD and applicant contend that the public interest protests of the Bureau and CCRB are in fact disguised vested right protests and that, therefore, the protests on public interest grounds by the Bureau and the CCRB must also be rejected. While the Bureau and the CCRB counter these contentions with several

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6. Condition 11 of the order of Decision 886 became term 5 of Permits 11308 and 11310 issued on Applications 11331 and 11332. In 1973 the Board modified term 5 of both permits. This change was intended to assure more efficient utilization of the waters of the Santa Ynez River. The Board did not attempt to resolve the present controversy in 1973 and the changes in term 5 do not affect the outcome of the present proceeding.

elaborate theories, they need not be considered here because the applicant and the SYRWCD read Decision 886 and Decision 1338 too broadly; we conclude that the Bureau and the CCRB protests are appropriate on both grounds.

12. Decisions 886 and 1138 required sufficient releases of the unregulated inflow into the Cachuma Reservoir to satisfy vested rights and to assure that that amount of water which would percolate into the Santa Ynez River alluvium and into adjacent groundwater basins without the Cachuma Project would occur. House Document No. 587 emphasizes that typically the precipitation in the Santa Ynez River Watershed occurs in flash floods and that the Cachuma Project was intended to capture that water which would otherwise flow into the Pacific Ocean. (House Document No. 587, 80th Congress, 2d session.) During a flash flood it is well understood by the Board that most of the water flowing in a stream channel will not have the opportunity to move from surface flow into the underflow or into adjacent groundwater basins because of the slower rate of movement of water into and through alluvial gravels. If, on the other hand, these large flows are captured in an upstream reservoir and then released at a slower rate, the quantity of water that will move into the underflow or adjacent groundwater basins will be proportionably much greater than without such regulation. Condition 11 was not intended to confer an uncompensated benefit on downstream users for the regulation of the flash

floods in the Santa Ynez River Watershed.[7] Consequently, the Bureau and the CCRB are always entitled to protest on grounds of injury to vested rights and thereby attempt to show that the water sought to be appropriated is water which would not flow into the underflow of the Santa Ynez River or adjacent groundwater basins without the Cachuma Project. Furthermore, the thorough discussion by the State Water Rights Board of the characteristics of the Santa Ynez River Watershed demonstrates that our predecessor was well aware of these facts and that Applications 11331 and 11332 were approved upon said understanding of the facts.

13. Protestants request the Board to review and revise the conclusion in Decision 1338, which interprets Condition 11 of Decision 886, that would allegedly require the Bureau to increase releases into the channel of the Santa Ynez River if these applications were approved. The applicant and the SYRWCD oppose the request. To assure that the Board gained a complete understanding of the parties respective positions, brief and reply briefs were requested on all relevant issues.[8] Following a review of said briefs and reply briefs the following issues emerge:

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7. The exact meaning of Condition 11 is discussed more fully infra.

8. Hearing Officer Adams directed Board staff attorney Barber to transmit a list of questions to all parties. Such list did not preclude the parties from discussing any relevant issue. The issues outlined on the next page have been appropriately modified to reflect the issues raised by the briefs and by the facts.

a. Is the Board foreclosed by any doctrine of law from examining whether Decision 1338 correctly interpreted Condition 11 of the order in Decision 886?

b. Assuming the answer to the foregoing question is negative, did the Board correctly interpret Condition 11 of the order in Decision 886.

c. Is it in the public interest to approve the applications?

d. Have the requirements of the California Environmental Quality Act been satisfied?[9/]

14. The applicant and the SYRWCD contend that several legal doctrines preclude this Board from examining whether Decision 1338 correctly interpreted Condition 11 of the order in Decision 886. First, they argue that the Board in acting upon applications to appropriate water exercises a judicial function, settling rights among parties, and that in such proceedings the doctrines of res judicata and collateral estoppel apply.[10/] Since Decision 1338 concerned the same type of appropriation as here, a diversion from the underflow of the Santa Ynez River, they argue that the doctrine of collateral estoppel precludes the Board from reexamining issues decided in Decision 1338. Second, they argue that, since neither the member entities of the CCRB nor the Bureau appealed Decision 1338 to the courts, the CCRB and Bureau have waived

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9. The third and fourth issues will be discussed following the discussion on the existence of unappropriated water.

10. Here it is obvious that the doctrine of res judicata does not apply because there are different parties and facts.

their rights to overturn that decision. Third, they argue that the situation is analogous to the effect of an agreement and open court stipulation resulting in a subsequent court order, that the Bureau in proceedings before the Board relevant to Decision 886 agreed to release sufficient water from Cachuma Project for subsequent appropriations of underflow of the Santa Ynez River, and that therefore said agreement is binding now upon the Bureau. Fourth, principles of equal protection and fairness intrinsic to the administration of rights apply here. Since the Solvang and Buellton applications are precisely the same kind as requested here, it is contended, the present applications must be approved. Finally, the doctrine of equitable estoppel precludes the Board from redetermining facts and priorities decided in Decision 1333.

