STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 28404 Permit 20042 License _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT

WHEREAS:

1. Permit 20042 was issued to Albert L. Russ and Paula Russ on April 2, 1987 pursuant to Application 28404.

2. Permit 20042 was subsequently assigned to Eric C. W. Dunn and Susan A. Dunn.

3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.

4. The order should be conditioned to: a) protect San Francisco garter snakes, b) require a vegetation plan, c) require compliance with Department of Fish and Game's stream bed alteration requirements, and d) reflect the recent San Gregorio Adjudication.

5. Permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

   CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE December 31, 2000 (0000008)

2. Condition 9 of the permit be amended to read:

   COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE December 31, 2004 (0000009)

3. Condition 20 be added to the permit to read:

For the protection of habitat for the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), Permittee shall:

a) establish and maintain a 150-foot-wide buffer of undisturbed natural upland vegetation around the water storage reservoir areas (alteration of vegetation within the buffer zone shall not occur without the review and approval by the Department of Fish and Game);

b) obtain approval from the Department of Fish and Game prior to any reservoir dredging operations;

c) refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations; and

d) restrict cattle access to the reservoir to a maximum of ten percent of the shoreline or construct outlet pipes to watering troughs. (0400500)

4. Condition 21 be added to the permit to read:

Permittee shall cause to be prepared by a registered landscape architect or forester a vegetation plan for the water storage reservoir and its 150-foot-wide buffer zone. This plan shall include 1) a diagram of the proposed plantings, 2) a list of sources for the plant material used (*e.g.*, cuttings or seeds from native plants on the property, locally-grown nursery stock of native species), and 3) a long-term management plan for the vegetated buffer zone. The vegetation plan shall be approved by the Department of Fish and Game and then submitted to the Division of Water Rights for inclusion in water right Permit 20042 and any water right license issued pursuant to said Permit.

a) The initial plantings specified in the above vegetation plan shall be completed within one year from the date of completion of the reservoir.

b) A brief written monitoring report describing the progress of implementing the vegetation plan accompanied by photographs must be submitted annually for five years after completion of the reservoir to the Chief of the Division of Water Rights. The first monitoring report shall be due one year after completion of the reservoir.

c) After the fifth annual report is submitted, brief monitoring reports verifying the implementation of the long-term management plan for the buffer zone and accompanied by photographs shall be submitted every fifth year thereafter to the Chief of the Division of Water Rights.

d) In each annual "Progress Report by Permittee", starting from the year of the first monitoring report as specified above, Permittee shall declare, in the "Remarks" section, whether or not the approved vegetation plan is being followed. (0400500) (0490500)

5. Condition 22 be added to the permit to read:

In accordance with Section 1601 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this Permit until Permittee has entered into a stream bed alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fish and wildlife resources have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the Permittee. (0000063)

6. Condition 23 be added to the permit to read:

In conformance with the San Gregorio Creek decree (filed January 29, 1993), this permit shall include a minimum bypass term, expressed as follows:

For protection of fisheries, wildlife, and other instream and public trust uses in the San Gregorio Creek Stream System, Permittee is subject to the following minimum flows at the USGS San Gregorio gage located at the Old Coast Highway Crossing:

a) *December 1 to April 30*: 10 cubic feet per second (cfs); except that the entire flow shall be bypassed for 5 consecutive days after streamflow rises above 50 cfs;

b) *May 1 to June 15*: 10 cfs when the sandbar at the mouth of San Gregorio Creek is open; 2 cfs when the sandbar is closed; and

c) *June 16 to November 30*: 2 cfs or the entire streamflow, whichever is less. (0140400)

Dated: SEPTEMBER 4 1996

Roger Schuman

for Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20042

Application 28404 of Albert L. Russ and Paula Russ

P.O. Box 82, San Gregorio, California 94024

filed on March 7, 1985, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

	Tributary to:
(1) Kingston Creek	San Gregorio Creek thence Pacific Ocean
(2) Unnamed Stream	San Gregorio Creek thence Pacific Ocean

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridan
(1) North 1,990 feet and West 1,330 feet from SE corner of Section 20	NE¼ of SE¼	20	7S	4W	MD
Diversion and Rediversion (2) North 2,500 feet and West 1,100 feet from SE corner of Section 20	NE¼ of SE¼	20	7S	4W	MD

County of San Mateo

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridan	Acres
Recreational						
Stockwatering	Reservoir No. 1 NW¼ of SE¼	20	7S	4W	MD	
Domestic						
Irrigation	NW¼ of SE¼	20	7S	4W	MD	5
	NE¼ of SE¼	20	7S	4W	MD	22
					Total	27

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 27.2 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (0000005)

The maximum rate of diversion to offstream storage shall not exceed 100 gallons per minute. (0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)

8. Construction work shall be completed by December 1, 1990. (0000008)

9. Complete application of the water to the authorized use shall be made by December 1, 1991. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)

11. 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. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, 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 protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) 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 appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. 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. (0000013)

14. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that an outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

15. Permittee shall install and maintain a device satisfactory to the State Water Resources Control Board to measure water diverted into the reservoir from Kingston Creek. (0060046)

16. For the protection of fish and wildlife in Kingston Creek, permittee shall bypass a minimum of 0.4 cubic foot per second downstream of the diversion point. The total streamflow shall be bypassed whenever it is less than the designated amount. (0140060)

17. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flow required by this permit. Said measuring device shall be properly maintained. (0060062)

18. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

19. This permit is subject to prior rights determined in the San Gregorio Creek Adjudication. (0500800)

***This permit is issued and permittee takes it* subject to the following provisions of the Water Code:**

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: APRIL 2 1987

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh

Chief, Division of Water Rights