and of Water Code Sections 100 and 101.

Protestant Warren is not entitled to the protection of his diversion to an arbitrary well depth. Such protection would preclude the use of waters in storage in the alluvium beneath the arbitrary depth and would therefore violate the constitutional and statutory mandate "that the water resources of the State be put to beneficial use to the fullest extent of which they are capable". (See Section 2, Article X of the California Constitution and Water Code Section 100.) Furthermore, by reducing the amount of water in storage during the dry months, the District will enable the high flows during the winter rainy months to be stored for use later. If, instead, the alluvium were maintained in a full or almost full condition throughout the year, which would be required to assure protection of a shallow well, the high winter flows of freshwater would be substantially lost to beneficial uses to the Pacific Ocean.[4/] People ex rel. State Water Resources Control Board v. Forni, supra, authorizes this conclusion. There it was held that riparian landowners who, along with appropriators, utilized water from the Napa River for frost protection to serve a high instantaneous need, may properly be required to experience some inconvenience or to incur reasonable expenses in order to satisfy the constitutional mandate of Section 2, Article X of the California Constitution. Here, protestant Warren may be required to incur the additional expense of deepening his present wells or drilling

---

[4/] We recognize that high flows in the winter rainy months serve some purpose such as providing flows for anadromonous fish. However, these purposes can be served even if the alluvium is partially dewatered during the summer. Because of the rate of flow in the winter and the permeability of the creek bottom, only a percentage of a high winter flow can physically recharge the alluvium.

the watershed of San Simeon Creek. Consequently, this portion is not land riparian to San Simeon Creek.

31. Protestant Pedotti's first condition summarized in Finding 28 appears to request use of the same condition which we have found to be necessary for protection of protestant Warren in Finding 21. However, there is a significant difference. The distance of 250 feet is measured not from protestant Pedotti's existing wells but from protestant Pedotti's property line. In fact, Pedotti's nearest well is over 300 feet from the nearest proposed well of the District. Consequently, proposed condition one evidently is intended to protect a non-existent well that is not even proposed to be built by the protestant. We decline to protect in the manner suggested a non-existent point of diversion. Protestant Pedotti's method of diversion must be reasonable; he did not supply any evidence as to why such a point of diversion is required for the irrigation of his property or as to why those portions of his property near its western boundary may not be reasonably served by existing points of diversion.

32. Protestant Pedotti's second condition is an attempt to maintain a specified level in protestant Pedotti's wells, or, in the alternative, a supply of water to protestant Pedotti's well head. The method of diversion by protestant Pedotti must be reasonable; there is no evidence to establish the reasonableness of the 10 percent reduction requested by protestant Pedotti.

33. Protestant Pedotti's third condition requires the District to maintain the quality of water in protestant Pedotti's wells. On its face, this condition is too broad, because it makes

the District liable for a decline in water quality caused by actions not within its control. However, we believe that this condition was intended to protect the water quality of San Simeon Creek underflow from possible migration of the sewage effluent east into protestant Pedotti's well field. The conditions imposed by the Regional Board and the proposed Basin Management Plan assure that such a migration will be detected early and that appropriate corrective measures could be undertaken by the District.

34. Protestant Pedotti's fourth proposed condition requests the Board to reserve jurisdiction in this matter. For the several reasons explained elsewhere in this decision, we agree and the extent that we reserve jurisdiction is explained herein.

Availability of Unappropriated Water

35. Protestants' claims to the present and prospective use of water on riparian land respond to the issue of whether unappropriated water is available to supply the applicant. The Board's practice in considering claims of riparians is to measure the riparian right by the actual beneficial use of water and to authorize the issuance of a permit subject to vested rights. Such a practice accomplishes two purposes: First, it authorizes the use of water which is not currently being put to beneficial use. Second, it protects the riparians' future use of water by requiring the permittee to accept as a condition of his permit the provision that the permit's issuance is subject to vested rights and therefore,

the permittee could not successfully claim that his use of water had prescripted the riparians' use of water.

36. Based upon our analysis of the data of record, we find that the total supply available during the dry period is, on the average, about 906 af. This total supply figure is comprised of the following:

1. natural underflow which contributes 56 af and which is equivalent to a flow of 93 gpm;
2. channel storage above the maximum well field drawdown line which contributes 576 af; and
3. channel storage between the maximum well field drawdown line and sea level, which contributes 274 af[8/].