15. Despite the elaborate arguments of the applicant and the SYRWCD, we find them unpersuasive. The doctrine of collateral estoppel provides that a prior judgment, though based on a different cause of action, may operate as a conclusive adjudication as to issues actually litigated. However, in Louis Stores Inc. v. Department of Alcoholic Beverages Control, 57 Cal.2d 749, 22 Cal.Rptr. 14 (1962), the California Supreme Court limited the applicability of that doctrine. It stated:

> "An important qualification of the doctrine of collateral estoppel is set forth in section 70 of the Restatement of Judgments, which reads as follows: 'Where a question of law essential to the judgment is actually litigated and determined by a valid and final personal judgment, the determination is not conclusive between the parties in a subsequent action on a different cause of action, except where both causes of action arose out of the same subject matter or transaction; and in any event it is not conclusive if

injustice would result.' ([Underlining] added.) Comment f to this section explains: 'The determination of a question of law by a judgment in an action is not conclusive between the parties in a subsequent action on a different cause of action, even though both causes of action arose out of the same subject matter or transaction, if it would be unjust to one of the parties or to third persons to apply one rule of law in subsequent actions between the same parties and to apply a different rule of law between other persons.' ([Underlining] added.)" Louis Stores Inc. v. Department of Alcoholic Beverages Control, supra, at 757.

In Decision 1338, this Board made several separate findings of fact and conclusions of law. First, the Board necessarily found as a fact that the water sought to be appropriated was water that would have moved from the surface flow to the underflow without the Cachuma Project. Second, the Board concluded as a matter of law the Condition 11 consequently accorded Solvang and Buellton preference over the rights of the Bureau under Permits 11308 and 11310. The CCRB and Bureau do not request us to reverse the above finding of fact; nor do we have the authority to do so. Water Code Section 1357. Rather, the CCRB and Bureau argue that the above conclusion of law incorrectly applied the applicable law. While they recognize that it is too late for them to seek modification of Decision 1338 or the permits issued pursuant thereto, they argue that the Board is free not to repeat a previous error and therefore free to reexamine its interpretation of Condition 11. We agree that the interpretation of Condition 11 is a question of law. The cases cited by the applicant, which conclude that the question of the meaning of language in a contract is one of fact, simply are not on point.

16. The second contention of the applicant and SYRWCD is premised on the assumption that the CCRB and Bureau are seeking to reverse Decision 1338 and to modify in some manner the permits issued pursuant thereto. As pointed out above, this is not the case and therefore, the contention is without merit.

17. The third contention is premised on the assumption that the Bureau agreed to release water for all appropriations of the underflow of the Santa Ynez River and that the Bureau is now precluded from unilaterally ignoring this obligation. What obligations the Bureau assumed in operation of the Cachuma Project will be discussed infra.

18. The fourth contention is premised on the assumption that the Solvang and Buellton applications are precisely the same kind as here. This is patently an overstatement. While they all involve diversions of underflow of the Santa Ynez River, the similarity ends there. As a prerequisite to issuing a permit, this Board must find, and substantial evidence must support, a finding that unappropriated water is available to supply the applicant. In Decision 1338 the Board necessarily concluded that the water sought to be appropriated was water that would have flowed into the underflow of the Santa Ynez River or adjacent groundwater basins in a state of nature. Decision 1338 does not preclude the Board from making a contrary finding in acting on subsequent applications, if the evidence so indicates. We doubt that the applicant would disagree with the above analysis. Rather, the applicant's argument is intended to foreclose the Board from

applying a conclusion of law in this case different from the conclusion in Decision 1338. However, Louis Stores Inc. (supra) makes clear that the Board does have such discretion and if a clear error of law were committed, the Board would not be constrained to perpetuate that error ad infinitum.

19. Finally, the fifth contention of the applicant and SYRWCD is that the doctrine of equitable estoppel prevents this Board from redetermining settled facts and priorities. Evidence Code Section 623 codifies the doctrine of equitable estoppel. It states:

> "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

However, for the Board to apply this doctrine, it has to determine what obligations the Bureau assumed in operation of the Cachuma Project. This issue will be discussed next.

20. The position of the applicant and SYRWCD bascially is that the Bureau, from the authorization of the Cachuma Project, during the proceedings before the State Water Rights Board and until 1966, consistently assured representatives from the Santa Ynez Valley that the water rights of the Cachuma Project would be subordinate to subsequent appropriations of underflow. They further assert that the Bureau changed its position in 1966 and protested the applications of Solvang, Buellton and Petan Company at the instance of the member entities of the CCRB. The applicant and SYRWCD principally rely upon the agreement dated October 7, 1949,

between the Bureau and the SYRWCD, which is commonly known as the "Live Stream Agreement". The Bureau and CCRB both argue that the Live Stream Agreement protected only "vested rights". All parties cite portions of House Document No. 587 and of the transcript of the proceedings before the State Water Rights Board to support their position.

