

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: [PJMLAW@pacbell.net](mailto:PJMLAW@pacbell.net)

THOMAS S. VIRSIK

May 22, 2012

Charles R. Hoppin, Chairman  
State Water Resources Control Board  
Coastal Hearing Room – Second Floor  
Joe Serna, Jr. - Cal/EPA Headquarters Building  
1001 "I" Street,  
Sacramento, CA 95814

Re: May 23, 2012 Public Workshop concerning UC Davis Report On Nitrate In  
Groundwater ("Davis Report")

Dear Mr. Hoppin:

**Introduction**

This office represents and has represented agricultural interests throughout the State of California for over 40 years before the SWRCB. We have been accused by a prominent UC Davis Professor who has worked for our opponents that our office works on behalf of clients to solve problems. During this representation it has frequently been our clients' position that it is important to have a full public disclosure of individual farmer water usage (both historical and current) and farming practices because this is the only way the water resources of the State of California can be fully optimized. This position has been challenged by individuals, water agencies and the SWRCB over the years.<sup>1</sup> The Davis Report gives the SWRCB a roadmap by which it can determine the scope of the Nitrate Problem in the State and economically address the problem. It is our sincere hope that this is not another report that the SWRCB and/or Legislature ignores for either political or budgetary reasons.

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<sup>1</sup> Efforts by PJM clients to publicly disclose water usage and the results of the efforts. 1) See WRD 1404 (Charles B. See)—This led to People v. Forni and the Napa Frost Protection Program; 2) fought to obtain water data collected by MCWRA in Salinas Valley. Based on hypothetical calculations the clients were able to establish that the Upper Valley and Forebay had a limited impact on Salt Water Intrusion. 3) Actively supported the Sax Report and proposed requiring the use of WC Section 5100 et seq. by all water users. SWRCB took no action. 4) Actively fought for the disclosure of individual farmers' water use in the Imperial Valley for the last ten years. Our clients are still trying to get the Board to accept their individual water use data. See Exhibit B for further details.

### **Importance of UC Davis Work**

There are four important messages in the Davis Report

A. To the extent there is a public health issue involving nitrates, it can be solved at a reasonable cost mainly through drinking water treatment.

B. Since direct measurement of nitrate leachate is costly to obtain, the regulator should initially fund treatment efforts with fees on fertilizer application until a taskforce can explore nitrate mass accounting as a basis for fees. Page 72.

C. Since nitrate mass accounting is inseparable from water flows accounting, irrigation management is equally important as nitrogen management in the determination of the amount of nitrate leachate beyond the root zone both to assess fees more accurately based on current contribution as well as for determination of cost-effective agrichemical loading reductions. Volume 2, Page 66.

D. Importance of collection and coordination of data.

### **Private Comments**

This office has spent a considerable amount of time with the Davis researchers and they have offered the following private comments:

A. If we had started collecting and coordinating data 20 years ago on water and nitrate application and farming practices the problem would have been much better understood and we would have by now been developing solutions.

B. The distinction between underflow and groundwater as defined in California law does not exist in the world of hydrology.

### **History of Modern Day Agriculture in the Salinas Valley in Monterey County**

Salinas Valley is where modern California irrigated agricultural started over 250 years ago. One of the advantages of the Salinas Valley is that a lot of this irrigated agricultural history is documented. See for example:

1. Franciscan Reports on the Missions
2. Govt. Reports during the twentieth century.
3. County Tax Records
4. US Govt. AG censuses.

Scholars are currently analyzing historical agricultural and water use records in Monterey County. This will help determine whether this long-term historical agricultural and water use had any impact on the nitrate issue.

### **Prior Data Collection by MCWRA**

There is another data set already collected by the Monterey County Water Resources Agency (MCWRA) which was not referenced in the Davis Reports. Many decades ago the SWRCB became concerned about Salt Water Intrusion in the Salinas Valley. MCWRA developed a sophisticated water management system. We described this system in detail in a letter we sent to RWQCB in March 2012. Exhibit A (Letter dated March 13, 2012 from Patrick J. Maloney to Jeffrey Young). This water and land use information was carefully gathered by the farming community over the last 20 years. When this data is publicly disclosed it will shed further light on

the contribution of irrigation flows by crop type and soils by location to the nitrate issue in the Salinas Valley. Any further work on nitrates should incorporate this information. There is no good reason to reinvent the wheel over the next 20 years and develop a new data-set when the information is already collected.

**Mythology vs. Facts**

There is a major difference between mythology and facts on water issues in this State. For example:

A. The County of Napa suggested you could have approximately 10,000 acres of vineyard development in Napa County because of water problems. There are now substantially more acres.

B. The County of Monterey thought that its Salt Water Intrusion was caused by the creation of the vineyards in the Southern Part of the County. It turned out to be false.

C. Many experts thought the introduction of Drip Irrigation would dramatically reduce the use of water in Salinas Valley on row crops. It has not happened.

There are numerous examples throughout the State where the creativity of the farming community has solved what looked like insurmountable water problems once the decision makers dealt with facts instead of mythology. We suggest that the Davis Report offers insights as to how the public, the farming community and SWRCB can work together to solve whatever nitrate problems there may be in the State of California. The SWRCB should recommend a course of action to the Legislature based on the report.

Sincerely yours,

*Patrick J. Maloney*

Patrick J. Maloney

cc: Thomas Harter, PhD

# EXHIBIT A

LAW OFFICES OF  
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PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: [PJMLAW@pacbell.net](mailto:PJMLAW@pacbell.net)

THOMAS S. VIRSIK

March 13, 2012

Jeffrey S. Young, Chair  
California Regional Water  
Quality Control Board  
895 Areovista Place, Suite 101  
San Luis Obispo, CA 93401

Re: Item 4, March 14-15, 2012, Central Coast Regional Water Quality Control Board  
("Board")

Dear Mr. Young:

We represent land and farming interests in Monterey, San Luis Obispo, and Santa Barbara Counties.

The agenda for March 14, 2012 reveals that the Board is considering the adoption of a renewal of a "Conditional Waiver of Waste Discharge Requirements for Irrigated Agriculture" (the so-called "Ag Waiver"). The Ag Waiver contemplates in part the collection of data about land use, farming units, farming practices, cropping patterns, fertilizer application, run off, and water use in the Salinas Valley. This office provided prior oral and written comments on the Ag Waiver. See e.g., August 31, 2011 letter.

The Staff Report at page 6 relies on a certain Study prepared by UC Davis in connection with SB X2. The analyses of its primary author, Dr. Thomas Harter, are relied upon in the Staff Report as well. See e.g., page 8. The actual Study (i.e., not the prior working draft) is dated today and will be addressed (at earliest) on May 23, 2012. We incorporate by reference that Study, albeit the public has not had sufficient time to thoroughly process it and its technical reports yet and there is no assurance that it will be adopted in its present form.