We find that the total demand during the dry season is, on the average, about 875 af. This total demand figure is comprised of the following:

1. water which flows to the Pacific Ocean and controls sea water intrusion, which totals about 124 af and which is equivalent to a flow of 200 gpm;
2. water lawfully diverted by protestant Pedotti which comprises about 176 af;[9/]

---

8. The amount of water in channel storage between the maximum well field drawdown line and sea level is not available to the District, as earlier explained in Finding 14; it is available to the upstream riparians.

9. As stated in Finding 37, protestant Pedotti's present total irrigation demand is 332 af. However, only about 53 percent of this amount or about 176 af would be utilized during the normal dry season.

3. water lawfully diverted by protestant Warren which comprises about 2.1 af;[10/]

4. water proposed to be diverted by the District during the dry season, which comprises about 572 af;

Consequently, on the average, during the dry season there is a small amount of water in excess of existing demand and the applicant's projected use . It should be noted that the above quantities are based on the Board's evaluation of the factors influencing the supply and this evaluation indicates a lesser supply than projected by the District. If the District's estimates were utilized, a more optimistic estimate of the supply results.

37. Protestant Pedotti claims a total ultimate riparian use of water of about 765 af. This total use consists of the following components:

a. Use of a maximum of 110 af in a gravel washing plant. Such water is returned to the streamshed of San Simeon Creek and results in little net loss to the underflow.

b. Future use of 320 af of water on land now utilized for dry farming (RT 157). The top of this field is over 250 feet in elevation above San Simeon Creek and it is extremely doubtful that the marginal increased return from such land by irrigating would justify the high costs of pumping water from the underflow of San Simeon Creek to the field.

---

10. As earlier stated in Finding 26, Protestant Pedotti claims 3-1/4 af for domestic use; protestant Warren claims 20 gpm for domestic use. Although Protestant Warren did not state a total annual water demand, a generous allocation is an amount equal to Protestant Pedotti's claim. Total riparian demand upstream of the proposed well field would be 339.

c. Present riparian use of 335 af, which is found to reflect a reasonable duty of water.

38. During the winter the storage in the channel of San Simeon Creek will fill and unappropriated water is available to supply the applicant at the proposed diversion rate of 2.5 cfs. The difference of opinion between the District and the protestants about the availability of unappropriated water relates to the dry season of each year. The District assumed that the San Simeon Creek channel would be full in the spring until surface flows at the Palmer Flats Gage ceased and that such flows ceased on the average about July 1. The District further assumed that the dry season would last for 140 days. Protestant Pedotti correctly pointed out that the dry season in dry years may be longer and may occur during a different period. The impact on applicant's project of this correct assertion can best be illustrated by assuming a 200-day dry season. In such an event, it is found that the total demand that would be placed upon the system by waste and sea water repulsion, by reasonably foreseeable lawful riparian uses, and by the District's use under conditions of full development, would exceed the supply available during this 200-day dry season by about 200 af. Since applicant's proposed use is municipal, we would be concerned about the potential for periodic short-falls in the supply available to the District's inhabitants during dry seasons of such extended length.[11/]

---

11. There is no question that such short-falls, if any, would accrue to the District since any entitlement issued will contain a condition subjecting it to vested rights, as noted in Finding 35, supra.

However, in this case the applicant has available to it a firm alternative source of supply of 260 af from its Santa Rosa basins diversions. While water from this source is of poor quality (see Finding 6, supra), it may be used when blended with the higher quality water proposed to be diverted by the instant application. (RT 106 and 109.) The alternative firm yield of the Santa Rosa basins diversions is found to be adequate to make up any periodic short-falls and thereby assure a firm supply to the District's inhabitants.

39. The Board concludes that there is unappropriated water available to the District, and, subject to appropriate conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water. The intended use is beneficial.