21. In Decision 1338 this Board concluded:

> "...that the Bureau had, in effect, agreed to release that portion of the unregulated flow required to satisfy vested rights to divert from the surface flow plus all unregulated flow that will percolate, which will progressively increase with increased use of the groundwater for future development in the watershed; that operation of the Cachuma Project by the Bureau as intended will provide a groundwater supply sufficient to permit additional diversions from groundwater for future development of the watershed without regard to whether such diversions will be technically classified as appropriations or extractions for use on overlying land...."

We have reviewed the extensive record before the State Water Rights Board. While we conclude that Decision 1338 correctly interpreted Decision 886, which in turn interpreted in part the Live Stream Agreement,[11/] we believe this conclusion

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11. We are not persuaded by the references of the CCRB to protection of prior vested rights in the Live Stream Agreement and elsewhere. There is no doubt that a purpose of the Live Stream Agreement was protection of prior vested rights. The factual issue is whether it was the exclusive purpose. There is admittedly sufficient vagueness concerning the latter that reasonable minds may differ. Nonetheless, the objective of the Cachuma Project, as we understand it, was to divert waters principally for use within the south coast area, that would otherwise waste to the ocean, and not to divert water which would normally flow down the Santa Ynez River and be beneficially used in that watershed. (See House Document 587, 80th Congress, 2d session; at 32, 46.) In reviewing the Live Stream Agreement several facts must be remembered. The distinction drawn by the Attorney General

(continued on next page)

does not preclude the Board from reviewing the interpretation of Condition 11.[12/] The Live Stream Agreement is not specifically incorporated into the permits issued to the Bureau. The applicant and SYRWCD are requesting this Board to enforce an agreement not incorporated into an entitlement issued by the Board. The authority for such action escapes us. The Board is not a court of general jurisdiction. Even if we had such authority, its exercise is unnecessary because each party has the usual recourse to the courts if they believe the other party has failed to comply with the obligations it undertook. However, this Board has adequate

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11. (continued from page 15)

between "inchoate priority" and "water right" with regard to the Watershed Protection Statutes had not been made at the time of the execution of the Live Stream Agreement in 1949. (See 25 Ops.Cal.Atty.Gen. 8, (1955); discussed infra.) Therefore, references in the Live Stream Agreement to prior vested rights may have been intended to refer to the "inchoate priority" of the inhabitants of the Santa Ynez River watershed as well as to the riparian rights, etc., of those persons downstream of the Cachuma Project. Since protection of watersheds of origin was a long-established state policy in 1949, the inhabitants of the Santa Ynez watershed could well have characterized this policy as establishing a "right". The problem with that analysis is that the opinion of the Attorney General was available prior to the hearings in 1957 on the Cachuma Project applications and that the foregoing distinction was not made by the SYRWCD or anyone else in those hearings. The Board expresses no opinion on the validity of this latter analysis. Rather, we point it out to illustrate the difficulty attendant to interpreting the Live Stream Agreement so many years after its execution.

12. We are aware that Conditions 11-14 of the order in Decision 886 were intended to implement the Live Stream Agreement, and that the interpretation of the Live Stream Agreement is quite relevant to the meaning of those conditions.

authority to interpret and enforce provisions in its entitlements. As previosuly indicated, the exact meaning and scope of Condition 11 contained in the Order of Decision 886 is the critical inquiry in this case. Or, stated in another manner, did the State Water Rights Board by Condition 11 or by any other condition require the Bureau to honor the substance of the agreement made between the Bureau and the SYRWCD?

22. The genesis of Condition 11 is Water Code Sections 11460 through 11463, which are in turn codifications of Section 11 of the Central Valley Project Act of 1933 (Stats. 1933, C. 1042, p. 2643). They provide as follows:

> "11460. In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.
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> "11461. In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.
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> "11462. The provisions of this article shall not be so construed as to create any new property rights other than against the department as provided in this part or to require the department to furnish to any person without adequate compensation therefor any water made available by the construction of any works by the department.
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> "11463. In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made

by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange." (Emphasis added.)[13]

These provisions of law are commonly referred to as the Watershed Protection Statutes[14] and their principal purpose is "to reserve for areas where water originates some sort of right to such water for future needs which is preferential or paramount to the right of outside areas, even though the outside areas may be the areas of greatest need or the areas where the water is first put to use as the result of operations of the Central Valley Project". (25 Ops.Cal.Atty.Gen. 8, 10, 1955.) The cited opinion of the California Attorney General has become the accepted interpretation of the Watershed Protection Statute and it concluded that the Watershed Protection Statute was intended to protect two areas (1) "a watershed or area wherein water originates" and (2) "an area immediately adjacent thereto which can conveniently be supplied with water therefrom". (Ibid, at 19) While the first category of areas protected is reasonably capable of description, the second category is more vague. The above opinion defined it as follows:

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13. Section 11 of the Central Valley Project Act originally referred to the Water Project Authority. Water Code Sections 11460-11463 now refer to the Department of Water Resources, which is the successor in function of the Water Project Authority.

