

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

WR ORDER 2000 – 17 DWR

In the Matter of Minor Protested Petitions
Permit 19572 (Application 28156)
J. E. JENSEN
Petitioner

SOURCE: Harlan Creek and Unnamed Tributary (aka Ladder Creek)
COUNTY: San Benito
PROTESTANTS: Ann Marie Sayers, Howard Harris, et al.

**ORDER APPROVING PETITION TO CHANGE POINT OF DIVERSION
AND REDISTRIBUTE STORAGE, AND APPROVING REQUEST FOR
EXTENSION OF TIME TO COMPLETE PROJECT**

1.0 SUMMARY

J. E. Jensen (hereafter Petitioner or Permittee) holds water right Permit 19572 authorizing diversion of 22.4 acre-feet of water per annum to storage. The permit authorizes diversion of water from Harlan Creek and an unnamed tributary (known locally as Ladder Creek) in San Benito County. Petitioner is currently storing water in a 10-acre-foot reservoir located on Harlan Creek as authorized by the permit. Other reservoirs previously authorized by Permit 19572 have been removed or washed out. In June 1996, Petitioner submitted a petition to the State Water Resources Control Board (SWRCB) requesting to: (1) change the location of a previously authorized reservoir to be constructed on Ladder Creek; (2) increase the capacity of the proposed reservoir on Ladder Creek from 1 acre-foot to 10 acre-feet; and (3) forego the construction of two previously planned reservoirs on Harlan Creek.¹ If the petition is approved, the total amount of water authorized to be diverted to storage by Petitioner will decrease from 22.4 acre-feet per annum (afa) to 20 afa. Petitioner also requests an extension of time to complete the project.

¹ SWRCB Order WR 93-8 required Permittee to submit a project feasibility report acceptable to the Chief of the Division of Water Rights prior to construction of any additional reservoirs. (SWRCB Order WR 93-8, p. 23.) Although the petition refers to foregoing construction of two reservoirs on Harlan Creek, Order WR 93-8, adopted on November 18, 1993, already amended Permit 19572 to delete a previously authorized reservoir designated as "Reservoir 3."

The Division of Water Rights (Division) distributed a notice of the petition to interested parties. Several parties submitted protests and recommended that the SWRCB deny the petition due to potential impacts to existing water rights and impacts to environmental and cultural resources. In response to unresolved protests, the Division held an on-site field investigation of the proposed changes on April 7, 1998, pursuant to Water Code section 1345 et seq. that govern proceedings on projects involving minor protested applications.²

As discussed below, the Division has reviewed the available information and concluded that the change petition and time extension should be approved subject to the conditions specified in this order. Storage of water in the proposed reservoir on Ladder Creek will provide Petitioner more flexibility for irrigation of his vineyard and should reduce the quantity of water diverted under riparian rights during drier months. Compliance with the conditions of this order should avoid or reduce potential adverse impacts to existing water rights, water quality, and cultural resources. Adoption of the order will authorize Petitioner to proceed with construction and diversion of water to storage in a new 10-acre-foot reservoir on Ladder Creek subject to appropriate changes to the conditions of Permit 19572.³ The changes to the conditions of Permit 19572 are summarized as follows:

1. Of the 10 acre-feet of water to be stored in the new reservoir on Ladder Creek, 9 acre-feet may be diverted from Harlan Creek and the remaining 1 acre-foot may be diverted to storage from Ladder Creek. Except for diversion of 1 acre-foot of water from Ladder Creek to storage in the new reservoir, Permittee shall bypass all surface and sub-surface flow in Ladder Creek through or around the reservoir and maintain reasonable quality of the water that is bypassed into the channel downstream of the new reservoir. Permittee may divert water to storage from Ladder Creek only when: (1) there is visible surface flow in Harlan Creek over the CSY Grant Line Weir and over the Harlan Creek Falls Weir; and (2) there is visible surface flow in the reach of Ladder Creek from Permittee's reservoir to the confluence of Ladder Creek and Harlan Creek.
2. No work shall begin on proposed Reservoir 4 until Permittee has submitted a plan satisfactory to the Chief of the Division of Water Rights for bypassing the surface and subsurface flow of Ladder Creek above Reservoir 4 for release into the stream below the reservoir, while maintaining water quality. Permittee shall install and

² Water Code section 1347 defines "minor applications" as applications for projects involving direct diversion of three cubic feet per second or less by direct diversion or storage of 200 afa or less.

³ Prior to adoption of this order, the Chief of the Division of Water Rights circulated a draft of the order to Petitioner and interested parties. By letter dated July 29, 2000, counsel for Petitioner stated the Petitioner was willing to accept the proposed amendments to Permit 19572 as set forth in the draft order. The letter went on to state that "Mr. Jensen reserves all rights to evaluate and, if necessary, contest the future water rights claims of downstream claimants and he respectfully requests that the [draft] Order be amended to reflect this reservation of rights." This order is not entered in the context of a statutory adjudication of water rights, and it does not preclude Petitioner from contesting future claims of downstream claimants in other proceedings. However, the water right permit conditions adopted by this order, together with other provisions of Permit 19572, define Petitioner's rights under the permit, and Petitioner must comply with all permit requirements unless those requirements are revised by the SWRCB or this order is invalidated upon appeal pursuant to applicable law.

maintain devices satisfactory to the Chief of the Division of Water Rights capable of bypassing water around Reservoirs 1 and 4.

3. Permittee shall not divert water to storage under Permit 19572 at any time that the holders of adjudicated water rights on Harlan Creek or Pescadero Creek downstream of Permittee's project are required to reduce diversions pursuant to the provisions of the judgment entered on December 19, 1988, in *Cienega Water Users Committee, et al. v. City of Hollister* (San Benito County, Superior Court No. 14797, hereinafter *Cienega Water Users*). Permittee is also prohibited from diverting water under Permit 19572 when any party holding a prior adjudicated right on Harlan Creek is unable to divert water due to the physical unavailability of water at the party's point of diversion.
4. Permittee shall prepare and implement an erosion control and water quality plan for the entire project. The plan shall include an implementation schedule and specific measures designed to maintain reasonable water quality in Harlan Creek and Ladder Creek downstream of the project and to mitigate project-related erosion. Permittee shall not begin construction of any facilities at project reservoirs prior to approval of the plan by the Chief of the Division of Water Rights.
5. Prior to construction of the new reservoir, Permittee shall conduct an archeological survey of the reservoir site and take appropriate measures to protect any archeological resources that are found. In the event archeological resources are discovered during construction, Permittee shall cease work, notify the Chief of the Division of Water Rights, retain a private archeologist to evaluate the find, and take appropriate action to protect the archeological resources.
6. Petitioner shall obtain a grading permit from San Benito County prior to beginning construction of Reservoir 4.
7. Petitioner shall enter into a streambed alteration agreement with the Department of Fish and Game prior to beginning construction of Reservoir 4.
8. Complete application of the water to the authorized use shall be made by December 31, 2006.

