STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

LIVESTOCK STOCKPOND USE REGISTRATION

CERTIFICATE NO. L 64

Application L31340 of **Peninsula Open Space Trust**
c/o Jeff Powers
3393 Cloverdale Road
Pescadero, CA 94060

filed with the State Water Resources Control Board (State Water Board) on **July 1, 2002** meets the requirements for registration of livestock stockpond use specified in Article 2.7 (commencing with section 1228) of Chapter 1 of Part 2 of Division 2 of the Water Code. The appropriation is subject to the following conditions.

1. Source: **Unnamed Stream**

Tributary to: **Butano Creek thence Pacific Ocean**

within the County of San Mateo.

2. Location of Point of Diversion: By California Coordinate System of 1927, **Zone 3**	Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
Reservoir 3: North 262,541 feet and East 1,460,351 feet	**NW¼ of SW¼**	**25**	**8S**	**5W**	**MD**
Reservoir 4: North 263,644 feet and East 1,459,819 feet	**SW¼ of NW¼**	**25**	**8S**	**5W**	**MD**

3. Purpose of Use:	4. Place of Use:	Section	Township	Range	Base and Meridian	Acres
STOCKWATERING, INCIDENTAL AESTHETIC, RECREATIONAL, FISH AND WILDLIFE	**At reservoir site Reservoir 3 within NW¼ of SW¼**	**25**	**8S**	**5W**	**MD**	
	Reservoir 4 within SW¼ of NW¼	**25**	**8S**	**5W**	**MD**	

The place of use is shown on a map on file with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 9.5 acre-feet per annum to be collected from December 1 of each year to April 14 of the succeeding year. The capacity of Reservoir 3 shall not exceed 5 acre-feet (af) and the capacity of Reservoir 4 shall not exceed 4.5 af which is the stated capacities shown in the registration.

6. Appropriation of water pursuant to this registration shall be made in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, and quantity and season of diversion. This information is reproduced as conditions 1 through 5 of this certificate.

7. After the initial filling of the storage reservoir, registrant's right under this certificate extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

8. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this registration, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

9. Registrant shall allow representatives of the State Water Board, and other parties as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms and conditions of this registration.

10. If the registrant does not own the point of diversion, this registration shall not be construed as conferring upon the registrant right of access to the point of diversion.

11. This appropriation is subject to prior rights. Registrant may be required to curtail diversion or release water stored during the most recent collection season should diversion under this registration result in injury to holders of legal downstream senior rights. If a reservoir is involved, registrant may be required to bypass or release water over, around, or through the dam. If release of stored water would not effectively satisfy downstream prior storage rights, registrant may be required to otherwise compensate the holders of such rights for injury caused.

12. To the extent that water available for use under this registration is return flow, imported water, or wastewater, this registration shall not be construed as giving any assurance that such supply will continue.

13. Diversion works shall be constructed and water applied to beneficial use with due diligence.

14. No work shall commence and no water shall be diverted, stored or used under this certificate until registrant has received a stream or lake alteration permit from the California Department of Fish and Game (DFG). Compliance with the terms and conditions of the permit is the responsibility of the registrant. If a permit is not necessary for this project, the registrant should retain a written waiver from the DFG.

15. In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water under this registration is by means of a dam, registrant shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the DFG, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.

16. No construction shall be commenced and no water shall be diverted under this registration until all necessary federal, state, and local approvals have been obtained, including obtaining and complying with any waste discharge requirements from the appropriate California Regional Water Quality Control Board.

17. This registration 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 registrant shall obtain authorization for an incidental take prior to construction or operation of the project. Registrant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this registration.

18. More than one appropriation for livestock stockpond use may be in effect at any time if stockponds subject to registration for this registrant do not exceed the ratio of one per 50 acres.

19. This registration is subject to the submittal of a report of water use and satisfactory renewal of the registration, on forms to be furnished by the State Water Board, including payment of the then-current renewal fees prior to the expiration of each five-year period following the date of first filing the completed registration.

20. The point or points of diversion and the place of use registered herein may be changed by filing a completed amended registration form with the State Water Board, including payment of the then-current registration fee. Such change shall not operate to the injury of any legal user of the water involved.

21. The appropriation registered herein shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.

22. The appropriation registered herein is subject to enforcement, including but not limited to revocation, by the State Water Board if 1) the State Water Board finds that the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration; 2) the registration is not renewed as required by the conditions of this certificate; or 3) the State Water Board finds that the registrant is in violation of the conditions of this registration.