14. A closely related provision of law, Water Code Section 10505, is called the "County of Origin" statute. It is not relevant to our discussion here.

"The second category of areas described extends the protection of the statute beyond the confines of the particular watershed.... The extent of the area immediately adjacent to the watershed which is subject to protection is ascertainable from the remainder of the description. It is that adjoining territory which 'can conveniently be supplied with water' from the watershed. The requirement of convenience in supplying the water implies the necessity that there be no difficult problems in effecting such supply and that delivery be clearly feasible, from both a financial and an engineering point of view." (Ibid, at 19-20; emphasis added.)

The operation of Watershed Protection Statutes was summarized as follows in said opinion.[15/]

"1) Section 11460 has the effect of reserving to the entire body of inhabitants and property owners in watersheds of origin a priority as against the Water Project Authority in establishing their own water rights in the usual manner as their needs increase from time to time up to the maximum of either their ultimate needs or the yield of the particular watershed.

"2) The establishment of this priority does not create or vest in any individual person a presently definable 'water right' in the conventional sense of the term. This is the unmistakable meaning of the limitation in section 11462:

'The provisions of this article shall not be so construed as to create any new property rights other than against the authority....'

This means simply what it says: No inhabitant of a watershed of origin becomes possessed of any presently vested title or right to any specific quantity of water as a result of this statute. As the need of such an inhabitant develops he must comply with the general water law of the state, both substantively and procedurally, to apply for and perfect a water right for water which he then needs and can then put to beneficial use (Secs. 1200-1800). However, when he makes such an application, as a

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15. Most simply stated, the Watershed Protection Statute, where applicable, establishes an exception to the "First in time, first in right" rule contained in Water Code Sections 1450 and 1455.

member of the class of persons protected by the statute, his application is not to be gainsaid, denied or limited by reason of any activity on the part of the Water Project Authority. Specifically, this means that if, prior to the development of the applicant's increased needs, the authority had been exporting from the watershed in question water required to supply the applicant's increased needs, such use by the authority would not justify denial of the application. Assuming the application to be otherwise meritorious, the State Engineer would grant a permit in the usual form, and the authority would thereafter be compelled to honor the water right thus created and vested." (Ibid, at 20-21; footnotes omitted; emphasis added.)

23. Several limitations on the Watershed Protection Statute must be noted. First, it initially applied only to the Water Project Authority's operation of the Central Valley Project (now the Department of Water Resources' operation of the State Water Project). Water Code Section 12931. Subsequently, Water Code Section 11128 extended its application to any federal agency operating the Central Valley Project. Second, it applies only to the Central Valley Project. Since the Cachuma Project is not part of the Central Valley Project, the Watershed Protection Statute does not expressly apply to it. However, Assembly Concurrent Resolution No. 2 of the 1952 1st Extraordinary Session and Senate Concurrent Resolution No. 8 of the 1952 Regular Session of the California Legislature (Stats. 1953, Vol. 1, pp. 272, 405) memorialized the Department of Public Works and the State Engineer (predecessors of the State Water Rights Board) to take the following actions regarding federal reclamation projects:

"...2. That licenses issued to the United States for irrigation purposes in connection with federal reclamation projects be limited to water subject to contracts between public agencies of the State and the

United States which the State Engineer finds to be in the public interest and to conform to state law and that any permits and licenses issued for such purposes contain, in the public interest, the following conditions among, but not to the exclusion of, other conditions:

* * *

(c) That the use of water appropriated under the permits and licenses are subject to the reasonable requirements of the watershed or area wherein the water originates or area immediately adjacent thereto that can be conveniently supplied with water therefrom; and that no transfer of water of one watershed or area of origin to another watershed or area shall be consummated unless and until provision is made to meet such reasonable water requirements of the former;...." (Emphasis added.)

The State Water Rights Board cited these resolutions in Decision 886 when it addressed the protection of the watershed of origin, viz., the watershed of the Santa Ynez River.

24. The State Water Rights Board held hearings on the Bureau's Applications 11131 and 11132, among others, on July 16, 17, and 18, 1957, and on September 5, 1957. The principal witness for the Bureau was Leland K. Hill. Much time was consumed at the hearing concerning the releases from Cachuma necessary to supply downstream rights. Mr. Hill testified that the Bureau conducted land use and land classification surveys of land downstream of Cachuma principally to determine the irrigable lands and thereby the ultimate water requirements for the Santa Ynez River Valley downstream of Cachuma. He summarized the results of his studies as follows:

"The estimated total acreage of the irrigable lands in the basin below Cachuma Dam is 36,470 acres, of which 9,210 acres are in the river alluvial lands; 360 acres in the Buellton-Zaca Creek area; 10,760 acres in the Lompoc Valley; 2,670 acres, in the Santa Rita Valley; 10,260 acres, in the Santa Ynez Upland Area; and 3,210 acres in the Solvang-Santa Ynez area.