2.0 BACKGROUND

Following issuance of Permit 19572 in 1985, Petitioner's project has been the subject of ongoing controversy and several complaints by downstream parties. The disputes have resulted in two previous SWRCB orders regarding changes in the project, an extension of time for completion of the project, and modification of the terms of Permit 19572. The disputes also led to a lawsuit concerning the exercise of Petitioner's riparian rights on Harlan Creek. The history of the project and the changes now proposed are addressed in sections 2.1 through 2.3 below.

2.1 Project History In 1984, Petitioner submitted Application 28156 for diversion and storage of water from Harlan Creek and Ladder Creek in San Benito County. The project is located about ten miles south of the City of Hollister (see Figure 1, Project Map). Permit 19572 was issued on July 12, 1985, for diversion of the following quantities of water:

- (a) 25 afa to be collected year-round and stored in four proposed reservoirs;
- (b) Replenishment of 7.6 afa;
- (c) 1 cubic foot per second by direct diversion from April 1 through September 1 of each year for irrigation use; and
- (d) 500 gallons per day by direct diversion from January 1 through December 31 for domestic use.

In March 1990, as a result of a complaint investigation by Division staff, Petitioner filed a change petition requesting authorization to add two wells as points of diversion from Harlan Creek under Permit 19572. Petitioner also requested an extension of time to complete the project. Downstream water users and property owners filed protests against the petitions. Division staff conducted a field investigation and issued a staff analysis dated July 1991. Objections to the recommendations of the staff analysis were received and a hearing was held before the SWRCB on May 27, 1992. The parties to the hearing requested a recess and returned to present a proposed stipulated settlement.

The SWRCB adopted Order WR 93-8 on November 18, 1993. The order denied the petition to add the wells as points of diversion, adopted provisions of the stipulated settlement presented by the parties during the 1992 hearing, resolved the issue of where downstream flow measurements should be taken on Harlan Creek and amended the permit as follows:

1. Deleted a previously authorized point of diversion at the location designated as Reservoir 3.
2. Deleted the direct diversion portion of the permit for domestic and irrigation uses.
3. Changed the storage season from "year-round" to the season from October 1 of each year to March 31 of the succeeding year.
4. Reduced the total amount of water to be appropriated under Permit 19572 to a maximum of 22.4 afa of naturally occurring surface flow.
5. Added other terms derived from the stipulated settlement between Petitioner and other participants at the hearing.

The order also stated that approval by the Chief of the Division of Water Rights would be required prior to constructing any new reservoirs under Permit 19572. The order deleted the deadline for completion of construction and extended the deadline for completion of putting water to beneficial use to December 31, 1996.

Protestant Ann Marie Sayers submitted a petition for reconsideration of Order WR 93-8. Following review of the petition for reconsideration, the SWRCB adopted Order WR 94-2 on February 2, 1994. Order WR 94-2 further modified Permit 19572 by adding a condition requiring continuous measurement of the flows in Harlan Creek during the diversion season. The order also clarified the language of Term 5 of the permit and added a requirement that the parties investigate a suitable location for measuring flow between the Harlan Creek Falls Weir and the CSY Grant Line Weir and notify the Division Chief of their findings.

In 1993, the dams of Reservoirs 2, 3 and 4 were breached. The embankment of Reservoir 2 was removed and the material was used to raise the embankment of Reservoir 1. In addition, the Reservoir 2 site was re-vegetated pursuant to an agreement between Petitioner and the Department of Fish and Game (DFG) to mitigate for the impacts of Petitioner's project in accordance with section 1603 of the DFG Code.

Following deletion of direct diversion rights from Permit 19572 in 1993, Petitioner has continued to directly divert water for irrigation under claim of riparian right. Petitioner's diversions from Harlan Creek were challenged in a suit filed by downstream property owners resulting in a judgment entered by the Superior Court for San Benito County on May 9, 1994. The stipulated judgment imposes specified restrictions on Petitioner's diversion of water from Harlan Creek under riparian rights. The judgment states it is "intended to constitute a full and final settlement of all water right disputes...existing between the parties as of the date of the Judgment." (*Ann Marie Sayers v. J.E. Jenson et al.*, San Benito County, Superior Court No. 19120, Judgment dated May 9, 1994, p. 3, emphasis added.) The judgment does not address the subject of the operation of the reservoir Petitioner now proposes to construct on Ladder Creek. (*Id.*, p. 6.)

2.2 Petition to Change Point of Diversion and Redistribute Storage Following adoption of Order WR 93-8, Petitioner revised his plan of development and submitted a change petition on June 24, 1996. The petition proposes to store 10 acre-feet of water at a new reservoir situated approximately 500 feet upstream of the initial location of Reservoir 4 on Ladder Creek (See Figure 1). Petitioner proposes that the new reservoir will store 9 acre-feet diverted from Harlan Creek and 1 acre-foot diverted from Ladder Creek. Petitioner will continue to store 10 acre-feet in Reservoir 1 located on Harlan Creek. The petition states that the dams of Reservoirs 2 and 3 will remain breached.⁴ If the petition is approved, the quantity of water storage authorized under Permit 19572 will be reduced from 22.4 acre-feet to 20 acre-feet. Of the 20 acre-feet diverted under Permit 19572, 10 acre-feet would be stored in Reservoir 1, which is already constructed, and operating, and 10 acre-feet would be stored in the proposed Reservoir 4.

2.3 Petition for Extension of Time The petitioner also seeks a 10-year extension of time to complete construction work and develop beneficial use of water. Approval of the requested time extension would allow Petitioner until 2006 to complete the project.