Dated: AUG 0 5 2005

STATE WATER RESOURCES CONTROL BOARD

Steven Herrera for

Victoria A. Whitney, Chief
Division of Water Rights

State of California – Resources Agency
ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF FISH AND GAME
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(707) 944-5500

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May 24, 2005

Mr. Jeff Powers
Peninsula Open Space Trust
3000 Sand Hill Road, 4-135
Menlo Park, CA 94025

Dear Mr. Powers:

Registration of Livestock Stockpond Use
Appropriation by Jeff Powers, Peninsula Open Space Trust,
for Seven Livestock Stockponds
Diverting from Multiple Unnamed Streams,
Tributary to Little Butano Creek or
Arroyo de los Frijoles Thence the Pacific Ocean,
San Mateo County

Department of Fish and Game (DFG) personnel have visited the site and reviewed your State Water Resources Control Board (SWRCB) registration application submitted to DFG for water appropriations for Livestock Stockpond Use.

The seven existing reservoirs considered in this registration application are all located on several unnamed tributaries to either Little Butano Creek or Arroyo de los Frijoles, thence the Pacific Ocean, on an 5,638-acre mixed use ranch (Cloverdale Ranch) located at 3393 Cloverdale Road (Assessor Parcel # 086-290-010), San Mateo County. SWRCB staff conducted a field inspection on December 9, 1998 of the seven reservoirs and it was suggested that all seven reservoirs be registered with the SWRCB.

The registration application and SWRCB inspection notice included the following information regarding storage for each reservoir:

Table 1				
Reservoir	Location	Dam Height (downstream toe to spillway)	Surface Area (acres)	Capacity (acre-feet)
1	NW1/4 of SE1/4 of S26, T8S, R5W	10.8 feet	33	1.1
2	SE1/4 of NW1/4 of S26, T8S, R5W	16.2 feet	4.5	4.9
3	NW1/4 of SW1/4 of S25, T8S, R5W	3 feet	2	5
4	SW1/4 of NW1/4 of S25, T8S, R5W	4 feet	1.5	4.5
5	SW1/4 of NW1/4 of S25, T8S, R5W	6.2 feet	3.7	10
6	SE1/4 of SE1/4 of S23, T8S, R5W	3.5 feet	0.4	3.5
7	SW1/4 of SW1/4 of S24, T8S, R5W	3 feet	0.8	4

The registration application requests to collectively divert and use water from November 1 to April 30 of the following year. Reservoirs numbers 3, 4, 5, 6, and 7 are tributary to Little Butano Creek and low in the Butano watershed area while reservoirs numbers 1 and 2 are tributary to Arroyo de los Frijoles and also low in the Arroyo de los Frijoles watershed. Type of use for these stockponds include stockwatering for 150 cattle and "incidental wildlife enhancement."

Little Butano Creek supports anadromous fish including a population of steelhead trout (*Oncorhynchus mykiss*) in its lower confluence with Butano Creek. Local steelhead have been listed by the National Marine Fisheries Service (NOAA Fisheries) as "threatened" under the Federal Endangered Species Act (FESA). The Arroyo de los Frijoles watershed and vicinity provide potential habitat for a number of listed species, including San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and California red-legged frog (*Rana aurora draytonii*). San Francisco garter snakes are a fully protected species under California law and are also listed as endangered under the Federal Endangered Species Act (FESA). California red-legged frogs are listed as threatened under FESA.

Pursuant to Section (§) 1228.3 of the State Water Code, registration of appropriations for Small Domestic Use requires consultation with DFG. DFG will not place any bypass flow requirements on the current facilities based on our site visit because the current use is basically non-consumptive. However, there is the possibility that stocked fish inadvertently released from these reservoirs may cause significant adverse impacts to the populations of sensitive native salmonids utilizing downstream reaches and sensitive amphibian species which may use the reservoir areas as foraging and reproduction sites. For these reasons, DFG's terms and conditions are limited to a prohibition on any future stocking of these ponds; therefore these ponds shall not be stocked with fish.

DFG also reminds the applicant that Butano Creek has been declared a "fully appropriated stream" from April 15 through Novemeber 30 as indicated in the SWRCB's Declaration of *Fully Appropriated Stream Systems*, Water Right Order 98-08, November 19th, 1998 (http://www.waterrights.ca.gov/FASList.pdf); this includes all tributaries where hydraulic continuity exists. The SWRCB will likely require the applicant to modify their season of diversion and collection to be in compliance with Water Right Order ~~90~~-08. 98-08

The issuance of this letter by DFG does not constitute a valid water right. SWRCB must first issue you a valid Livestock Stockpond Use Registration certificate before you may divert water. Under State Water Code § 1052, the diversion and use of water without a valid basis of right is a trespass against the State of California and is subject to enforcement action by SWRCB.

This letter may be subject to modification or cancellation by DFG should facts warranting such action come to light at a later date or if the purpose of use changes. If you have questions regarding these conditions, please

contact Mr. Jeremy Sarrow, Environmental Scientist, at (707) 944-5573; or Ms. Linda Hanson, Staff Environmental Scientist, at (707) 944-5562.

Sincerely,

Robert W. Floerke
Regional Manager
Central Coast Region

cc: Ms. Victoria Whitney, Chief
Attention Ms. Patricia Meroney
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, CA 95812-2000

Dr. William Hearn
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777 Sonoma Avenue, Room 325
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