The impact of the Study is being presented to the Board via this letter and oral comments at the earliest possible time (within hours) of the public release of the Study. It is patently

relevant – seemingly critical – to the Staff Report and action recommended since Staff relies on an unofficial prior version of the Study's data and analyses, below.

We ask that you delay any action on the Ag Waiver until Staff and the public has had the opportunity to digest the Study and its numerous technical reports. Since it has been released today, it would be unrealistic to expect that your Staff has been able to properly harmonize its findings and suggestions with Staff's earlier in time report. The Study will not be formally adopted until at least May 23, 2012 anyway. As the Study makes explicit, one of its statutory purposes is to "develop recommendations for developing a groundwater cleanup program for" this Board. Study at page 11. The Ag Waiver is in part a means to clean up the groundwater through nitrate limits and management. This Board would be countering the underlying legislation if it moved forward without first assessing the Study's recommendations.

Another key point Staff and the board should consider is the final "key finding" of the Study about the inconsistency of data. In that vein, almost twenty years ago the State Water Resources Control Board insisted the County of Monterey develop a sophisticated data collection system to determine land use, farming use, cropping patterns, and water use in the Salinas Valley and collect this data. At great expense to the County and the farming community over the last twenty years Monterey County developed such a program. This collection process does not currently collect the chemical or fertilizer applications or potential run off from the lands. We do not know if the Data Collection system can be easily modified to include this information.

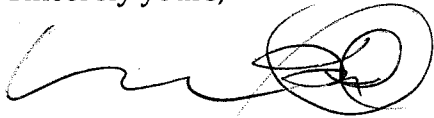
The landowner/tenant is required to prepare and file detailed reports on a yearly basis to submit to the Monterey County Water Resources Agency (MCWRA) as part of this data collection process. The forms that the each farmer is required to file can be found on the MCWRA home page – Misc. Forms – Ground Water Extraction & Conservation Forms – Agriculture – Agricultural Water Conservation Plan. URL: [http://www.mcwra.co.monterey.ca.us/forms/forms\\_ag.html](http://www.mcwra.co.monterey.ca.us/forms/forms_ag.html). A sample form is attached. The reports generated by these filings can be found at MCWRA home page – Available Data and Reports. URL: <http://www.mcwra.co.monterey.ca.us/index.html>. The report includes not only ground water but also surface water activities.

The State recently made clarifications in Water Code sections 5100 et seq. that potentially will require a significant number of landowners in the Salinas Valley to make a filing concerning their water use. Much of the information that will be required in these filings will be similar to information required in connection with Monterey County's requirements as well as the contemplated requirements under the Ag Waiver.

The State Water Resources Control Board (SWRCB) has been adamant that reporting requirements should be unified and standardized wherever possible, including for example expanding the scope of the statements of water diversion. By a copy of this letter we are asking the SWRCB to serve as the leader in the endeavor to harmonize the data requirement

for reporting by the farming community. This should be done as soon as possible but until it is done this Board should not adopt the Ag Waiver.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Patrick J. Maloney', with a large, stylized circular flourish at the end.

Patrick J. Maloney

C. Charles R. Hoppin, Chairman SWRCB  
Thomas Harter, PhD  
Monterey County Board of Supervisors:  
Fernando Armenta  
Louis Calcagno  
Simon Salinas  
Jane Parker  
Dave Potter

Encl. 2012 Agricultural Water Conservation Plan form

Office Use	
address code :	
staff :	
date :	

## 2012 Agricultural Water Conservation Plan

(Submit one plan per company)

*Please check all that apply, fill in the acreage blanks and sign below.*

- ☐ **I farm property** in Zone(s) 2, 2A, or 2B; the information included in this Agricultural Water Conservation Plan for the 2012 growing season is correct; I am engaged in the business of raising crops for commercial purposes; and I will implement the irrigation management practices selected in this plan during the 2012 growing season. The amount of acreage that I will farm/operate in 2012 ...

<input type="checkbox"/> <b>will not change</b> since 2011.	<input type="checkbox"/> <b>will increase</b> since 2011.	<input type="checkbox"/> <b>will decrease</b> since 2011.
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	<u>Previous</u> <u>2011</u>	<u>Upcoming</u> <u>2012</u>
① <b>GROSS ACRES</b> (All acreage <b>including</b> farm roads, buildings, etc.)	_____	_____
② <b>NET FARMABLE ACRES</b> (Physical field acres, Nurseries, <b>excluding</b> farm roads, buildings, etc.)	_____	_____
③ <b>NUMBER OF ACTIVE (OPERATIONAL) IRRIGATION WELLS</b>	_____	_____

Below, list reason(s) for any **changes in the number of wells** from the previous year. Include ranch changes (losses or gains) and any abandoned, destroyed, or newly drilled wells.

Added / Deleted	Ranch Name	Assessor Parcel Number	Acreage	Number of Wells	Previous / New Company

X	X	( )
Signature	Print Name	Date
Phone No.		

**NOTE: If necessary, please provide updated company information to the right of the existing information.**

Designation:

COMPANY:

CONTACT:

ADDRESS:

CITY, STATE ZIP:

☐ **I would like my raw data kept confidential.**

## 2012 Agricultural Water Conservation Plan

Please complete the chart below listing the number of Net Farmable Acres associated with the crop type(s) and irrigation method(s). Record the sum of all listed Net Farmable Acres on the "Total NET FARMABLE ACRES" line at the bottom of the chart (*do not multiply by number of crops per year*). Results of this irrigation method survey provide valuable and unique information regarding the status of irrigation practices in the Salinas Valley.

<b>Enter the number of Net Farmable Acres per Irrigation Method below:</b>										
	Average number of crops per acre	Furrow Only	Sprinkler / Furrow combination	Hand-move sprinkler only	Solid-set or permanent sprinkler	Sprinkler / Drip Combination	Drip Only	Micro-spray / Micro-sprinklers	Linear-Move (overhead)	Other (specify): _____
Vegetables										
Field Crops (beans, grain, etc.)										
Berries	1.0									
Grapes	1.0									
Tree Crops	1.0									
Forage Crops (alfalfa, pasture, etc.)										
Other: _____										
Set-aside (fallow)										
<b>Total NET FARMABLE ACRES: _____</b>  <b>Must equal your NET FARMABLE ACRES from</b> <b>page 1, line ②, 2012 column.</b>										

**Company Name:** \_\_\_\_\_

## 2012 Agricultural Water Conservation Plan

### **Irrigation Management Options**

For 2012, please indicate whether or not you intend to implement any Management Options and how many Net Farmable Acres would be affected by the practice (*must not exceed the figure on line ②, page 1, 2012 column*).

For 2011, please indicate whether or not the Management Options were implemented and how many Net Farmable Acres were affected by the practice.

For guidelines and definitions of terms, please refer to the Appendix on our website: [www.mcwra.co.monterey.ca.us](http://www.mcwra.co.monterey.ca.us) and click on "Misc. Forms".