⁴ As noted in Section 1.0 above, Order WR 93-8 previously deleted Reservoir 3 as an authorized point of diversion under Permit 19572. Reconstruction of Reservoir 2 appears to be precluded by Petitioner's agreement with the Department of Fish and Game to re-vegetate the site of that reservoir.

3.0 PROTESTS

A notice of the petitions for change and extension of time was issued October 18, 1996. The following parties submitted protests:

Ismana Carney
Carnival Stables
Carroll Ranch
Steve Espinoza
Nancy Fairchild
Carolyn A. Flores
Tony Franco
Kenneth Gimelli
Beatrice Gorena
Mark Hager
Howard Harris
Rachel Haugo

Russ Imrie
Rebecca Moncada
Karen L. Mora
Jeannie Kay Nilson
Paris O. Parker
Cindy Pitter
Ridgemark Corporation/Pascines Ranch
Arthur Rosato
Saling Ranch
Ann Marie Sayers
Thousand Trails Resort

The protests were based on alleged injury to prior rights and environmental concerns. Some protests also allege that the proposed changes and time extension would be contrary to law and not in the public interest.

Several of the protests allege that *any* additional diversion of water to storage beyond what Petitioner can store in Reservoir 1 (even though Permit 19572 refers to diversion of up to 22.4 afa) will cause environmental damage. The environmental protestants request preparation of an Environmental Impact Report on the proposed changes.

Downstream water users assert that diversion of water for Petitioner's project has already decreased the amount of water available for satisfaction of prior rights downstream and that diversion of water to storage in Petitioner's proposed reservoir would worsen the situation. Protestants Carroll Ranch, Franco, Gimelli, Harris, Ridgemont Corporation, Saling Ranch and Thousand Trails Resort claim water rights pursuant to the 1988 judgment entered by the Superior Court for San Benito County in *Cienega Water Users*.⁵

4.0 FIELD INVESTIGATION

The notice for the April 7, 1998, field investigation identified the following subjects as unresolved issues raised by the protests.

⁵ By letter dated May 21, 1998, Kenneth Gimelli withdrew his protest to the petitions. Although Howard Harris remains a protestant to the petitions, it appears he no longer retains a legal interest in the real property holding an adjudicated right under the 1988 *Cienega Water Users* judgment. Mr. Harris attended the April 7, 1998, field investigation in his capacity as the watermaster representative under the *Cienega Water Users* judgment.

1. Cumulative impact of Petitioner's project on the Pescadero Creek Watershed.
2. Instream flow needs for fishery or other aquatic life.
3. Environmental damage due to the proposed onstream reservoir.
4. Impacts of the proposed changes on riparian habitat, including plants used for Native American basketry and food.
5. Possible impacts to the downstream Indian Cultural Center/Heritage Area and cultural resources.
6. Water quality, including erosion control and sedimentation
7. Protection of prior rights.
8. Water availability.

A field investigation was conducted on April 7, 1998, to provide an opportunity for interested parties to present information relevant to the specified issues. The following people participated in the field investigation:

Josh Jensen, Petitioner
 Jim Hanson, Consultant for Petitioner
 Kevin O'Brien, Attorney for Petitioner
 Ann Marie Sayers, Protestant
 Lynn Keslar, Attorney for Protestant Sayers
 Patrick Wood, Attorney for Protestant Sayers
 Howard Harris, Protestant
 Kathy Horak, Protestant Thousand Trails
 Mark Hager, Protestant
 Mary Paxton, San Benito County Planning
 Rhetta Hager, Interested Party
 Tom Valliant, Interested Party
 Joan Valliant, Interested Party

Robert Levy, Interested Party
 Pat Wirz, Interested Party
 Harland Winkle, Interested Party
 Jeff Jaraczski, Interested Party
 Diana Vita, Interested Party
 Jim Ryan, Interested Party
 Scott A. Morris, Attorney for San Benito
 County Water Agency
 Donna Sheeders, Division Staff
 Mike Meinz, Division Staff
 Dave Cornelius, Division Staff
 Dan Frink, SWRCB Office of
 Chief Counsel

The group met at the Cienega Valley Winery and toured the project site and downstream areas. The Petitioner, protestants, and interested parties provided written and oral information and opinions on the issues specified in the notice.

5.0 COMPLAINTS FILED BY PROTESTANTS SAYERS AND HARRIS

Following the field investigation on the pending petitions, Protestants Ann Marie Sayers and Howard Harris filed complaints with the Division on August 30, 1998, and September 6, 1998, respectively. Ann Marie Sayers filed an additional complaint received by the SWRCB on April 24, 2000. The complaints allege that Petitioner is diverting water in violation of the legal limitations applicable to his water rights and to the detriment of downstream water users.

In addition to the conditions previously specified in Permit 19572, this order limits Petitioner's diversion and use of water in a manner intended to protect water quality and downstream water rights. Violation of the conditions of Permit 19572 would make Petitioner subject to administrative civil liability under the Water Code and other legal remedies. Compliance with

the provisions of this order by Petitioner should reduce or avoid the need for enforcement action. However, if the Division determines that any additional enforcement action is needed, that action will be taken in separate proceedings.

6.0 ANALYSIS OF ISSUES

The issues raised by the petitions and the protestants are addressed in sections 6.1 through 8.0 below.

6.1 Focus of SWRCB Inquiry Section 844 of title 23 of the California Code of Regulations provides that an extension of time will be granted only upon such conditions as the SWRCB determines to be in the public interest and only upon a showing that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted.

The primary considerations in deciding if a petition to change the conditions of a permit should be granted are: (1) whether the proposed change will in effect initiate a new right; and (2) whether the proposed change will cause injury to any other legal user of water. (Cal. Code Regs, tit 23, §791.) In this instance, the changes to Permit 19572 also require consideration of whether there will be adverse impacts to the environment, cultural resources, or prior rights due to: (1) moving Reservoir 4 upstream approximately 500 feet from the previously authorized location; or (2) storing 9 acre-feet of water diverted from Harlan Creek at the proposed Reservoir 4 on Ladder Creek rather than a reservoir located on Harlan Creek.

In addition to examining the specific changes and time extension requested by Petitioner, the SWRCB has the continuing responsibility and authority to supervise the diversion and use of water under an appropriative water right permit to ensure the protection of prior rights and the protection of public trust resources where feasible. (Water Code sections 174, 1052, and 1825; *National Audubon Society v. Superior Court* (1983) 33 Cal 3d 419, 89 Cal. Rptr. 346.)