"A survey made by the Bureau of Reclamation in 1952 indicated that about 16,840 acres of land were irrigated in the Santa Ynez River Basin below Cachuma Dam. The quantity of water used for irrigation and municipal purposes was approximately 35,560 acre-feet that year and was obtained from ground water basins....

* * *

"Ultimate irrigation requirements have been determined on the premise that all irrigable lands in the Santa Ynez River Basin below Cachuma Dam would be developed for that purpose, except the area expected to be used for urban and industrial purposes. Lands expected to be used in the future for suburban living were included with general irrigated agriculture, as the unit water requirements are approximately the same.

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"The total ultimate water requirement for the Santa Ynez River Basin below Cachuma Dam is estimated to be 73,950 acre feet annually...." (1957 RT, pp. 69-70, lines 19-4; p. 70, lines 14-20; p. 71, lines 21-23; emphasis added.)

Subsequently, Mr. Hill testified concerning the ultimate water supply for the Santa Ynez River watershed. He stated in part:

"... Existing surface conservation facilities and full economic utilization of the groundwater resources are estimated to supply 69,500 acre feet of the 73,950 acre feet ultimate annual water requirements of the Santa Ynez River Basin; and 45,600 acre feet of the 53,730 acre feet needed annually under ultimate conditions in the South Coast area. The remaining 12,580 acre feet of ultimate annual water requirements in the Santa Ynez Basin and the remaining 8,130 acre feet annually of water requirements of the South Coast area will have to be met from additional surface storage facilities on the Santa Ynez River.

"... Furthermore, I am of the opinion that with a downstream release of about 1,400 acre feet annually from Cachuma Reservoir for percolation into the alluvium groundwater basins, there should be sufficient groundwater, when augmented with local groundwater supplies, to satisfy all existing uses and the probable future or potential uses in the area."16/ (1957 RT, pp. 132-133, lines 18-2; p. 133, lines 19-24.)

25. Arden T. Jensen appeared on behalf of the Santa Ynez River Water Conservation District at the above hearings. At the end of those hearings he requested permission to submit suggested terms of the permit to be issued to the Bureau. The Board granted permission and thereafter, on September 11, 1957, he submitted eight proposed permit terms. The second proposed term was included verbatim in Decision 886 as Condition 11.

26. From the foregoing history, the Bureau and CCRB advance several inconsistent hypotheses why Decision 1338 allegedly incorrectly interpreted Condition 11 to give Solvang and Buellton a priority over the Bureau's permits. They argue that Condition 11 was intended only to protect "vested rights" and that this conclusion is supported by the fact that there was no obligation on the part of the State Water Rights Board to protect this watershed of origin from export. They find three reasons why there was no such obligation: the Watershed Protection Statute does not apply to the Cachuma Project; the concurrent resolutions do not have the force of law and therefore they could not alter the "first in time, first in right" rule contained in Water Code Sections 1450 and 1452; assuming the concurrent resolutions did

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16. The quantity of 1,400 acre-feet was used by the Bureau merely for illustrative purposes. Mr. Hill testified that it would increase or decrease based upon the needs downstream. (1957 RT, pp. 261-262, lines 15-1.)

provide policy direction to the State Water Rights Board, they do not apply by their terms to the Cachuma Project because they are limited to federal reclamation projects for irrigation purposes and because the Cachuma Project principally provides municipal and industrial water.[17/] In the alternative, they argue, if Condition 11 incorporates the Watershed Protection concept, the south coast area is entitled to protection equal to the watershed of origin because the south coast area is an "area immediately adjacent thereto which can conveniently be supplied with water therefrom".

27. We have reviewed Decision 1338 in detail and the conclusion of law therein. We believe Decision 1338 correctly concluded:

> "Considering Decision 886, including the order as a whole, it is concluded that the Board intended to grant permits for the Cachuma Project subject to prior vested rights to divert from the surface flow and also subject to all diversions supplied by percolation from the unregulated flow of the Santa Ynez River for use in the watershed without regard to the basis of right for such diversions." (Decision 1338 at 8.)

The arguments of the Bureau and CCRB fail to take into account the history leading up to Decision 886. That decision contained a separate section entitled "Protection to the Watershed of Origin". To argue that Condition 11 was intended only to protect "vested rights" ignores this part of that decision and indeed ignores the fact that there were 42 protestants from the Santa Ynez Valley who requested that the State Water Rights Board protect them. Although there was no specific legal obligation

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17. House Document No. 587 makes clear that the Cachuma Project was principally an irrigation project and not a municipal and industrial project as the CCRB would have us conclude. See footnote 3.

on the State Water Rights Board to protect the watershed of origin, there was the general authority of that Board to condition the decision in a manner such that the public interest be protected and that Board exercised that authority in formulating Condition 11. The "first in time, first in right" rule contained in Water Code Sections 1450 and 1455 must be read together with Water Code Sections 1253 (authority to impose public interest condtiions), 1255 (authority to reject applications not in the public interest), 1256 (duty to consider California Water Plan in determining the public interest), and 1257 (duty to consider the relative benefit to be derived from all beneficial uses of water). If the State Water Rights Board had read or if this Board were now to read Water Code Sections 1450 and 1455 myopically, without considering other applicable provisions of law, as the Bureau and CCRB request, a skewed administration of water rights in this state would result.