Finding Relative to the California Environmental Quality Act

40. In October 1976, the District certified a Final Environmental Impact Report (EIR) for the proposed upgrading of its water distribution system and for the proposed diversion from the underflow from San Simeon Creek. The EIR identified a number of adverse impacts associated with the construction of the proposed project. These include:

a. a dust hazard
b. an increase in ambient noise levels
c. a hazard to traffic and persons from open trenches and heavy machinery
d. construction through known archaeological sites
e. disturbance to biological habitat

41. The District proposes to mitigate these adverse impacts as follows:

a. dust hazard -- the supervising engineer will be directed to suppress dust conditions when they occur and to replace pavement within a specified period after removal to install pipelines.

b. noise hazard -- the equipment utilized by the contractor will be required to conform with noise emittance standards of the National Occupational Safety and Health Act. Furthermore, the contractor will be limited to 8-hour daylight shifts in areas where noise might disturb residents in close proximity to the construction site.

c. traffic hazard -- a maximum length of 600 feet of open trench will be allowed at any construction site. During non-working hours all open trenches will be barricaded and properly signed.

d. archaeological impacts -- these impacts will be mitigated by designing the pipeline alignment within existing highway rights-of-way near site 637, and by removing existing pipelines in the vicinity of site 177 and placing new pipelines in the same existing trench. The San Luis Obispo County Archaeological Society will be notified before construction begins at the site and will be allowed to carefully remove human and cultural remains encountered during construction.

e. biological habitat -- the District proposes to minimize disturbance to biological habitat during construction. In areas where vegetation is temporarily disturbed by construction, natural vegetation will be encouraged to return so as not to unnecessarily reduce animal foraging areas or natural habitats.

42. The District also identified the following impacts resulting from the operation of the proposed well field:

a. an adverse impact on steelhead trout,

b. degradation of groundwater by sea water intrusion and contamination with domestic wastewater.

c. lowering the groundwater level,

d. growth inducement

The District proposes to mitigate the impacts on steelhead trout by accepting the conditions of the Department of Fish and Game for protection of the steelhead trout. These were discussed in Finding 11 above.

43. The District proposes to avoid the adverse impacts on the groundwater by undertaking a San Simeon Valley Water Basin Management Program. The purpose of this program is to provide guidance for maintaining an adequate water supply of suitable quality to meet the community demand, to minimize deleterious effects downstream, such as seawater intrusion, and to prevent the migration of recharged sewage effluent into the well field for the production of potable water. While the draft of this program is rather detailed, several major aspects of the program need be briefly described. As

explained in Finding 9, above, the District's sewage will be spray irrigated on the lower reaches of San Simeon Creek. That portion of the effluent, which percolates into the ground, should provide a hydraulic barrier to prevent the intrusion of seawater. Furthermore, since the District does not plan to lower the water table under the production well field below sea level, no inducement of seawater intrusion can be expected from the well field operation. The District proposes to monitor several wells to assure that the water level does not fall beneath sea level. In the unlikely event that seawater intrusion does occur, the District proposes to extract the saline water by a new extraction well and to reduce pumpage in the well field. Since the Basin Management Program as ultimately adopted by the District will affect the quality of water in the underflow of San Simeon Creek and the fishery resources of San Simeon Creek, it is appropriate for the Board to condition any permit issued on this application upon development and implementation of suitable operational water supply criteria in a final Basin Management Program. The Board should reserve jurisdiction to impose additional permit terms and conditions which would include suitable operational water supply criteria for the protection of vested rights and the public interest.

44. Since the effluent disposed of downstream may migrate to the production well field during periods of heavy pumping, the District's program includes water quality monitoring. From observation wells located upstream of the disposal area, the District proposes to sample on a quarterly basis during the winter months and on a monthly basis during periods of heavy pumping. The District proposes

four different types of analyses: (1) routine complete, (2) special components; (3) trace elements, and (4) bacteriological. A routine complete analysis is for calcium, magnesium, sodium, potassium, carbonate, bicarbonate, chloride, sulfate, nitrate, pH, electrical conductivity, and total dissolved solids at 180° C. Special component monitoring is for monitoring effluent movement. It includes analysis for nitrogen forms, phosphate forms, boron, and methylene blue active substances -- a test for detergents. Trace element analysis will be primarily for those components required by drinking water standards. bacteriological monitoring is primarily for coliform bacteria.