6.2 Petitioner's Diligence in Completing Project Although Petitioner proposes to change the project substantially from what was originally authorized, the changes are due in part to unanticipated obstacles in completing the original project. Those obstacles included construction and design problems with Reservoir 1, a dispute with the DFG resulting in elimination of Reservoir 2 and re-vegetation of the reservoir site, and litigation with downstream property owners. Despite the delays and changes in the project, Petitioner has planted vineyards, constructed Reservoir 1, and developed a system for irrigating the vineyards with water diverted under Permit 19572 and riparian rights.

In view of the obstacles encountered and Petitioner's actions in response to those obstacles, the Division concludes: (1) Petitioner has been diligent in pursuing completion of the project; (2) completion of the project was delayed in part by obstacles that could not reasonably be avoided; and (3) the record indicates satisfactory progress will be made if an extension of time is granted.

6.3 Relationship of Proposed Changes to Conditions of Permit 19572 The changes requested by Petitioner would not result in increasing the season of diversion or the total authorized amount of water that may be diverted under Permit 19572, but would result in changing the location and size of the reservoirs from what was previously authorized. Although the capacity of the reservoir on Ladder Creek will be increased from 1 acre-foot to 10 acre-feet, Petitioner proposes that the additional 9 acre-feet of water to be stored at the new reservoir will come from Harlan Creek. Therefore, the total amount of water diverted to storage from each stream would not exceed the limits presently specified in Permit 19572.

Diversions under Permit 19572 are restricted to naturally occurring surface flow. In order to avoid the type of recurring disputes and litigation that have occurred over the operation of Reservoir 1, the proposed dam and related facilities at Reservoir 4 should be constructed and operated solely for the diversion of water to storage under the permit and not to facilitate diversions under riparian claim. Therefore, this order includes a requirement to measure the quantity of water diverted into Reservoir 4 from Ladder Creek and to bypass all other surface and subsurface flow from Ladder Creek through or around the reservoir except for the 1 acre-foot that is diverted to storage.

With the conditions established in this decision, the Division concludes that the proposed change will not constitute the initiation of a new right. Possible effects of the project on other legal users of water and the environment are addressed in Sections 6.4 through 7.0 below.

6.4 Water Availability and Effect of Proposed Change on Prior Rights Issuance of an appropriative water right permit does not ensure that water will always be available for diversion for the period and in the amounts specified in the permit. All permits are issued subject to the continuing requirement that the diversion and use of water under the permit not infringe upon prior rights of other water users. Availability of water for diversion by Petitioner's project and operation of the project in a manner to minimize impacts to other water users are addressed in Sections 6.4.1 through 6.4.4 below.

6.4.1 Project Feasibility Report In accordance with the provisions of Order WR 93-8, Petitioner submitted a project feasibility report to demonstrate that construction and operation of Reservoir 4 at the proposed location is feasible. In evaluating the availability of water for storage in the proposed reservoir, Petitioner's consultant recognized that Permit 19572 expressly restricts diversions to times when there is surface flow present in Harlan Creek at the Grant Line Weir location. Based on his analysis of the relationship between precipitation and flow at the Grant Line Weir, the consultant concluded that a minimum of 10 inches of precipitation is needed between January and March "to insure a live stream" at the Grant Line Weir. The consultant states that the needed precipitation would have been present in 38 of the last 71 years, or about 55 percent of the years.

Based on an analysis of expected run-off, the consultant concluded that in the years when there is flow at the Grant Line Weir, there would be sufficient water to fill the proposed Reservoir 4 as well as the existing Reservoir 1. The feasibility report states that limiting diversions to storage in Reservoir 4 to times when there is a continuous flow in

Ladder Creek at its confluence with Harlan Creek "should not have a significant effect on anticipated diversions."⁶ The feasibility report also concludes that "diversions to storage are not likely to occur in years of below average rainfall." ("Feasibility Report for Construction of Additional Storage under Permit 19572," pp. 5 and 6.)

The feasibility report recognizes that Petitioner can divert to storage under Permit 19572 only when there is flow at Grant Line Weir, but the report does not further analyze the portion of available run-off from Harlan Creek and Ladder Creek needed for satisfaction of the downstream prior rights adjudicated by the Superior Court for San Benito County in *Cienega Water Users*.

6.4.2 Previous Evaluations and Determinations Regarding Water Availability At the time Application 28156 was approved in 1985, there were no outstanding protests to the application. As a result, the SWRCB did not conduct a detailed analysis of prior downstream water rights. The subject of the impact of the project on the holders of prior rights was not addressed by the SWRCB until 1992 at the time of the hearing on the previous change petition and time extension request. Prior to the 1992 hearing, the Division of Water Rights conducted a field investigation and prepared a staff analysis. The analysis discussed the fact that diversion of water by the holders of previously adjudicated water rights in the Pescadero Creek watershed, of which Harlan Creek is a part, was often limited due to insufficient water. (Staff Analysis – Minor Protested Application dated July 17, 1991, pp. 20-32.)

Following objections to the 1991 staff analysis by Petitioner and other parties, the SWRCB held a hearing on the petition for changes in the project authorized in Permit 19572 and to consider Petitioner's first request for an extension of time to complete the project. Although the issue of water availability was raised at the 1992 hearing, the parties to the hearing requested a recess and then returned to present a proposed stipulated settlement that was intended to resolve their dispute over the revised project. The SWRCB adopted Order WR 93-8 on November 18, 1993, to implement the provisions of the stipulated settlement. Order WR 93-8 includes provisions for protection of specific downstream parties in accordance with the provisions of the stipulated settlement. Order WR 93-8 approved a time extension and changes in Petitioner's project in accordance with the provisions of the stipulated settlement. The order does not include specific provisions for protection of the prior rights of downstream water users who were not a party to the hearing and stipulation, but Permit 19572 remains subject to the general requirement that an appropriative water right is issued subject to prior rights.

6.4.3 Protection of Prior Water Rights of Downstream Users Several protestants and interested parties contend that their diversion and use of water on Harlan Creek and Pescadero Creek has been impacted due to unavailability of water for diversion. Several of those parties hold adjudicated rights recognized in the 1988 *Cienega Water Users* judgment. The written protests and oral statements during the field investigation

⁶ Although the feasibility report concludes that requirement for continuous flow in Ladder Creek is not expected to have a significant effect, the report does not stipulate that a continuous flow requirement should become a specific permit term.

establish that downstream water users are concerned that diversion of water by Petitioner has already reduced the quantity of water available for diversion under their prior rights, and *any* additional diversion of water to storage beyond what Petitioner can store in Reservoir 1 will increase water shortages for downstream water users.