	2011			2012		
<u>Irrigation Management Options</u>	<u>Yes</u>	<u>No</u>	<u>Net Farmable Acres</u>	<u>Yes</u>	<u>No</u>	<u>Net Farmable Acres</u>
12-month Set-aside	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Summer Fallow (90 days between Apr.1 and Sep.30) or Other Fallow (210 consecutive days)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Water Flowmeter(s)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Time-clock on pump and/or pressure switch on booster	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Use of Soil Moisture Sensors and/or ET Data (CIMIS)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Pre-irrigation Reduction	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Agricultural Mobile Irrigation Lab	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Transplants	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Educational Sessions (Applies to <u>all</u> Net Farmable Acres)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Conservation Program	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Reuse of Tailwater or Run-off	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Recycled Water (Castroville Seawater Intrusion Project)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____

Company Name: \_\_\_\_\_

## 2012 Agricultural Water Conservation Plan

### **Irrigation Management Options continued...**

	2011			2012		
<u>Sprinkler Irrigation System Improvements</u>	<u>Yes</u>	<u>No</u>	<u>Net Farmable Acres</u>	<u>Yes</u>	<u>No</u>	<u>Net Farmable Acres</u>
Reduced Sprinkler Spacing	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Sprinkler Improvements (uniform nozzle sizes and/or flow control nozzles)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Off-wind Irrigation	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Leakage Reduction (replacing gaskets)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Linear-Move (overhead)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
<u><b>Micro Irrigation Systems</b></u>						
Drip Tape / Hose	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Pressure Compensating Emitters / Tape (reduce pressure fluctuations along a row)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Micro-spray / Micro-sprinklers	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
<u><b>Surface Irrigation System Improvements</b></u>						
Surge Flow Irrigation	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Shorten Field Run (Lessen furrow length or add a manifold line down center of field to cut water run in half.)	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Tailwater Return System	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____
Laser Leveling / Major Land Grading	<input type="checkbox"/>	<input type="radio"/>	_____	<input type="checkbox"/>	<input type="radio"/>	_____

Company Name: \_\_\_\_\_

## EXHIBIT B

RE: IMPERIAL VALLEY

## Barbara Evoy - Maloney Statements

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**From:** Bob Rinker  
**To:** Evoy, Barbara  
**Date:** 9/28/2011 1:28 PM  
**Subject:** Maloney Statements  
**CC:** Sawyer, Andy  
**Attachments:** Maloney Documents.PDF

---

Barbara,

I received the attached documentation from Patrick J Maloney. He is the gentleman that spoke at a recent Board session indicating to date we have not processed his statements. I still have all of the filings in a box in my cube [REDACTED]. The letter is addressed to you and cc's the Board members. Still need direction on what we are going to do with his statements and how to address him.

Thanks,

Bob Rinker  
Division of Water Rights  
Fee & Data Management Manager  
(916) 322-3143  
rrinker@waterboards.ca.gov



Patrick Maloney &lt;pjmlaw@gmail.com&gt;

---

**Public Request Act Response**

3 messages

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**Bob Rinker** <rrinker@waterboards.ca.gov>  
To: "<PJM Law" <pjmlaw@pacbell.net>

Wed, May 16, 2012 at 1:28 PM

Mr. Maloney,

In response to your Public Records Act request, please find the attached document. A portion of this document has been redacted because it is protected by the attorney client privilege and therefore is exempt from disclosure requirements pursuant to Government Code sections 6254, subdivisions (a) and (k), and 6255. The State Water Board also has records of internal communications between legal counsel and technical staff that are protected by the attorney client privilege and exempt from disclosure requirements in their entirety. Dana Heinrich, Staff Attorney IV, is the person who decided to withhold exempt records in this matter.

If you have any questions, you can contact me at (916) 322-3143 or at [rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov).

Bob Rinker  
Division of Water Rights  
Fee & Data Management Manager  
(916) 322-3143  
[rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov)

**Maloney Documents .PDF**  
2567K

---

**Pjmlaw@gmail** <pjmlaw@gmail.com>  
To: Patrick Maloney <pjmlaw@gmail.com>

Wed, May 16, 2012 at 2:01 PM

Sent from my iPhone

Begin forwarded message:

**From:** Bob Rinker <[rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov)>  
**Date:** May 16, 2012 1:28:31 PM PDT  
**To:** "<PJM Law" <[pjmlaw@pacbell.net](mailto:pjmlaw@pacbell.net)>  
**Subject:** Public Request Act Response

[Quoted text hidden]



**Maloney Documents .PDF**  
2567K

**PJM Law** <[pjmlaw@pacbell.net](mailto:pjmlaw@pacbell.net)>  
Reply-To: [pjmlaw@pacbell.net](mailto:pjmlaw@pacbell.net)  
To: Bob Rinker <[rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov)>

Thu, May 17, 2012 at 9:27 AM

Mr. Rinker,

Please indicate to which numbered category in our April 4, 2012 request, the document provided is responsive.

We assume that more documents are forthcoming by the deadline set in your prior email, given the scope of the request. Alternately, are we to understand that the balance of the requested items are presently covered by the attorney client privilege, including letters SWRCB staff sent to this office in the past?

With regard to the 9/28/2011 (printed on May 2, 2012) email from you to Barbara Evoy, it reflects that you had "received the attached documentation from Patrick J. Maloney." We are assuming SWRCB has retained the "attached documentation" from a non-privileged source reflected in the non-privileged email transmission. Please provide the referenced documentation in its pdf form as reflected in the email.

Additionally, please provide a copy of the privilege log (date, author, etc) listing all exempt documents so that the public may intelligently consider its rights to challenge any conclusions thereon.

PJM

[Quoted text hidden]

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Law Office of Patrick J. Maloney  
2425 Webb Avenue, Suite 100  
Alameda, CA 94501  
[510-521-4575](tel:510-521-4575)

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LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

April 2, 2012

Barbara Evoy, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: California Public Records Act  
Statements of Water Diversion  
Colorado River – Imperial County

Dear Ms. Evoy:

This a formal request for the below information pursuant to the Constitutional rights found in the California Public Records Act.

Please provide copies of the following:

Copies of all correspondence, emails, memoranda and documents (including drafts) between the SWRCB, Imperial Irrigation District and the Law Offices of Patrick J. Maloney and/or any of its agents.

An electronic format is acceptable if that will simplifies and/or expedites matters. We are prepared to pay any cost for reproduction at a reasonable rate. Please let us know if you will be unable to comply with this request in the statutory time.

