

P20600

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

Application 29395 Permit 20600

**ORDER AMENDING THE PERMIT BY
CHANGING EXISTING TERMS AND BY ADDING
MONITORING REQUIREMENTS AND AN
ENDANGERED OR THREATENED SPECIES TERM**

WHEREAS:

1. Permit 20600 was issued to Silver Terrace Nursery, Inc. on March 9, 1992.
2. The time to complete application of the water to the authorized use under Permit 20600 shall be made by December 31, 1996 (Term 6 of the permit).
3. The Division of Water Rights (Division) conducted a compliance inspection of the project covered by Permit 20600 on May 25, 1999. This inspection found that the permittee has not established full beneficial use of water under the permit and that the permittee was operating in violation of Term 11 (regarding measuring devices) of the permit.
4. The State Water Resources Control Board (SWRCB) requires compliance with terms and conditions by adding additional monitoring requirements to the permit.
5. The SWRCB will also add a permit term to prevent any act which results in the taking of a threatened or endangered species that has been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Term 11 of Permit 20600 is superceded as follows:

No water shall be diverted under this permit until the permittee installs and maintains an in-line flow meter, acceptable to the Division, that is capable of measuring the instantaneous diversion rate and the cumulative amount diverted to storage under this permit. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual diversion, and shall submit these monthly records with the annual Progress Report by Permittee, or whenever requested by the Division.

2. Term 12 of Permit 20600 is superceded as follows:

For the protection of fish and wildlife during the period from December 1 of each year to May 1 of the succeeding year, permittee shall cease diversions of water under this permit whenever the flow of Pescadero Creek is less than or equal to either: (1) 13 cfs measured immediately below the point of diversion, or (2) 15.1 cfs measured at the upstream USGS Pescadero Creek gaging station. Permittee shall maintain a record of the measured bypass flow prior to each daily diversion of water under this permit. These records shall be made available to the Division whenever requested. If the USGS Pescadero Creek gaging station is used as the measuring device under this permit, the permittee shall also obtain at the beginning of each diversion season, and make available upon the Division's request, the latest gage rating curve maintained by the USGS. If the Pescadero Creek gaging station is abandoned by the USGS, permittee shall install, maintain and monitor a replacement device, satisfactory to the Division, at the same location or at a location immediately below the point of diversion.

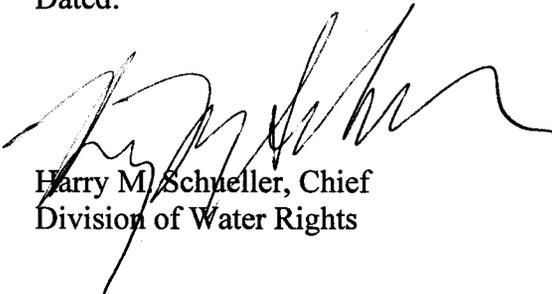
3. Term 13 of Permit 20600 is superceded as follows:

The SWRCB reserves jurisdiction over this permit to change the fish bypass amounts to conform to the results of a comprehensive field study to be completed by the California Department of Fish and Game to determine minimum streamflow required to protect fishlife. Action to change the bypass amounts will be taken only after notice to interested parties and opportunity for hearing.

4. An endangered species term is added to this permit as follows:

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 (California 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.

Dated: **MAR 20 2000**



Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
 WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER
PERMIT 20600

Application 29395 of Silver Terrace Nursery

c/o Richard and Robert Ruggeri, 525 Chestnut Avenue, South San Francisco, CA 94080

filed on January 9, 1989, 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: Pescadero Creek Tributary to: Pacific Ocean

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
SOUTH 1,200 FEET AND EAST 100 FEET FROM NW CORNER OF SECTION 11	NW $\frac{1}{4}$ OF NW $\frac{1}{4}$	11	8S	5W	MD
OFFSTREAM STORAGE UNNAMED RESERVOIR IN	NE $\frac{1}{4}$ OF NE $\frac{1}{4}$	10	8S	5W	MD

County of San Mateo

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
IRRIGATION	W $\frac{1}{2}$ OF NW $\frac{1}{4}$	11	8S	5W	MD	
	E $\frac{1}{2}$ OF NE $\frac{1}{4}$	10	8S	5W	MD	
					TOTAL	30

The place of use is shown on map on file 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 20 acre-feet per annum to be collected from December 1 of each year to May 1 of the succeeding year. (0000005)

The maximum rate of diversion to offstream storage shall not exceed 0.223 cubic foot per second. (000005J)

6. Complete application of the water to the authorized use shall be made by December 31, 1996. (0000009)

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

8. 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)

9. 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)

10. 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)

11. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the rate and quantity of water diverted into the reservoir from Pescadero Creek. (0060046)

12. For the protection of fish and wildlife, permittee shall during the period from December 1 through May 1 bypass a minimum of 13 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount. (0140060)

13. The State Water Resources Control Board reserves jurisdiction over this permit to change the fish bypass amounts to conform to the results of a comprehensive field study to be completed by the California Department of Fish and Game to determine minimum streamflows required to protect fishlife. Action to change the bypass amounts will be taken only after notice to interested parties and opportunity for hearing.

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 the conditions of this permit. Said measuring device shall be properly maintained. As an alternative, a single measuring device installed and maintained jointly by all water users on Lower Pescadero Creek, located at a position on the creek acceptable to the Department of Fish and Game and the State Water Resources Control Board, may be substituted. (006G001)

14. 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 under this permit until permittee has entered into a stream or lake alteration agreement with the California 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)

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

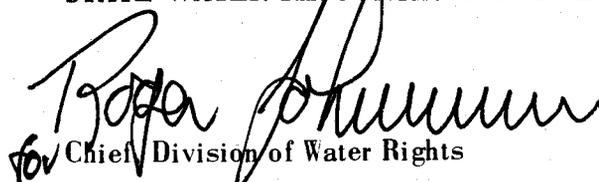
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

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: MARCH 09 1992

STATE WATER RESOURCES CONTROL BOARD


for Chief, Division of Water Rights