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

DIVISION OF WATER RIGHTS

In the Matter of Permit 20784 (Application 29977)
G. Scott Fahey

ORDER APPROVING EXTENSION OF TIME, CHANGE IN POINT OF DIVERSION, AND AMENDING THE PERMIT

SOURCE: Unnamed Spring (AKA Cottonwood Spring)

COUNTY: Tuolumne

WHEREAS:

1. Permit 20784 was issued to G. Scott Fahey on March 23, 1995, pursuant to Application 29977.

2. A petition for an extension of time within which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board (SWRCB) on May 29, 1998.

3. The permittee has proceeded with diligence and good cause has been shown for extension of time. The SWRCB has determined that the petition for extension of time does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

4. A petition to change a point of diversion was filed with the SWRCB on December 12, 1997 and the SWRCB has determined that good cause for such change has been shown.

5. The SWRCB has determined that the petition for change in a point of diversion does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

6. Public notice of the request for extension of time and of the change was issued on August 26, 1998 and protest issues have been resolved.

7. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

8. There is a possibility that buried archeological deposits may be present and accidental discovery could occur. In compliance with the California Environmental Quality Act, which states that a Lead Agency is required to make a provision for historical or unique archeological resources accidentally discovered during construction or operation of projects, a condition should be included in the permit requiring notification of the Chief of the Division of Water Rights if project activities uncover any buried archeological materials.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 20784 IS AMENDED TO READ AS FOLLOWS:

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

   1) North 1500 feet and West 2700 feet from SE Corner of Section 22 being within: NW¼ of SE¼ of Section 22, Township 2 North, Range 17 East, Mount Diablo Base & Meridian.
   2) North 1390 feet and West 2190 feet from SE corner of Section 16 being within: NW¼ of SE¼ of Section 16, Township 2 North, Range 17 East, Mount Diablo Base & Meridian.

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

   Complete application of the water to the authorized use shall be made by December 31, 2011.
   (0000009)

3. Permit 20784 is amended to include the following Endangered Species condition:

   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.

   (0000014)

4. Permit 20784 is amended to include the following archeological condition:

   Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet to find. 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 mitigation, as approved by the Chief of the Division of Water Rights.

   (0000215)

STATE WATER RESOURCES CONTROL BOARD

Edward C. Anton, Chief
Division of Water Rights

Dated: MAR - 6 2002

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20784

Application 29977 of G. Scott Fahey

2418 Pleasanton Avenue, Boise, ID 83702

filed on July 12, 1991, has been approved by the State Water Resources Control Board SUBJECT TO PRIOR 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) Unnamed Spring (AKA Cottonwood Spring)	Cottonwood Creek thence
	Clavey River thence
	Tuolumne River
2) Deadwood Spring	Unnamed Stream thence
	Basin Creek thence
	North Fork Tuolumne River thence
	Tuolumne River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
1) North 5 feet and West 5 feet from SE corner of Section 16	SE¼ of SE¼	16	2N	17E	MD
2) North 1,390 feet and West 2,190 feet from SE corner of Section 16	NW¼ of SE¼	16	2N	17E	MD

County of Tuolumne

Application 29977 Permit 20784

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Industrial	Bottled water plant(s) off premises					

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.062 cubic foot per second to be diverted from January 1 to December 31 of each year as follows: 0.031 cubic foot per second from Cottonwood Spring and 0.031 cubic foot per second from Deadwood Spring. The maximum amount diverted under this permit shall not exceed 44.82 acre-feet per year. (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 31, 1998. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1999. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a 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. This permit shall not be construed as conferring upon permittee right of access to the point of diversion. (0000022)

15. The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed. (0000027)

16. 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)

17. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the San Joaquin River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

18. Prior to diverting water under this permit, permittee shall notify the State Water Resources Control Board of the name(s) and location(s) of the company(s) that will be bottling the diverted water. (0280999)

19. Diversion of water under this permit during the period from June 16 through October 31 of each year is subject to maintenance of the Water Exchange Agreement executed on December 12, 1992 between the permittee and the Modesto and Turlock Irrigation Districts. Pursuant to the Agreement, permittee shall provide replacement water to New Don Pedro Reservoir for all water diverted under this permit during the period from June 16 to October 31 of each year. The source, amount and location at New Don Pedro Reservoir of replacement water discharged to the reservoir shall be reported to the State Water Resources Control Board with the annual Progress Report by Permittee. (0250300)

20. Permittee shall comply with the following provisions which are derived from the City and County of San Francisco (San Francisco) letter dated December 19, 1994 filed with the State Water Resources Control Board:

1) Permittee shall not interfere with San Francisco's obligations to the Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or any implementing Agreement between the Districts and San Francisco. (000T001)

2) Permittee shall provide replacement water to New Don Pedro Reservoir for water diverted under this permit which is adverse to the prior rights of San Francisco and the Districts. A determination of whether permittee's diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made annually by the latter parties in accordance with water accounting procedures being used by said parties.

   Permittee shall provide replacement water within one year of the annual notification by San Francisco or the Districts of potential or actual water supply reduction caused by permittee's diversions. Permittee shall provide replacement water in a manner that will offset the separate reductions in water supplies of San Francisco and the Districts. Replacement water may be provided in advance and credited to future replacement water requirements. Permittee shall not be obligated to provide replacement water for diversions that occur

during periods when the Districts' and San Francisco's reservoirs are spilling or are being operated in anticipation of spill except that all water diverted during the period June 16 through October 31 shall be replaced pursuant to the Water Exchange Agreement executed on December 12, 1992 between permittee and the Districts. Permittee's obligations to provide replacement water under this agreement shall take into consideration permittee's obligations to provide replacement water under the Water Exchange Agreement. The source, amount and location at New Don Pedro Reservoir of replacement water discharged to the reservoir shall be reported to the State Water Resources Control Board with the annual Progress Report by Permittee. (0250700) (0280700)

3) Permittee shall not provide replacement water, under this letter agreement or permittee's aforementioned Water Exchange Agreement, from a source that is hydraulically connected to surface water tributary to the Tuolumne River. If permittee replaces water diverted pursuant to this permit with groundwater which it extracts, permittee shall demonstrate that any extracted groundwater which replaces diverted surface water is water which would not otherwise reach New Don Pedro Reservoir (NDP). Permittee shall demonstrate that there is hydraulic separation between the groundwater extracted and groundwater flow from the east into NDP; or, alternatively, permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDP is not substantial and that any extraction of groundwater by permittee would have essentially no impact on groundwater recharge via subsurface inflow from the east to NDP. (0280800)

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 23 1995

STATE WATER RESOURCES CONTROL BOARD

Roger Ohlum

for Chief, Division of Water Rights