Very truly yours,



Patrick J. Maloney

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THOMAS S. VIRSIK

September 22, 2011

Barbara Evoy, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: Statements of Water Diversion  
Colorado River – Imperial County

Dear Ms. Evoy:

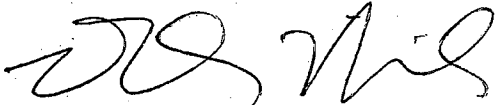
Since 2006, our office has had pending before the SWRCB staff over 350 statements of water diversion for waters from the Colorado River by clients in the Imperial Valley. As the enclosed copies of letters (by no means representative of all of the communication) demonstrate, staff has refused for some five years to file the statements. Most recently, staff's five-year delay was brought to the attention of the Board during the Water Diversion Measurement Workshop this year. Staff's decision to preclude the filing of the subject statements is now threatening to derail the imminent petition by Imperial Irrigation District (IID) to the Board addressing the same waters in the same basin, of which IID resolution the SWRCB is aware. See IID Resolution 27-2011 and the media article referencing the SWRCB spokesperson.

Our clients are in no way through this letter suggesting agreement, objection, protest or other position with IID's as yet unfiled petition. Nor are they taking a position in favor or against IID's proposal to transfer allegedly surplus waters and the environmental effects and alternatives to the project goal of creating funds for Salton Sea restoration or mitigation. However, the petition and IID's proposal will necessarily involve the waters of the Colorado River that are diverted for use in the Imperial Valley, to which the pending statements of diversion are facially germane.

This office is aware, through other clients in other water basins, that SWRCB staff has been diligent in perusing statements of water diversion. When staff believes such statements are to be filed but have not been (or supplements are missing), staff follows through with at times threats of penalties and fines. Thus, staff is obviously in possession of adequate tools and resources as well as Board direction in seemingly every other basin and with respect to all other diverters to follow the law. Nor does it appear that mere "controversy" dissuades the Board from taking action, as the recent Russian River regulation (September 20, 2011) makes abundantly plain.

Because of the imminence of the IID petition, the delay (intentional or otherwise) by staff looks to prejudice not only our clients, but also the IID, its water transfer "partners" on the Coast whose IID agreements are inextricably tied to the Salton Sea, and hence the millions of resident that are affected thereby, as well as the overall water policy of the State. Our clients demand that the backlog be resolved forthwith, and in all events their statements of water diversion be filed as of the date of presentation (with the amendments requested by staff as well as their own) before the acceptance of any IID petition addressing the waters of the Colorado River.

Very truly yours,



Thomas S. Virsik

c.

Charles R. Hoppin, Chair

Tam M. Dudoc, Board Member

Frances Spivy-Weber, Vice Chair

Kevin Kelley, GM IID

Enclosures:

May 12, 2006 letter (IID) (w/o encl.)

May 16, 2006 letter

August 30, 2006 letter (w/o encl.)

April 22, 2010 letter

June 16, 2010 letter

July 21, 2011 letter to Chair Hoppin (w/encl.)

"IID Seeks to Cut Off Salton Sea," Desert Sun, September 22, 2011

IID Resolution 27-2011

LAW OFFICES OF  
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e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

September 22, 2011

Barbara Evoy, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: Statements of Water Diversion  
Colorado River – Imperial County

Dear Ms. Evoy:

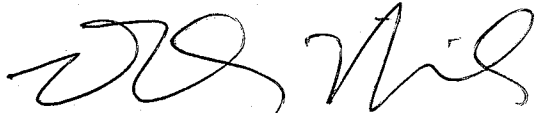
Since 2006, our office has had pending before the SWRCB staff over 350 statements of water diversion for waters from the Colorado River by clients in the Imperial Valley. As the enclosed copies of letters (by no means representative of all of the communication) demonstrate, staff has refused for some five years to file the statements. Most recently, staff's five-year delay was brought to the attention of the Board during the Water Diversion Measurement Workshop this year. Staff's decision to preclude the filing of the subject statements is now threatening to derail the imminent petition by Imperial Irrigation District (IID) to the Board addressing the same waters in the same basin, of which IID resolution the SWRCB is aware. See IID Resolution 27-2011 and the media article referencing the SWRCB spokesperson.

Our clients are in no way through this letter suggesting agreement, objection, protest or other position with IID's as yet unfiled petition. Nor are they taking a position in favor or against IID's proposal to transfer allegedly surplus waters and the environmental effects and alternatives to the project goal of creating funds for Salton Sea restoration or mitigation. However, the petition and IID's proposal will necessarily involve the waters of the Colorado River that are diverted for use in the Imperial Valley, to which the pending statements of diversion are facially germane.

This office is aware, through other clients in other water basins, that SWRCB staff has been diligent in perusing statements of water diversion. When staff believes such statements are to be filed but have not been (or supplements are missing), staff follows through with at times threats of penalties and fines. Thus, staff is obviously in possession of adequate tools and resources as well as Board direction in seemingly every other basin and with respect to all other diverters to follow the law. Nor does it appear that mere "controversy" dissuades the Board from taking action, as the recent Russian River regulation (September 20, 2011) makes abundantly plain.

Because of the imminence of the IID petition, the delay (intentional or otherwise) by staff looks to prejudice not only our clients, but also the IID, its water transfer "partners" on the Coast whose IID agreements are inextricably tied to the Salton Sea, and hence the millions of resident that are affected thereby, as well as the overall water policy of the State. Our clients demand that the backlog be resolved forthwith, and in all events their statements of water diversion be filed as of the date of presentation (with the amendments requested by staff as well as their own) before the acceptance of any IID petition addressing the waters of the Colorado River.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TS Virsik', written over a horizontal line.

Thomas S. Virsik

c.

Charles R. Hoppin, Chair

Tam M. Dudoc, Board Member

Frances Spivy-Weber, Vice Chair

Kevin Kelley, GM IID

Enclosures:

May 12, 2006 letter (IID) (w/o encl.)

May 16, 2006 letter

August 30, 2006 letter (w/o encl.)

April 22, 2010 letter

June 16, 2010 letter

July 21, 2011 letter to Chair Hoppin (w/encl.)

"IID Seeks to Cut Off Salton Sea," Desert Sun, September 22, 2011

IID Resolution 27-2011

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

June 16, 2010

Victoria A. Whitney, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: Statements of Water Diversion  
Colorado River – Imperial County

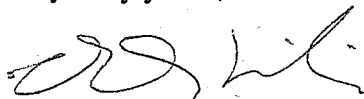
Dear Ms. Whitney:

Enclosed is a copy of our April 22, 2010 letter (without enclosures). To date, we have received neither a response nor any indication that the statements of water diversion were filed ahead of the July 1, 2010 deadline. We again demand that the SWRCB file our clients' statements.