45. The Board concludes that the District proposes to develop an adequate monitoring program to assure protection of potable water upstream from the effluent disposal area. However, to assure that an adequate monitoring program is maintained, a permit term requiring a monitoring program satisfactory to the Chief of the Division of Water Rights should be included in any permit issued on this application.

46. The measures which either the District proposes or the Board will require the District to undertake to mitigate the lowering of the groundwater level are explained elsewhere and will not be repeated here.

47. The Final EIR indicates that the expansion of the water system to serve new subdivisions in accordance with the Cambria General Plan would be facilitated by the proposed diversion. Since the California Coastal Commission has jurisdiction over the land use in most of the District's service area, the Coastal

Commission has the authority and has adopted appropriate conditions to mitigate any adverse impacts of growth inducement caused by the approval of this permit.

48. The Final EIR indicates that water conservation is a water source immediately available to the District. At the time the Final EIR was certified, the District had undertaken a voluntary water conservation program. However, because of the worsening water supply situation, the District adopted on June 23, 1977, Ordinance No. 4-77, An Urgency Ordinance for Water Conservation. This ordinance includes a very stringent water conservation program. For example, residents in the community are limited to 50 gallons per day; industrial uses are cut back to 50 percent of the previous years usage; motels are subject to a stringent allowance, which is parallel to the requirement for residences. The District contemplates Ordinance No. 4-77 as only a temporary measure in this period of drought. However, Condition 6 of the permit issued by the South Central Coast Regional Commission required the District to demonstrate the existence of a water conservation program prior to the utilization of its facilities.[12/] Condition 6 further stated:

> "An acceptable water conservation program shall include, at a minimum: elimination of the decreasing block rate structure which currently exists; modification of the plumbing portions of the building code to require installation of low-flow toilets and pressure reducing devices on all taps; establishment of a retrofit program providing free water dams and pressure reducing washers; and evidence of a public information

12. This requirement was included in the conditions adopted for Application No. 132-18 of the District by the South Central Coast Regional Commission. These conditions were introduced into evidence as Exhibit 3 of the District.

program informing the public of the need to save water, the availability of flow reduction devices, and the need to use drought-resistant plants in landscaping."

Such a water conservation program, when implemented, will substantially reduce wasteful methods of use of water within the District.

49. The Board concludes that the District has either mitigated or avoided the significant effects of the project as identified in the Final EIR and at the hearing on this matter. From the foregoing findings, the Board concludes that Application 25002 should be approved and that a permit should be issued to the District subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 25002 be approved in part and that a permit be issued to the District subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second, to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 572 acre-feet between July 1 and November 20 each year, or 1,230 acre-feet per annum.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before six months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1979.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1995.

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

7. 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.

8. Pursuant to California Water Code Section 100, 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 prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to

meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) 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.

9. 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 soley through the control of waste discharges.

10. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

11. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Coast Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

(1) The Regional Board issues a waiver pursuant to Section 13269, or

(2) The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

12. For the protection of fish and riparian wildlife habitat, permittee shall observe the following conditions:

a. The permittee shall maintain water levels in the lower basin to sustain stream flow to the lagoon at the mouth of San Simeon Creek to maintain fish and riparian wildlife habitat.

b. The permittee shall provide and operate as necessary irrigation facilities to maintain riparian vegetation within the district owned property.

c. In accordance with Section 1601 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fish and wildlife resources have been incorporated into the plans and construction of such diversion. The construction, operation, and maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

13. For the purpose of protecting vested rights approval of the location of all production wells by the Chief of the Division of Water Rights is required prior to diversion under this permit.

14. The Board reserves jurisdiction to amend, revise, supplement or delete terms and conditions in the permit to protect vested rights and specifically to add terms and conditions which would include suitable operational water supply criteria for the protection of vested rights and the public interest.

15. District shall implement a well monitoring program for water production and quality of its wells and, at District's expense, of the wells of those of protestants and other diverters who agree to participate in such program. The District shall not divert any water under this permit until a monitoring program has been approved by the Chief of the Division of Water Rights.

16. District shall install and maintain totalizing flow meters or separate power meters on all of its wells.

IT IS HEREBY FURTHER ORDERED that Application 25102 is cancelled.