The 1988 *Cienega Water Users* judgment defines the water rights of the City of Hollister and specified landowners in the Pescadero Creek watershed and its tributaries including Harlan Creek. The judgment allots specific quantities for various uses on 14 separate properties. The uses include domestic, irrigation, livestock watering, municipal and industrial. The basic allotments are set forth in Schedule I of the judgment, and the criteria for reductions in use are set forth in Schedule II of the judgment. The judgment establishes a watermaster system of regulation and provides for reductions of up to 75 percent in the allotments at the direction of the watermaster if the "Static Water Level at the Saling Well is lower than thirty-five (35) feet below ground level." The identified diversions for domestic uses, campsites, and livestock or poultry watering existing in 1988 are exempt from reductions under the judgment.

As stated in section 3.0, seven protests to the pending petitions contend that Petitioner's diversion of water impairs diversions under their prior rights. Since the issuance of Permit 19572, the SWRCB has also received numerous letters from downstream water users complaining that Petitioner has interfered with availability of water for diversion under prior rights. The file includes letters from Harlan Winkle, Georgia Contrival, and Dan Carroll, all of whom hold adjudicated rights under the 1988 judgment. In addition, the file contains numerous letters from Howard Harris (court-appointed watermaster representative for the 1988 judgment) complaining about effects of Petitioner's diversions on downstream water users.

The potential effects of Petitioner's diversions upon prior rights downstream are illustrated by a September 4, 1992, letter to the Division by Harlan Winkle, owner of the property immediately downstream of Petitioner on Harlan Creek. The letter states that Winkle had received no irrigation water for six years due to diversion of water for Petitioner's upstream reservoir. The letter goes on to state that Winkle was given notice to reduce his water use by 75% (the maximum reduction called for under the 1988 judgment) and that Winkle actually had no water available at all, even though Petitioner diverted water for irrigating his vineyard throughout that period. Winkle's letter is not cited here to establish that Petitioner interfered with the prior rights of another water user on a particular date. Rather, the letter is cited simply to illustrate that Petitioner's diversion of water can affect water availability to those holding downstream prior rights who have experienced shortages in the past.

As with all appropriative water rights, Permit 19572 is subject to prior rights of other water users. The provisions of Orders WR 93-8 and 94-2 were intended to provide specific protection to the rights of certain parties in accordance with the stipulated settlement presented to the SWRCB at the 1992 hearing. Inclusion of those protections, however, did not exempt Petitioner from the basic requirement of avoiding interference

with the diversion and use of water by other senior right holders not a party to the stipulated settlement.⁷

The protests received in response to the pending time extension and change petitions, together with the correspondence and statements from parties attending the April 7, 1998, field investigation establish that several holders of prior downstream water rights have received less than their allotments under the 1988 judgment. In order to guard against interference with prior rights, it is reasonable to prohibit diversion of water under Permit 19572 any time that parties who have rights under the 1988 judgment are ordered to reduce their diversions by the court-appointed watermaster.⁸ Diversion under Permit 19572 should also be prohibited any time that a party holding a prior right on Harlan Creek under the 1988 judgment is unable to divert his or her decreed allotment due to the physical unavailability of water at the party's point of diversion.

There is substantial evidence that the surface flow of Harlan Creek may disappear at one location and resurface a short distance downstream. Therefore, at times when diversions under prior adjudicated rights are curtailed, the absence of continuous surface flow between Petitioner's property and a downstream point of diversion would not provide a basis for allowing Petitioner to divert water. This conclusion is consistent with the 1988 judgment in the *Cienega Water Users* that defines rights of specified parties to both surface flow and subsurface flow of Pescadero Creek and its tributaries. In addition to avoiding injury to prior rights adjudicated in *Cienega Water Users*, the diversion of water under Permit 19572 should not interfere with the use of water under the riparian claims of protestant Ann Marie Sayers whose property is used for various Native American cultural purposes as discussed in sections 6.5 through 6.5.3 below.⁹ The availability of water for riparian uses on protestant Ann Marie Sayers' property is protected by the provisions of the 1994 judgment in *Sayers v. Jenson (supra.)*, the provisions of Orders WR 93-8 and WR 94-2, the requirements of this order regarding maintenance of surface flow in Ladder Creek, and development and implementation of an erosion control and water quality protection plan.

6.5 Environmental, Public Trust and Cultural Resources In addition to effects on downstream water availability, Petitioner's existing project has resulted in erosion and degraded water quality in Harlan Creek downstream of Reservoir 1. Sections 6.5.1 through 6.5.4 below address the actions needed to correct those problems and to prevent significant adverse effects on

⁷ By letter dated March 26, 1996, the Chief of the Division of Water Rights advised Petitioner's attorney that it is unlikely that the permitted amount of water would be available for diversion to storage in all years, that rights under Permit 19572 remain subject to prior rights of downstream users, and that Petitioner's decision on whether to pursue the proposed change in the project should be made with full consideration of the water supply limitations in the Harlan Creek watershed.

⁸ At the time of acting upon a petition for reconsideration of Order WR 93-8, the SWRCB declined to tie diversion of water under Permit 19572 to provisions of the 1988 *Cienega Water Users* judgment. (SWRCB Order WR 94-2.) That decision was in part due to the fact that the party requesting reconsideration (and the other parties to the 1992 hearing) had agreed to a stipulated settlement that did not expressly limit diversions based on provisions of the *Cienega Water Users* judgment. (SWRCB Order WR 94-2.) The later protests from parties holding rights under the *Cienega Water Users* judgment filed in the current proceeding, however, make it appropriate for this order to condition Permit 19572 expressly upon protection of those prior adjudicated rights.

⁹ As discussed in Section 6.5.3 below, Ann Marie Sayers' property is the home of the Indian Canyon Nation.

the environment and cultural resources when constructing Reservoir 4 and diverting water under Permit 19572.