Additionally, our clients intended to file amendments to their statements once received and numbered by the SWRCB. Since the SWRCB has delayed for over four years, our clients do not have the filing information (e.g., a numbered copy of their statement) on which they can tender individual amendments. Thus, our clients have no option but to tender the following universal amendment to Footnote 1 for all statements reflected in the April 22, 2010 letter:

*Corporations Code § 14452 (formerly Civil Code § 552). Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands that the corporation has sold, the right to the flow and use of that water is and shall remain a perpetual easement to the land so sold, at any rates and terms that may be established by the corporation in pursuance of law. Whenever any person who is cultivating land on the line and within the flow of any ditch owned by the corporation, has been furnished water by it with which to irrigate his or her land, that person shall be entitled to the continued use of that water, upon the same terms as those who have purchased their land from the corporation.*

Very truly yours,



Thomas S. Virsik  
Enclosure April 22, 2010 letter

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

April 22, 2010

Victoria A. Whitney, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: Statements of Water Diversion  
Colorado River – Imperial County

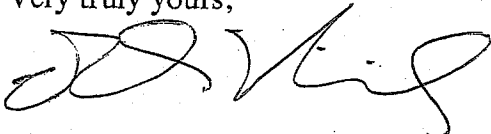
Dear Ms. Whitney:

Beginning in March 2006 and continuing through December 2006, this office presented over 350 statements to the SWRCB for filing on behalf various clients that use Colorado River water in the Imperial Valley. To date not a single statement has been filed. Since none of the statements have been returned to our office, we know the statements are still in the Board's possession so we are not sending additional copies. A list of all statements sent to the Board is enclosed.

The Legislature's passage of SB 8 (the amendments to Water Code §§ 5100, et seq), made effective starting February 2010, has brought those statements to the fore. Both our clients and the SWRCB are now obligated to follow the detailed and mandatory requirements of SB 8. Accordingly, we demand on our clients' behalf that the statements already presented be processed and filed as of the date of their receipt, i.e., starting in 2006. Given the substantial changes and new burdens and presumptions in the Water Code wrought by SB 8, our clients are concerned that they may suffer prejudice should the Board's records erroneously suggest that their reporting of their diversions and use dates only after the passage of SB 8.

In addition, and without waiving any of the above, please confirm that the format of the statements and their contents already in the Board's possession is sufficient for any future filings under SB 8, whether for diversions from the Colorado River or otherwise.

Very truly yours,



Thomas S. Virsik  
Enclosure

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: PJMLAW@pacbell.net9

THOMAS S. VIRSIK.

May 16, 2006

Victoria A. Whitney  
Division Chief  
Division of Water Rights, SWRCB  
P.O. Box 100  
Sacramento, CA 95812

Re: Statements of Water Diversion  
Colorado River – Imperial County

Dear Ms. Whitney,

This office is in receipt of a letter from IID dated May 12, 2006 (by David Osias) regarding various Statements of Water Diversion submitted by clients. That letter speaks in terms of "filings." Staff had informed us that the Statements were not yet filed. In fact, we had transmitted material just last week and have been preparing modifications to maps and other parts of the forms based on staff direction. If the Statements have in fact been filed, please return to us at least the face pages bearing a stamp or number showing so.

If the Statements are not yet filed, how did IID obtain copies of what was submitted to the SWRCB? While our clients have made no secret of the preparation and their efforts in filing the Statements (see e.g., the January 30, 2006 letter to Mr. Chrisman of the DWR), we had not publicly released the actual Statements. Is IID privy to internal SWRCB materials, i.e., pre-filing processes? If so, our clients make demand for the same access and materials under the California Public Records Act.

We had spoken to staff two years ago about filing Statement for Colorado River diversions. Our initial batch of Statements was sent on or about March 8, 2006 and since that time we have had multiple contacts with staff about the Statements. Staff indicated that the Statements were statutorily appropriate, but sought certain specific clarifications to aid in processing, which we are providing. We also noted an error with the first batch, and submitted certain replacements.

If the SWRCB desires, we can provide a detailed response to the various statements of error, material omissions of IID's statements before the Board, irrelevant claims, threatened criminal and civil liability, and legal argument contained in IID's letter. For example, while IID complains that certain detailed water use information is missing, it failed to state that when our clients asked for that information, IID refused to provide it (and a simple web search confirms that IID has the information readily available). Or, that IID is apparently unaware of

longstanding SWRCB practice to file Statements by landowners who are “redirecting” water that is initially diverted by a local agency pursuant to a permit or license some distance away (e.g., Tanimura & Antle’s Statements in the Salinas Valley when the initial diversion is from permitted reservoirs 150 miles away). Or perhaps most notably, that our clients assert pre-1914 rights, i.e., rights over which the SWRCB exercises no jurisdiction (see WRO 2002-13).

Our clients do not wish, however, to turn an administrative activity into an adjudicative one, much less a multi-stage tug of war. The newest Statements contain substantially more detailed maps at the request of staff. Other changes have been made, too, that may assist IID in reassessing its position with respect to the Statements. Our clients believe it is in the interest of efficiency for IID to take ample time and resources to assess its positions in light of the Statements now being presented, after staff input, rather than the initial and now modified batch. If staff has further questions, we can address those. We are providing IID with this letter (1) copies of several (42) current Statements of the next batch (approx 200) to be sent to the SWRCB so that IID may have the benefit of the improvements suggested by SWRCB staff and (2) the most recent written communication to staff (the electronic document is on a CD). (The exemplars do not contain signatures, but otherwise are the same as those to be submitted to the SWRCB).

Once IID has had the opportunity to consider those materials and SWRCB staff has completed its own inquiry, we can provide a point-by-point response to the May 12, 2006 letter. If you prefer a more immediate response, please let us know.

We are sending a copy of this letter to Mr. Lee of the Attorney General’s office since IID believed it appropriate to include him in this exchange.

Sincerely

PATRICK J. MALONEY

c.

Dana Heinrich  
Clifford Lee  
Les Grober (SWRCB)  
David Osias (IID)

Encl. to IID only:

Elmore (42) Statements (w/o signatures)  
May 9, 2006 letter to Les Grober (SWRCB)

RE: SALINAS VALLEY  
NAPA  
SAX REPORT

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: [PJMLAW@pacbell.net](mailto:PJMLAW@pacbell.net)

THOMAS S. VIRSIK

August 31, 2011

Jeffrey Young, Chairman  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

Re: Item No. 16 – Report of Prof. Harter, Ph.D. (UC Davis) on nitrate study

Dear Mr. Young:

I am with the office of Patrick J. Maloney in Alameda. Our office has been a strong advocate for the accurate reporting of water use data for decades. See July 21, 2011 letter to Chairman Hoppin (SWRCB) at the Water Diversion Measurement Workshop, and references therein. July 21, 2011 Thomas S. Virsik letter to Charles R. Hoppin, Chairperson, SWRCB, enclosed. For this letter, we represent various clients in the Salinas River basin that have been following the progress of the nitrate situation at this Board and elsewhere.

The report presented by Dr. Harter on June 21, 2011 at the State Water Board Meeting in Sacramento concludes with the following language: "Incoherence and inaccessibility of data prohibit better and continuous assessment." We respectfully suggest a certain direction that may help alleviate that substantial stumbling block – and by necessary implication, the management of the nitrates in the Salinas River basin. See e.g., Agenda Item 17, indefinitely postponed. For without a thorough understanding and general comfort with the data, any project to alleviate nitrate problems is likely to be either ineffective or counterproductive.

