and irrigation of an adjacent parcel of 96 acres located for the most part in the south of Uvas Creek.

2. Applicant's point of diversion is about 4 miles downstream from Uvas Dam, built in 1957 by the South Santa Clara Valley Water Conservation District (hereinafter called the District) pursuant to Permit 10000 (Application 13886). A comparison of quantities of water authorized to be appropriated under the District's permit with the average annual runoff at the site of Uvas Dam as shown by U.S.G.S. records indicates that there is no longer any unappropriated water in Uvas Creek at or above the dam site. However, there are 17 square miles of Uvas Creek watershed above applicant's proposed point of diversion and below Uvas Dam. Also there is a certain amount of rising water in Uvas Creek near Ward's Bridge, about a quarter of a mile above the point of diversion. Furthermore, applicant advises that even during the times of little or no surface flow in Uvas Creek he has always been able to obtain an ample water supply from subject well, which has been in production since 1951.

3. The only protest filed was by the Department of Fish and Game. It authorized dismissal of its protest if applicant agreed to a clause in his permit requiring "release past the point of diversion" of 20 cubic feet of water per second for about five months and half that amount for the rest of the year for the benefit of steelhead. The protest states that it is based upon Section 5937 of the Fish and Game Code

which relates to releases of water by the owner of a dam. Applicant has neither a dam nor other means of regulating surface flow of the stream. His well is offset from the stream by 100 feet, and it is doubtful to what extent diversion therefrom affects surface flow of the creek. The suggested clause as applied to this situation is meaningless, at least in the absence of evidence of a direct effect of pumping from the well upon the surface flow.

Subsequent to the filing of its written protest, the Department of Fish and Game also referred to and relied upon a contract it has with the District which calls for releases of specified quantities of water from Uvas Dam down Uvas Creek for the preservation of steelhead. Since the Board's finding with respect to unappropriated water is based upon an analysis of conditions which existed prior to the construction and operation of Uvas Dam, this additional ground of protest is also inapplicable, and accordingly, the Department's protest does not bar approval of the application.

4. Based upon conditions which existed prior to the construction and operation of Uvas Dam, it is found that there is unappropriated water available to supply the applicant, and such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

5. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 17635 should be approved and that a permit

should be issued to the applicant subject to the terms and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 17635 and all relevant information on file therewith, particularly the report of the field investigation made on May 12, 1958; State Water Resources Board Bulletin No. 7, "Santa Clara Valley Investigation," dated June 1955; records of releases from Uvas Dam obtained from the South Santa Clara Valley Water Conservation District; United States Geological Survey "Mt. Madonna," "Loma Prieta," "Gilroy," and "Chittenden" quadrangles, all 7.5 minute series; United States Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California," with particular reference to records of Uvas Creek near Morgan Hill, California; and Report of Referee, Department of Public Works, acting through the State Engineer, dated February 1953, in connection with the case entitled Armsbey et al. v. Lowe et al., Santa Clara Superior Court No. 77558.

IT IS HEREBY ORDERED that Application 17635 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.40 cubic foot per second to be diverted between January 1 and December 31 of each year. The equivalent of such

continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

4. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

5. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at , California, on the day of , 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member