6.5.1 Erosion and Water Quality The project area covers about 100 acres of hilly terrain. Elevations range from around 1,200 feet to 2,000 feet above mean sea level, and slopes range from 15 to 75 percent. The most common soils associated with this project are Cibo rocky clay and Sheridan coarse sandy loam. (U.S. Dept. of Agriculture 1969. San Benito County California). The vegetation consists chiefly of annual grasses and forbs with some scattered oaks and brush on the more eroded, rocky slopes. Average rainfall is around 25 to 30 inches per year depending on the orientation of the slopes. Runoff in the area can be very rapid and the hazard of erosion is severe on steep slopes. The cumulative loss of topsoil in the Pajaro River watershed is so severe that the drainage is listed under the Federal Clean Water Act as "impaired for sediment."

During the April 7, 1998, field investigation, erosion caused by development of Petitioner's vineyard was readily visible. Substantial erosion was evident in the newly planted vineyards, vineyard roads, and at the spillway on the flow bypass structure at the existing Reservoir 1. In addition, a representative from the U.S. Environmental Protection Agency (EPA) inspected the project site on November 21, 1997. Following his inspection, the EPA official expressed concern about high erosion in a vineyard upstream of Reservoir 1, potential water pollution from a chemical mixing area near Reservoir 1, and unusually large amounts of algal growth in Reservoir 1, indicating a strong likelihood of elevated nutrients from the surrounding area. (Letter dated December 31, 1997, from Clancy Tenley, EPA Region IX, to Josh Jensen.)

Protestants are concerned about the effect of Petitioner's current operation on water quality and erosion, and they believe the following problems will be aggravated by construction of a new reservoir:

1. Release of accumulated sediment from reservoirs on Petitioner's property with adverse impacts to riparian habitat and aquatic life.
2. Erosion due to land clearing leading to increased accumulation of sediment in Petitioner's reservoirs.
3. Nutrients from agricultural runoff are captured in the reservoir and eventually pass downstream degrading surface water quality.

Although there are many sources of sediment along Harlan Creek, Petitioner has acknowledged that runoff during heavy storm events has resulted in erosion from his vineyards. Erosion caused by construction of the proposed reservoir on Ladder Creek may introduce additional sediments that could impact the creek channel and water quality. Petitioner's consulting engineer has advised U.S. EPA that Petitioner will implement best management practices including drop inlets to catch erosion, silt fences, and the placement of permanent sod between vine rows. (Letter dated March 30, 1998, from James C. Hanson to Clancy Tenley, U.S. EPA, Region IX). At the time of the field

investigation, Petitioner's consultant stated that Petitioner also intends to repair the eroding spillway on Reservoir 1.

In order to prevent or reduce soil erosion due to Petitioner's vineyards and reservoirs, Permit 19572 should be amended to require compliance with the following requirements before construction of Reservoir 4 commences:

1. Permittee shall enter into a streambed alteration agreement with the Department of Fish and Game covering construction of Reservoir 4.
2. Permittee shall obtain a grading permit from San Benito County.
3. Permittee shall prepare and implement an erosion control and water quality plan for the entire project. The plan shall include an implementation schedule and specific measures designed to maintain reasonable water quality in Harlan Creek and Ladder Creek downstream of the project and to mitigate project-related erosion. Permittee shall not begin construction of any facilities at project reservoirs prior to approval of the erosion control and water quality plan by the Chief of the Division of Water Rights.

6.5.2 Fisheries There are no native fish present in Ladder Creek or the reach of Harlan Creek immediately downstream of Petitioner's project. The absence of fish is due to the seasonal nature of the flow and the blockage to upstream migration of fish by waterfalls located on both streams downstream of Petitioner's property.¹⁰ The record does not provide a basis for conditioning water diversions under Permit 19572 in order to protect fish.

6.5.3 Protection of Cultural Resources at Project Site In the course of the Division's review of Petitioner's original water right application in 1984, a Division archeologist searched archeological site records and maps at the Department of Parks and Recreation and conducted an archeological reconnaissance of the vineyard areas and the four reservoir sites proposed at that time. The only artifacts noted during that reconnaissance were widely scattered chert lithics.¹¹ The archeologist concluded that the artifacts on Petitioner's property were at intervals too widely spaced to justify site recordation.

In 1992, a site consisting of a midden deposit with associated bedrock mortars was recorded near Reservoir 1.¹² Division staff has reviewed the location of that site and determined it will not be impacted by Petitioner's proposed changes. However, due to the presence of archeological artifacts in the area, Petitioner should be required to conduct an archeological survey of the new site of Reservoir 4 prior to commencing work and take appropriate action to protect any archeological resources that may be found in the project

¹⁰ Historically, steelhead could have come upstream as far as the base of the waterfalls located downstream of Petitioner's property on Harlan Creek and Ladder Creek but there is no evidence of that now occurring.

¹¹ Chert lithics are residual debris from tool manufacturing activities of prehistoric inhabitants.

¹² The site was designated in the state numerical system for designation of archeological sites as "CA-SBN-198."

area. In the event any buried archeological materials are uncovered during construction, Petitioner should be required to cease work, notify the Division of the discovery, retain a professional archeologist to evaluate the find, and take appropriate action to protect the archeological resources.

6.5.4 Protection of Riparian Vegetation and Native American Cultural Activities

Protestant Ann Marie Sayers is the Tribal Chairperson for the Indian Canyon Nation located in the Indian Canyon area of Harlan Creek on her property downstream from Petitioner's property. Ms. Sayers submitted extensive documentation to establish that Native Americans have used Indian Canyon for a variety of activities including gathering plants for food, medicines, musical instruments, basket weaving, tool making, and building construction. Property downstream from the project area has either been federally owned or held in trust by the federal government as Native American allotment land since 1911. The Indian Canyon Nation has designated the Indian Canyon as a Living Indian Heritage Area. Native American groups use the area for ceremonies and vision quests that are important elements of their cultures.¹³

The proposed site for Reservoir 4 on Ladder Creek is upstream of property that continues to be used for Native American ceremonial purposes. There are two waterfalls and three sacred vision quest sites in the area. Protestant Sayers is concerned that the proposed reservoir will reduce downstream flow and adversely affect the visual character or quality of the vision quest sites. Interruptions in stream flow due to upstream diversions can interfere with Native American ceremonial use of the waterfalls.