We are suggesting a two-pronged approach, both prongs of which are necessary to obtaining a thorough analysis of data on which future action can be based. The two prongs can be broadly seen as (1) the addition of water quality data reporting relevant to nitrates (or whatever data Dr. Harter identifies) on the already required statements of water diversion (Water Code sections 5100, et seq) and (2) a finding or policy that all water pumped in the Salinas River basin is underflow of the Salinas River rather than true groundwater, unless a filer can demonstrate otherwise (e.g., well depth).

Both prongs would require action by this Board and likely by the State Water Resources Control Board. For example, certain interests in the Salinas Valley represented by this office

sought the disclosure of detailed pumping data in the SWRCB July 6, 2000 Order Quashing Subpoena of Clients of Mr. Maloney in connection with the expansion of the Monterey County Water Resources Agency's permit for the Nacimiento Reservoir. The SWRCB determined that privacy prevailed. Now, some decades later, the policy of the State and of the SWRCB of late is to require more detailed and reliable disclosures. See e.g., July 20, 2011 Agricultural Water Use Efficiency Workshop and July 21, 2011 Water Diversion Measurement Workshop and Chairman Hoppin's observation that crafting one integrated form is superior to a multitude of inconsistent forms.

The second prong of determining that the water pumped in the Salinas River basin is presumed to be the underflow of the Salinas River may also need to revisit certain prior decisions and policies. In 1992 the SWRCB discussed the difference between groundwater and underflow of the Salinas River. July 14, 1992 SWRCB Report - United Agricultural Association, enclosed. It is no longer appropriate to make such distinctions in the Salinas River basin.

With a presumption about the underflow of the Salinas River and a requirement that the reporting of diversions and use include the data good science requires (e.g., as Dr. Harter recommends), a much better understanding of the true state of nitrates and their causes can be ascertained, on which an effective policy can be based.

The proposals herein may be controversial to some, but anything less than reliable data will result in, at best, inequity and, at worst, increasing the problem.

Very truly yours,

[Thomas S. Virsik](#)

Thomas S. Virsik

Encl. July 21, 2011 Thomas S. Virsik letter to Charles R. Hoppin, Chairperson, SWRCB  
SWRCB July 6, 2000 Order Quashing Subpoena of Clients of Mr. Maloney  
July 14, 1992 SWRCB Report - United Agricultural Association

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
e-mail: [PJMLAW@pacbell.net](mailto:PJMLAW@pacbell.net)

THOMAS S. VIRSIK

July 21, 2011

Charles R. Hoppin, Chairman  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Comments for SWRCB 7/21/2011 Water Diversion Measurement Workshop --  
Tina Shields (IID) letter 7/1/2011

Dear Mr. Hoppin:

I am with the office of Patrick J. Maloney in Alameda. Our office has been a strong advocate for the accurate reporting of water use data for decades. See April 2, 2002 Patrick Maloney letter to Paul Murphey. Our experience in the Salinas Valley, for example, was that the initial modeling conclusions about the cause and rate of seawater intrusion were inaccurate. Only with better data was the real problem understood and at least a partial solution implemented. This Board had a substantial role in those events in the late 1990's.

We represent clients in the Imperial Valley that own lands and whose water rights predate the creation of IID. These are at least the pre-1914 rights recognized by the US Supreme Court. Arizona v. California, (2006) 547 U.S. 150, 175.

Beginning in 2006, these clients filed over 350 statements of water diversion and they continued to update the statements through at least 2009. There was extensive correspondence between SWRCB staff and our office. As far as we can tell, SWRCB has never actually filed the statements of water diversion, even after the 2009 amendments that made more explicit the filing requirements.

This office previously prepared, and the SWRCB accepted for filing, the same sort of statements of water diversion from individual water diverters in Monterey County, on the Salinas River. Yet, with the Colorado River the statements have not yet been officially entered into the eWRIMS database. The SWRCB would have been far ahead with respect to Imperial Irrigation District's (IID) reporting had its staff filed the statements years ago when they were received.

Our clients are aware of the July 1, 2011, letter from IID's Assistant Water Department Manager, Tina Shield, to the SWRCB. They agree with some of it, but take issue with other

statements. Our clients are not surprised that IID admits in at least two places that the present measurement system is inaccurate. (Shields July 1, 2011 letter – 2<sup>nd</sup> ¶, 2<sup>nd</sup> to last sentence; 3<sup>rd</sup> ¶ 3<sup>rd</sup> and 4<sup>th</sup> sentences.) IID is admitting in those statements that what it has been reporting for decades has never been accurate. IID calls it a “magnitude of error.” Yet, in its conclusion IID asks that it be exempted from improving its measurements and reporting.

Since at least 2003, our clients have been trying to engage IID in broad improvements to its measurement systems. The clients have provided to IID modest cost proposals on how to make those improvements by working with the on-the-ground water users. One such proposal is for what our clients call the “Water Exchange” – a water management, conservation, measurement tool for which they received a patent. Our clients’ website explains a little about its use. [www.imperialgroup.info](http://www.imperialgroup.info). As Secretary Ross pointed out yesterday at the agricultural efficiency workshop, there are always innovators; it is getting the rest to follow that can be problematic. In this instance, the party declining to follow is one over whom this Board has authority – an irrigation district.

From our clients’ perspective, IID has available to it a ready means to materially improve its water management by cooperating with its water users – one of the so-called “unique circumstances” which this Board should consider. Or, does the Board wish to set a policy allowing or even encouraging diverters to ignore better technologies and practices that are fiscally reasonable just because the diverter is fearful of what such analysis and improvement may reveal?

IID claims in its last paragraph that the reporting by the United States Bureau of Reclamation (USBOR) is adequate, notwithstanding how IID characterized the measurement quality and its effects in the two prior paragraphs. What IID failed to mention is that during that time – in 2002 to 2003 – that the BOR performed a detailed analysis of IID’s water use (what is sometimes known as a Part 417 analysis). The BOR’s primary recommendation to IID was that IID “develop, maintain and use a district-wide network of water measurement devices for consistent monitoring, recording and reporting of system and on-farm water data.” BOR Determinations and Recommendations, August 29, 2003. So, contrary to what IID is suggesting, the BOR already is an advocate for better measurement and reporting by IID. Moreover, as Chairman Hoppin articulated at yesterday’s workshop, when there are competing systems of reporting, the goal is to harmonize, not ignore the potential differences.

IID’s diversions account for a substantial amount of the total California water diversions. IID’s letter conveniently omits this relevant piece of information. A 10% error of IID’s diversions -- 300K -- represents the entirety of the water transfer to the Coast (QSA) that IID mentions in its second paragraph. Imagine the affect of that amount of water – for better or worse – on the state of the Salton Sea. (The Board may wish to recall how Prof. Burt at yesterday’s workshop characterized the importance to the State of the potential improvements for IID.) As this Board and everyone else is likely aware, the QSA transfer is presently on appeal because the parties had utterly mishandled the Salton Sea. Had IID been forced to collect and make publically available more and better data, the transfer and the role of the Salton Sea in it would have been far different. Using the terminology advocated by Prof. Gleick at yesterday’s workshop, the co-

benefits of a transfer based on good data versus poor or missing data could have been starkly disparate.