28. What of the alternative contention of the Bureau and CCRB that the south coast area is entitled to protection equal to the watershed of origin because the south coast area is "an area immediately adjacent thereto [that is, to the watershed of origin] which can conveniently be supplied with water therefrom"? Superficially, this contention has some appeal. Geographically, the Cachuma Project service area is at least in close proximity to the Santa Ynez River watershed, and it is indeed a close question whether the service area fits into the second category of protection under Water Code Section 11460, a matter about which reasonable minds may differ. However interesting the mapping of the second category

of protection under Water Code Section 11460 may be, it need not be addressed here. The State Water Rights Board, as we understand it, included a special permit condition, Condition 11, to respond to the concerns of the 42 protestants before that Board. While the concept of Condition 11 may find its beginnings in Section 11 of the Central Valley Project Act, the extent, the limit, and the measure of the protection provided by Condition 11 may be found only in the four corners of that condition. Condition 11 is not a wholesale incorporation of the Watershed Protection Statute because it is inconsistent in several respects with the Watershed Protection Statute. The Watershed Protection Statute reserves to the inhabitants of a watershed a priority as against the Department or Bureau in operation of the Central Valley Project in establishing the inhabitants own rights as their needs increase up to the maximum of either their ultimate needs or the yield of the watershed. In contrast, Condition 11 reserved (1) that part of the unregulated flow required to satisfy vested rights to divert from surface flow and (2) that part of the unregulated flow which will move from the surface flow into the underflow and into adjacent groundwater basins without the Cachuma Project.[18/] Decision 886 expressly states that the ultimate water needs of the Santa Ynez River Watershed will have to be met by additional storage facilities located there and the evidence before the Board clearly established that fact.

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18. Condition 11 uses the term "groundwater" and some confusion concerning the use of this term was evident at the hearing. A review of the 1957 transcript indicates that the term was used by the Bureau to mean both water moving in the underflow of the Santa Ynez River and water in adjacent groundwater basins. (See 1957 RT at 72, 77-78.)

Consequently, the measure of protection provided by Condition 11 is much less. If the entire Watershed Protection Statute had been incorporated into Condition 11, a discussion in Decision 886 concerning whether the Cachuma Service Area is an area immediately adjacent to the Santa Ynez River Watershed would have been warranted. Yet Decision 886 is silent on the issue. The inescapable conclusion is that the State Water Rights Board concluded that such a discussion was irrelevant to Decision 886, as we also conclude that such a discussion is irrelevant to this decision.

Existence of Unappropriated Water

29. The applicant prepared a study that indicated annually "...the resulting flow at 13th Street, which is virtually the point where water would then waste to the ocean was 77,925 acre-feet". (RT 37, ID Exhibit 4) The applicant's study of the 70-year period from 1904-05 to 1973-74, indicates that water is available from the unregulated flow to satisfy 94.4 percent of the total demand and that the remaining 5.6 percent of the total demand (eight separate periods) would be supplied from the Uplands Groundwater Basin (RT 52). Two agreements, one of which would be incorporated in any permits issued on the applications, would decrease or stop the pumping during these periods under these

applications. In addition, any order should include a special permit term prohibiting any diversion of water when water from the unregulated flow of the Santa Ynez River would not have been available. Consequently, with the inclusion of these conditions, we conclude that there is unappropriated water available to supply the applicant.

30. The intended use is beneficial.

Public Interest

31. The CCRB and Bureau contend that the proposed appropriations would impair the yield of the Cachuma Project and that as a consequence, the already marginal water supplies available to the CCRB member entities will be even less sufficient. This result, they argue, is contrary to the public interest in depriving existing economies of water necessary for their subsistence and for the health and safety of their residents in order to make new water supplies available for growth elsewhere. This argument is without merit for it lacks both a factual and legal bases.

32. Several facts are not in substantial dispute. The Goleta, Montecito and Summerland County Water Districts, three of the five member agencies of the CCRB, have, or will have in the near future, substantial water shortages and have enacted moratoria on hookups as a result. Only the Goleta County Water District has a proven groundwater basin, which is now in overdraft. The City of

Santa Barbara presently has an adequate water supply and the groundwater basin which it overlies is essentially full. The Carpenteria County Water District has a voluntary water conservation program since its water supplies are presently in balance with its demand. However, these facts about water shortages on the south coast are relevant herein only if the Cachuma Project is not able to supply its firm yield with the approval of these applications.