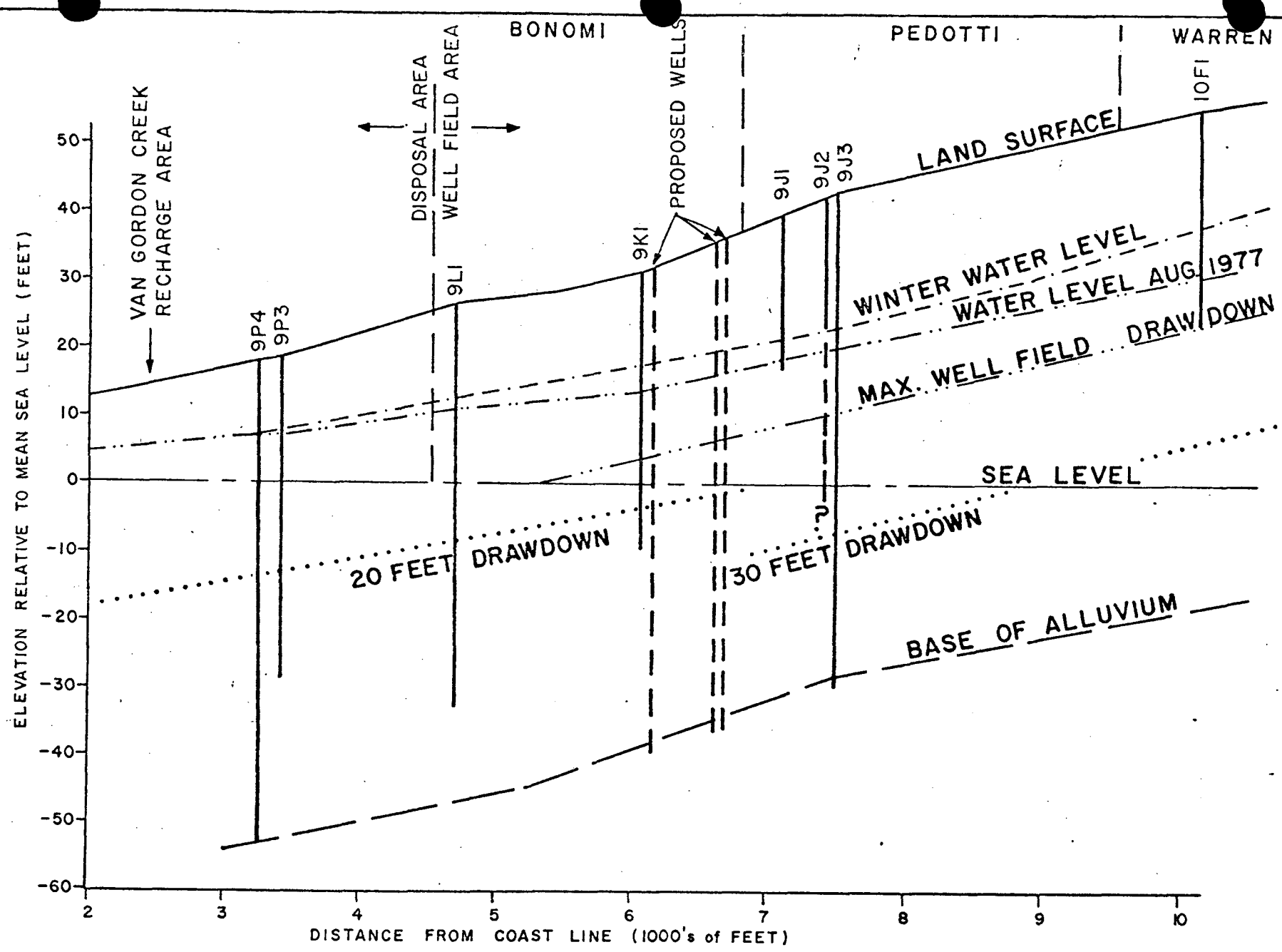
Dated: DEC 15 1977

WE CONCUR:

W. W. Adams, Member

John E. Bryson, Chairman

W. Don Maughan, Vice Chairman



HYDROGEOLOGIC SECTION - SAN SIMEON CREEK

3087