The potential benefit to the State in forcing one of its largest diverters to sit down and work cooperatively with the on-the-ground water users to improve the measurement and delivery of water is too important to degenerate into political favoritism. Our clients who have over 350 pending statements of water diversion for the Colorado River as it passes through the IID service area strongly advocate that IID join the balance of the water diverters in improving its measurements and management as the law now requires.

There may be political reasons why IID wishes to maintain its inaccurate data reporting, but the absence of accurate data will only further aggravate the State's water problems.

Very truly yours,

*Thomas S. Virsik*

Thomas S. Virsik

Encl. Patrick Maloney April 2, 2002 letter to Paul Murphey, SWRCB

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY  
THOMAS S. VIRSIK

(510) 521-4575  
FAX (510) 521-4623  
San Francisco (415) 512-0406  
e-mail: PJMLAW@pacbell.net

JOHN F. HANSON, JR.  
OF COUNSEL

April 2, 2002

Paul Murphey  
Division of Water Rights  
SWRCB  
Sacramento, California

Re: Workshop on Professor Sax's Report  
SWRCB No. 0-076-300-0  
April 10, 2002

Dear Mr. Murphey:

Professor Sax's Report is a significant document. The SWRCB should pay particular attention to Chapters V and VI. The solutions Professor Sax proposes in these two Chapters are important to water issues in the state and are particularly important to California's economy over the next fifty years. Our comments on the Report are divided into the following categories:

- A. Background
- B. Responses to the Questions Posed by the Board
- C. People v. Forni
- D. Indefinite Nature of California Water Rights
- E. Existing Statutory structure

Background

Over the last thirty years lawyers in our Office have been involved in a number of different water issues in the State of California:

Re: Professor Sax report  
4/02/02

Page 2

1>Developed the arguments and positions at the SWRCB on behalf of private clients which ultimately became People v. Forni.

2>Represented major landowners throughout California and Nevada.

3>Represented major financial institutions with concerns about their investments in California because of the water issue.

4>Co-Authoring an article entitled "Restructuring America's Water Systems" published by the Reason Foundation. Neal, Kathy, Patrick J. Maloney, Jonas A. Marson and Tamer E. Francis, Restructuring America's Water Industry: Comparing Investor-Owned and Government-Owned Water Systems, Jan. 1996 (Reason Foundation, Policy Study No. 200). Many people see this article as an argument for privatization of the water delivery system in America. Morgan, Steven P. and Jeffrey I. Chapman, Issues Surrounding the Privatization of Public Water Service, Sept. 1996 (ACWA). The word "privatization" does not appear in the article. The article has received extensive criticism from organizations like ACWA, but the Reason Foundation article suggests public policy makers should rethink how water is distributed and managed in America and California in particular. The article has been purchased and studied by most significant water interests in the world including but not limited to financial institutions, water purveyors, engineering firms, and think tanks.

5>Developed the Instadjudicator. This is an interactive database that instantly determines a landowner's water rights or water entitlement in the Salinas Valley. The interactive database uses public source inputs such as chains of title, the APN system, assessor map overlays, County and State publicly available databases, defined engineering terms, the results of computer runs from the Salinas Valley Integrated Ground and Surface Water Model and other non-proprietary information. The utility of such a tool is to (1) quickly develop "what if" scenarios, and (2) to identify anomalous or skewed inputs or uses, e.g., identify by inferring from multiple sources that water use in a section of the analyzed area is substantially higher than the surrounding areas viz. unreasonable. We are not suggesting that the Instadjudicator is the only solution to the State's water issues but what is needed is a similar tool for all over-drafted (and ultimately all) basins so there can be a critical analysis of a Basin's water issues and "what if" scenarios can be quickly understood.

Engineers involved in the Mojave case have reviewed the operation of the Instadjudicator and suggested its use would hasten the resolution of the Mojave case. The Instadjudicator was offered to the SWRCB with appropriate technical assistance for its use but the offer was rejected. At a contested hearing the

Re: Professor Sax report  
4/02/02

Page 3

SWRCB refused to force the Monterey County Water Resources Agency to release data by which the instant adjudication of the Salinas Valley could be accomplished. Hearing on Motion to Quash Subpoenas, 6/28/00, Application 30532. A staff member of the SWRCB has suggested there are two problems with the Instadjudicator: A) The name and B) that this office developed it.

6>The office is currently working on an analysis of the leadership in the Water and Sewer industry with prominent People of Color. The purpose of this analysis is to compare the existing leadership of the water industry against the demographic make-up of the State now and forty years from now. The preliminary results of this research indicate that the California's water industry is not reflective of the ethnic demographic make-up of the State now or forty years from now.

#### Responses to the Questions Posed by the Board

Professor Sax proposes quantifiable criteria by which the water user could determine whether or not it is pumping percolating groundwater. The first problem with the proposed criteria is that they will involve more engineers arguing arcane hydrologic issues. These arcane hydrological issues are irrelevant if there is an unreasonable use of water. More importantly the percolating groundwater and underground surface water classification will change depending on what crop is used and how much water is being pumped in a given basin. What these criteria do is add further confusion rather than bring more definability to water usage in California. From time to time or place to place making the fine distinctions advanced by Professor Sax may be necessary, but only as a component of an overall solution-oriented water management system, not as the starting point. Making the management of California water more complex is not in the State's interest.

#### People v. Forni

Over thirty years ago adjudication was proposed for the Napa Valley and our vineyard clients decided adjudication would not solve the water problems caused by Frost Protection in the Napa Valley. The clients and their representatives instead worked closely with the staff of the SWRCB led by Ken Woodward, the former Chief of the Division of Water Rights, and the SWRCB to develop the principles which ultimately became People v. Forni. These principles and facts were presented in a highly contested hearing before the SWRCB. The arguments and the facts presented by our clients were the basis for the See decision and from

Re: Professor Sax report  
4/02/02

Page 4

the See decision the SWRCB developed the regulation challenged in People v. Forni. People ex rel. SWRCB v. Forni (1976) 54 Cal.App.3<sup>rd</sup> 743; See Decision 1404. Our clients presented these positions because they felt the only way a system for Frost Protection could be developed was if all water sources in the water basin were considered and managed. Under the far-sighted leadership of Chairman Adams and Members Robie and Auer the SWRCB used its Sections 100 and 275 powers and brought stability to the region's water problems and allowed the Napa Valley to prosper. The lesson the SWRCB can learn from Forni is that once it develops a carefully reasoned engineering position it should take an active role in solving a region's water problem before the problem becomes a crisis.