33. The Bureau prepared an operational study covering 58 years of flow records with and without the subject applications included. In both situations, the Bureau concluded that the firm yield of 22,000 afa could be delivered to the south coast area. Nonetheless, the Bureau's studies indicate a decrease in yield of about 930 afa in non-firm supplies if the instant applications are approved. The CCRB's study projects a loss of yield of about 1,000 - 1,650 afa. Furthermore, under Board Order No. 73-37 an additional, non-firm supply of 1,500 - 3,000 afa, later refined to 2,000 - 2,480 afa, is available for export. Consequently, the only shortages would be of surpluses and not of firm yield.[19/]

34. Even if the subject applications adversely affected the firm yield of the Cachuma Project, automatic rejection of them would not result. The concept of a provision in a permit for

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19. There was some evidence at the hearing to indicate that the Cachuma Project has not been able in recent years to deliver its firm yield to the south coast. However, the cause of this discrepancy evidently has been the request by members of the CCRB for more than their share of water with the hope that the precipitation in the immediately forthcoming years will be above average.

watershed protection is that someday the needs of the persons within the watershed will increase and force a reduction in diversions to use outside the watershed. Although this in effect is favoring future growth within the watershed at the expense of an existing economy outside the watershed, it is inherent in the watershed protection principle. Nevertheless, interim use by persons outside the watershed is allowed of water needed by them, a use that might not have been authorized in the first instance without the condition protecting the watershed of origin. Moreover, while making such interim use, the persons outside the watershed are given time to plan for and secure other necessary alternative water supplies.

35. Our decision today should not be interpreted as subjecting the approriative rights of the Bureau for the Cachuma Project to unlimited impairment by later appropriations of water from the underflow of the Santa Ynez River for use within the watershed. Such an interpretation would be grossly erroneous. Rather, we interpret Condition 11 as establishing a limited reservation of water for use within the Santa Ynez River watershed. Each applicant who desires to appropriate unapproriated water from the underflow of the Santa Ynez River must establish in the first instance that he is within that class of persons for whom the reservation in Condition 11 was made. Further, we emphasize that previous Board decisions required sufficient releases of the unregulated inflow into Cachuma Reservoir (1) to satisfy downstream diversions of the surface flow under prior vested rights and (2) to assure the percolation of that amount of water which would percolate into the Santa Ynez River alluvium and

into adjacent groundwater basins without the Cachuma Project. The above parameters fixed in 1958 the maximum quantity of water which the Bureau in operating the Cachuma Project would be obligated to release. Moreover, the above parameters were not intended to, and do not, confer any benefit on the inhabitants of the Santa Ynez River Watershed by virtue of the water made available by Bradbury Dam and Cachuma Reservoir.[20/]

Rather they were intended to, and do, reserve from availability for appropriation at Cachuma waters which would become a part of the underground supply in the absence of the project and which are needed (1) to satisfy prior rights and (2) to meet the anticipated future increase in beneficial use within the watershed of origin. The Cachuma Project proponent has a strict legal duty under the water law of this State to satisfy the former need, and one of the thrusts of Condition 11 was to give specific water right entitlement recognition to that duty. Our predecessor's requirement that the latter need be provided for, while not a recognition of a strict legal duty on the project proponent, was a public interest determination which our predecessor was amply competent to make on the basis of its authorizing statutes and upon substantial evidence of record in the prior proceedings (see Bank of America v. SWRCB, 42 Cal.App.3d 198, 116 Cal.Rptr. 770 (1974)). This Board continues to exercise

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20. The definitive opinion of the Attorney General on the Watershed Protection Statute (25 Ops.Cal.Atty.Gen. 8) emphasized that said statutes did not require a project operation to furnish water made available by the project to the inhabitants of the watershed of origin without adequate compensation therefor. Evidently, this aspect of the Watershed Protection Statute was retained in Condition 11.

the authority of its predecessor, and we find no justification in the record in the instant proceeding for reversing our predecessor's public interest determination.

Since the implementation of Water Rights Order No. 73-37, the inhabitants may be receiving a benefit from the regulatory storage behind Bradbury Dam. Nonetheless, said order resulted from an agreement between all parties and its goal was more efficient utilization of the limited water supplies. Said order did not enlarge or restrict the maximum amount of water required to be released from Cachuma Reservoir.

Findings Concerning the California Environmental Quality Act

36. The applicant prepared or caused to be prepared an environmental impact assessment and Negative Declaration for its proposed project. The applicant concluded that the project will not have a significant effect on the environment in the Negative Declaration. Thereafter, the applicant determined to approve the project on December 14, 1976. A Notice of Determination was filed with the County Clerk for the County of Santa Barbara on December 21, 1976. The Board has reviewed and considered the information contained in the Notice of Determination, Negative Declaration, Environmental Impact Assessment and Initial Study.