Permit 19572 limits diversion of water to storage when there is surface flow present at the Grant Line Weir downstream of Petitioner. As discussed in Section 6.4.1, Petitioner's feasibility study for the proposed new reservoir concludes that the requirement for surface flow at the Grant Line weir effectively limits diversion to storage to periods when there is substantial flow in Harlan Creek and that, during those periods, Petitioner's reservoirs are expected to fill within a period of a few days. Nine acre-feet of the water collected to storage in Reservoir 4 are to be diverted from Harlan Creek. Diversion of water from Harlan Creek to storage in Reservoir 4 will be subject to the existing downstream flow requirements which apply to any diversion of water to storage from Harlan Creek as specified in Permit 19572.

In view of the cultural uses and importance of Ladder Creek and the adjoining riparian vegetation to Native Americans, Petitioner's proposed diversion to storage of 1 acre-foot from Ladder Creek should be permitted only when there is visible surface flow in Ladder Creek from Petitioner's reservoir to the confluence of Ladder Creek and Harlan Creek.

Several protestants have expressed concern about potential effects of diversions from Ladder Creek upon downstream riparian vegetation, some species of which are used in

¹³ The natural, cultural and historic resources of the Indian Canyon Nation property are discussed in the "Landowner Forest Stewardship Plan for the Indian Canyon Nation" prepared by Sherman J. Finch and certified by the California Department of Forestry as part of the California Forest Stewardship program in 1995.

traditional Native American crafts and other cultural activities. This order limits diversions to storage from Ladder Creek to 1 acre-foot, allows diversions to storage on Ladder Creek only when: (1) there is surface flow in Ladder Creek at the falls located on the Sayers' property; and (2) there is also surface flow in Ladder Creek at its confluence with Harlan Creek.¹⁴

Several protestants are also concerned that the construction of a dam at Reservoir 4 under Permit 19572 will block the subsurface flow in Ladder Creek and thereby result in decreasing the downstream flow by more than the 1 acre-foot of water diverted to storage under Permit 19572. The existing Term 5 of Permit 19572 limits diversions under the permit to naturally occurring surface flow. In order to prevent the new dam at Reservoir 4 from reducing downstream flow by more than the 1 acre-foot to be diverted to storage from Ladder Creek, Petitioner should be required to develop and implement a plan for bypassing all other surface and subsurface flow in Ladder Creek above Reservoir 4 for release into the stream below the reservoir.

Conditioning diversions to storage from Ladder Creek upon meeting the requirements described in this section should have minimal effect on Petitioner's ability to divert water under Permit 19572 and will protect riparian vegetation and Native American cultural uses of Ladder Creek.

7.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act ("CEQA," Public Resources Code section 21000, et seq.), the SWRCB is lead agency for purposes of evaluating potential environmental impacts of the proposed changes to the project authorized by Permit 19572. The Division has conducted a preliminary review of the changes requested by Petitioner. Modification of the project to include the requirements specified in this order will result in a project that will not have a significant adverse effect on the existing environment. Petitioner's project, as conditioned in this order, qualifies for a mitigated negative declaration under CEQA.¹⁵

8.0 CONCLUSION

Petitioner's project involves diversion and use of water in the upper reaches of a water-short area. Petitioner's diversion of water in the past, and adverse impacts of Petitioner's project on downstream water quality, have been the subject of previous disputes before the SWRCB and the Superior Court for San Benito County. In acting upon the pending petitions, the Division is mindful of the need to prevent injury to holders of prior rights as well as the obligation to protect public trust resources where feasible and to maximize the reasonable and beneficial use of water.

¹⁴ The confluence of Ladder Creek with Harlan Creek is upstream of the CSY Grant Line Weir referred to in Order WR 94-2. Therefore, in accordance with the conditions governing diversions from Harlan Creek, this order also conditions diversions to storage from Ladder Creek upon the presence of surface flow at the CSY Grant Line Weir.

¹⁵ In the absence of Petitioner's modification of the project in accordance with this order, the project would have the potential to have a significant adverse environmental effect and an Environmental Impact Report would be required.

The reservoir that Petitioner now proposes to construct on Ladder Creek will store 9 acre-feet of water to be diverted from Harlan Creek and 1 acre-foot to be diverted from Ladder Creek. Petitioner's points of diversion from Harlan Creek for Reservoir 1 and proposed Reservoir 4 are upstream of land owned by parties who hold rights adjudicated in the 1988 *Cienega Water Users* judgment. Permit 19572 was issued subject to prior vested rights. This order clarifies that general requirement with an express condition requiring Petitioner to cease diversion under Permit 19572 at times when the prior rights recognized in the *Cienega Water Users* judgment are not being met. The evidence presented in Petitioner's feasibility study for the new reservoir establishes that there will be many years when no water is available for diversion to storage under Permit 19572.¹⁶ In years when water can be diverted to storage under Permit 19572, the use of water stored in Petitioner's reservoirs can reduce the demand for diversion under claim of riparian right during the irrigation season.

Petitioner's proposed reservoir on Ladder Creek is immediately upstream of land comprising the Indian Canyon Nation of which protestant Ann Marie Sayers is the Tribal Chairperson. This order limits Petitioner's diversions of water to storage from Ladder Creek to 1 acre-foot and includes other conditions to protect downstream cultural activities that are dependent upon flow in Ladder Creek.

Based on the findings in this order, the Division concludes that Petitioner's proposed change in point of diversion and redistribution of storage will not initiate a new right and that approval of the pending petitions in accordance with the requirements of this order will not cause injury to any legal user of water. Approval of the petitions, subject to the conditions specified in this order, is consistent with statutory requirements and consistent with the SWRCB's continuing obligation to protect public trust resources where feasible and to maximize beneficial use of water in accordance with article X, section 2 of the California Constitution and Water Code sections 100 and 174.

ORDER AMENDING PERMIT

IT IS HEREBY ORDERED that Permit 19572 is amended as follows:

1. Permit Term 2 is amended to delete Point of Diversion 2 and Reservoir 2. The authorized point of diversion for proposed Reservoir 4 on the unnamed stream (aka Ladder Creek) tributary to Harlan Creek as specified in Permit Term 2, is moved upstream to a point described as follows:

North 750 feet and West 950 feet from the SW corner of projected Section 14, T14S, R5E, MDB&M, within the SE ¼ of SE ¼ of said Section 14 as shown on a map on file with the State Water Resources Control Board.