37. The CCRB alleges that the applicant has failed to comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.; hereinafter referred to as "CEQA") because it did not consider the adverse effects of the diversions on the south coast area. Whether the CCRB believes that

a more comprehensive Initial Study and Negative Declaration is appropriate, or that an Environmental Impact Report is required, is unclear. In any event the claim is untimely. Section 15064, Article 6, Chapter 3 of Title 14, California Administrative Code, addresses the conclusiveness of a lead agency's [the applicant's] action on responsible agencies such as the Board. It states in part:

> "(c) The determination of the Lead Agency of whether to prepare an Environmental Impact Report or a Negative Declaration shall be final and conclusive on all persons, including Responsible Agencies, as provided by Section 21080.1 of the Public Resources Code, unless:
>
> (1) The decision is challenged as provided in Section 21167 of the Public Resources Code, or
>
> (2) Circumstances change as provided in Section 15067."

Public Resources Code Section 21167 contains the applicable statute of limitations for challenging actions under CEQA. It states in part:

> "Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:
>
> (a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152." (Emphasis added.)

Since the applicant filed a Notice of Determination with the County Clerk on December 21, 1976, the applicant arguably receives the benefit of the 30-day statute of limitations in subdivision (b) rather than the 180-day period in subdivision (a). However, Section 15083(b)(4), Article 7, Chapter 3, Title 14 of California Administrative Code requires a local agency, which is a lead agency, to file the Notice of Determination with both the County Clerk and the Secretary for Resources, if the project involves state approval. The purpose for such a requirement is obvious; the filing of a Notice of Determination with the Secretary for Resources in this situation provides notice to state agencies about those projects of significant state interest. If we were to conclude that the filing of the first Notice of Determination started the statute of limitations, this purpose could be completely frustrated. Accordingly, we conclude that the 180-day statute of limitations applies. Since no person filed an action alleging noncompliance with CEQA within the 180-day statute of limitations, the CCRB's claim is untimely.[21/]

38. From the foregoing findings, the Board concludes that Applications 24578 and 24579 should be issued to the applicant subject to the limitations and conditions set forth in the following orders.

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21. The other exception in Section 15064 does not apply.

ORDER

IT IS HEREBY ORDERED that Application 24578 be approved and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (a) 3.2 cubic feet per second by direct diversion from March 1 to November 15 for irrigation purposes, and (b) 0.8 cubic foot per second by direct diversion from January 1 to December 31 for municipal purposes. The maximum amount diverted under this permit for all uses shall not exceed 2,220 acre-feet per year.

The maximum amount diverted under this permit and the permit issued pursuant to Application 24579 shall not exceed 5,620 acre-feet per year.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before May 1, 1984 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1990.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1995.

6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

8. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient

water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to the paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Coast Region, pursuant to Water Code Section 13260, and the Regional

Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

(1) The Regional Board issues a waiver pursuant to Section 13269, or

(2) The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

11. At such time as the water level in observation well 6N/30W-29E1 (windmill well) is at or below elevation 445.5 feet, permittee shall at its option either: (a) refrain from pumping from the underflow of the Santa Ynez River pursuant to this permit, or (b) supply water to Bryant Myers, and his successors in interest, for use upon his riparian land in amounts necessary to irrigate such land, provided that Myers and such successors pay to permittee what its costs would have been to pump such amounts of water from its own wells.

In the event that credits in the "above Narrows" account are available for release from Lake Cachuma pursuant to Order No. WR 73-37, or any amendment thereof, and 150 acre-feet of credits are reserved for release after September 1 of any year, the elevation in well 6N/30W-29E1 at which permittee must either refrain from pumping or supply water shall be 444.5 feet.

Jurisdiction is retained to modify this condition, if necessary, to protect fully the exercise of all riparian rights, and to allow full development of this permit and to prevent any unnecessary restrictions upon pumping thereunder.

12. Permittee shall divert under this permit only water which would have been available from the unregulated flow of the Santa Ynez River without the Cachuma Project.

IT IS HEREBY FURTHER ORDERED that Application 24579 be approved and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (a) 4.5 cubic feet per second by direct diversion from March 1 to November 15 for irrigation purposes, and (b) 1.5 cubic feet per second by direct diversion from January 1 to December 31 for municipal purposes. The maximum amount diverted under this permit for all uses shall not exceed 3,400 acre-feet per year.

The maximum amount diverted under this permit and the permit issued pursuant to Application 24578 shall not exceed 5,620 acre-feet per year.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before two years from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1990.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1995.

6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

8. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee wihtout unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are apppropriate to the particular situation.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge

requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Coast Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

(1) The Regional Board issues a waiver pursuant to Section 13269, or

(2) The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

11. Permittee shall divert under this permit only water which would have been available from the unregulated flow of the Santa Ynez River without the Cachuma Project.

Dated: September 25, 1978

WE CONCUR:

/s/ W. W. ADAMS
W. W. Adams, Member

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman

/s/ WILLIAM J. MILLER
Wiliam J. Miller, Member

/s/ L. L. MITCHELL
L. L. Mitchell, Member