¹⁶ Based on the findings in this decision, the Division concludes that Harlan Creek should be added to the next revision of the Declaration of Fully Appropriated Streams under Water Code section 1205 et seq. Because water is unavailable for diversion to storage in many years, and there is insufficient water to fully satisfy existing rights during the irrigation season, Harlan Creek should be declared fully appropriated on a year round basis.

2. Permit Term 5 is amended to read as follows:

The water appropriated shall be limited to the naturally occurring surface flow and to the quantity which can be beneficially used, and shall not exceed a total of 20 acre-feet per annum (afa) to be collected to storage from October 1 of each year to March 31 of the succeeding year. Up to 10 afa may be diverted from Harlan Creek to storage in Reservoir 1 on Harlan Creek and up to 9.0 afa may be diverted from Harlan Creek to storage in Reservoir 4 located on the unnamed stream (aka Ladder Creek) tributary to Harlan Creek. Up to 1.0 afa may be diverted from Ladder Creek to storage in Reservoir 4. Petitioner shall bypass other surface and subsurface flow in Ladder Creek through or around the reservoir into the natural channel downstream of Reservoir 4. Petitioner shall maintain reasonable quality of the water that is bypassed or released into the channels downstream of the reservoirs. The reservoirs may be filled only once per year. The capacity of Reservoir 1 and Reservoir 4 shall not exceed 10 acre-feet for each reservoir.

Water may be collected to storage in Reservoir 1 only during times when there is visible surface flow over the CSY Grant Line Weir and the Harlan Creek Falls Weir. Water may be collected to storage in Reservoir 4 only when: (1) there is visible surface flow in Harlan Creek over the CSY Grant Line Weir and at the Harlan Creek Falls Weir; and (2) there is visible surface flow in the reach of Ladder Creek from Reservoir 4 to the confluence of Ladder Creek and Harlan Creek. Within 90 days of the date of this order, Permittee shall submit a plan to the Chief of the Division of Water Rights for installation and operation of measuring devices sufficient to ensure that all water diversions under this permit are in compliance with the terms of the permit.

3. Permit Term 8 is amended to read:

Construction work shall be completed by December 1, 2006. Complete application of the water to the authorized use shall be made by December 31, 2010.

IT IS FURTHER ORDERED that Permit 19572 is amended to include the following additional conditions:

1. Permittee shall not divert water to storage under Permit 19572 at any time he is informed by the watermaster in *Cienega Water Users Committee, et al. v. City of Hollister* (San Benito County, Superior Court No. 14797) that the holders of adjudicated water rights on Harlan Creek or Pescadero Creek downstream of Permittee's project are required to reduce diversions pursuant to the provisions of the judgment entered on December 19, 1988. In addition, Permittee shall not divert water under Permit 19572 at any time that a party holding a prior right on Harlan Creek under the 1998 judgment is unable to divert his decreed allotment due to the physical unavailability of water at the party's point of diversion.

2. Permittee shall prepare an erosion control and water quality plan for the entire project in consultation with the U. S. Department of Agriculture Natural Resources Conservation Service and the Water Quality Control Board for the Central Coast Region. The plan shall include an implementation schedule and specific measures designed to maintain reasonable water quality in Harlan Creek and Ladder Creek downstream of the project. The plan shall address the following subjects:
 - a. Mechanical removal and disposal of accumulated sediment from Reservoirs 1 and 4.
 - b. Reduction of erosion on roads and adjoining land.
 - c. Establishing adequate streamside protection zones and erosion-resistant spillways on Reservoirs 1 and 4.
 - d. Erosion prevention and mitigation within the vineyards including placement of permanent sod between vine rows.
 - e. Procedures to prevent agricultural chemicals from entering Harlan Creek or Ladder Creek.

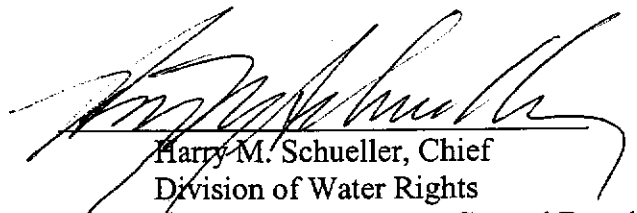
The plan shall be submitted for the Chief of the Division of Water Rights' review by March 1, 2001. Permittee shall not begin construction of any new facilities at project reservoirs prior to approval of the plan by the Chief of the Division of Water Rights. Following review and approval by the Chief of the Division of Water Rights, the plan shall be implemented pursuant to an approved schedule.

3. No work shall begin on proposed Reservoir 4 until Permittee has submitted a plan satisfactory to the Chief of the Division of Water Rights for bypassing the surface and subsurface flow from Ladder Creek above Reservoir 4 for release into the stream below the reservoir, while maintaining water quality. Permittee shall install and maintain devices satisfactory to the Chief of the Division of Water Rights capable of bypassing water around Reservoirs 1 and 4.
4. No work shall begin on proposed Reservoir 4 until Permittee has received a grading permit from San Benito County and a copy of the grading permit has been submitted to the Division of Water Rights. Construction, operation, and maintenance costs of any required facility are the responsibility of the Permittee. Permittee shall submit a copy of all monitoring reports required by the county grading permit to the Division of Water Rights as attachments to the annual Progress Report by Permittee.
5. In accordance with sections 1601 and 1603, of the Fish and Game Code, no work shall be started on the diversion works for Reservoir 4 and no water shall be diverted to Reservoir 4 until Permittee has entered into a stream or lake alteration agreement with the California Department of Fish and Game. Construction, operation, and maintenance costs of any required facility are the responsibility of the Permittee.

6. Prior to any activities associated with the construction of the Reservoir 4, Permittee shall have an archeological survey conducted by a professional archeologist. A report including any recommendations or mitigation measures shall be prepared and submitted to the State Office of Historic Preservation and the Chief of the Division of Water Rights for review. All mitigation measures that are deemed necessary by the State Office of Historic Preservation and the Chief of the Division of Water Rights must be completed by a professional archeologist hired by the Permittee prior to the initiation of construction activities.
7. Should any buried archeological materials be uncovered during project activities, such activities within 100 feet of the find shall cease. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools, bedrock outcrops and boulders with mortar cups, and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.
8. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

DEC 13 2000

Date



Harry M. Schueller, Chief
Division of Water Rights
State Water Resources Control Board