For the last five years another set of clients have advocated a similar solution, the application of Sections 100 and 275 powers to the Salinas Valley's salt water intrusion and nitrate problems and the SWRCB has repeatedly rejected our clients' pleas. The current Chief of the Division of Water Rights has opposed the use of Sections 100 and 275 powers by the SWRCB because "initiating an unreasonable use proceeding would be viewed by the local agency as a 'blind-side' attack, and would probably be considered a back-door adjudication by the agricultural community. Nevertheless, if other efforts fail, this type of action would be preferred over an adjudication because the SWRCB could address administratively rather than in a judicial proceeding in superior court." (Confidential) Memorandum from Harry Schueller on Salinas Valley, June 16, 2000, page 8. The SWRCB's inaction has put in jeopardy the water supply of a major city in California and will likely cost the taxpayers (State and/or local) tens or hundreds of millions of dollars that could have been avoided by forcing a certain limited segment of the agricultural community to use water reasonably in the first place. The SWRCB has the power to solve water problems in this State and most of the issues raised in Professor Sax's Report. It must use the power and not worry about offending local water agencies or limited segments of the agricultural community.

#### Indefinite Nature of California Water Rights

No one really knows who has water rights in California. All water licenses are subject to vested rights. What those vested rights are is anybody's guess. Probably the most interesting statement made in Professor Sax's Report is found in footnote 122 wherein he cites In re Waters of Long Valley for the proposition that there is no such thing as unexercised riparian water rights in California. Long Valley probably does not say that, but the point is there is no water right in

Re: Professor Sax report  
4/02/02

Page 5

California if the actual or contemplated water use is unreasonable. The Sax Report is full of references to cases by various California courts over the last century, which apply the reasonableness test to solve a water problem. There are no absolute water rights. A water right disappears in California when the needs of the community demand it.

The most disturbing problem we have in California water issues is that the SWRCB cannot figure out what its position is on most issues and the underflow issue is just a manifestation of the problem. We have staff letters of the SWRCB and Licenses telling the public that certain water rights exist yet frequently in public hearings of all types we have representatives of the SWRCB or other agencies of the State denying the validity of SWRCB's earlier positions. The SWRCB looks like a fool. To the outside world the State of California looks like a fool. In earlier times California could do whatever it pleased. Now, however, we have few major banks or financial institutions left in California and in order to maintain financing for our homes, agriculture and industries we must bring some order and discipline to the State's water system. We have to have more definability in our water system. We cannot reject definability merely because it upsets the sensitivities of certain water agencies or members of the agricultural community. The magic of People v. Forni and other things done in the Napa Valley to define water rights and optimize the region's water resources brought confidence to the investing and lending institutions and helped spur the development of California's wine industry.

#### Existing Statutory Structure and Actions of the SWRCB

Professor Sax's Report fails to recognize how much the Legislature and the SWRCB has actually done to solve the State's water problem. We direct the SWRCB's attention to Water Code Sections 5100 et seq. and 1010 et seq. and the forms prepared by the SWRCB. STATEMENT (1-00) and ST-SUPPL (2-01). No one knows exactly how to fill out the forms because of the SWRCB's inability to define underflow and consumptive use but at least there is a form. SWRCB has expanded the Section 5100 form dramatically in recent years without legislative approval. The forms should be expanded administratively to require water users to report all types of water sources and use. If the SWRCB does this administratively, there will be no need for the legislative action feared by Professor Sax. Once the forms are filed the data should be put into the existing publicly accessible SWRCB databases defined by USGS basin lines. Then Computer tools

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should be developed for each water basin such as an "integrated groundwater and surface water model" throughout the State by which anyone could easily ascertain a reasonable use of water for a given basin.

Such a system would encourage conservation and the orderly transfer of water. Either the SWRCB or somebody else could then stop anybody who is unreasonably using water pursuant to Water Code Sections 100 and 275. Anybody who is using less than a reasonable amount water could transfer water to somebody who has a need for the conserved water. Then the State's water argument will be over reasonable use of water in any given basin not over the application of unclear laws to disputed hydrological facts.

Ultimately if the expanded Section 5100 form is not filled out and filed by a water user, the Legislature could develop legislation establishing a presumption the water user forfeits whatever water rights it has unless the water user can demonstrate good cause for not filing the form. Notwithstanding much of the uncertainty about the present filing system, this office has been active in filing reports for its various clients, relying on various public sources to explain and detail positions where the SWRCB has not provided clarity. This office understands the system to be akin to recording ownership of real property. In other words, if a water user declines to follow the statute and does not file, its claim will be entitled to less weight than any competing claim of a water user who followed procedures and filed reports – similar to that of a property owner who takes title but does not record it. Water users also file Statements with the expectation that this State database will be used by EIR preparers to catalogue and analyze water rights for a given project. Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal App 4<sup>th</sup> 99, 122; Petition for Extension of Time for Permit 5882 (Application 10216) (1999).

California's computer industry deals with much more complex than the State's water issues. The SWRCB should rely on this industry for solutions. The SWRCB's existing data system on water rights should be modified to make all pumping data publicly available and a system of inquiry developed so the public can ascertain a reasonable water use standard for each basin.

### Conclusion

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The Sax Report offers important statutory history. The SWRCB should carefully consider the Report's generalized recommendations and develop an action plan to pursue the goal of a more defined system of water rights. This will ultimately lead to an overall solution-oriented water management system.

Very truly yours,

Patrick J. Maloney



**Winston H. Hickox**  
*Secretary for  
Environmental  
Protection*

# State Water Resources Control Board

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## Executive Office

901 P Street • Sacramento, California 95814 • (916) 657-0941  
Mailing Address: P.O. Box 100 • Sacramento, California 95812-0100  
FAX (916) 657-0932 • Internet Address: <http://www.swrcb.ca.gov>



**Gray Davis**  
*Governor*

July 6, 2000

TO: PERSONS TO EXCHANGE INFORMATION FOR HEARING ON  
APPLICATION 30532

### ORDER QUASHING SUBPOENA OF CLIENTS OF MR. MALONEY

As part of an adjudicative proceeding on a water right application filed by the Monterey County Water Resources Agency (MCWRA), Application 30532, Mr. Patrick Maloney, attorney for a group of protestants which has been named "Salinas Valley Protestants," (protestants) issued a subpoena duces tecum (subpoena) to MCWRA. Two items that the protestants have requested that MCWRA produce pursuant to the subpoena are "all water extraction reports" (item 1) and "all water conservation reports" (item 2). MCWRA filed a Motion to Quash the Subpoena of Clients of Mr. Maloney (motion) as to items 1 and 2. MCWRA provided documents responsive to the other requests contained in the subpoena and they are not at issue in this motion.

A hearing was held on June 28, 2000, to provide an opportunity for the parties to present oral argument in accordance with Code of Civil Procedure section 1987.1. As hearing officer for the hearing on the motion and for the hearing on Application 30532 of MCWRA, I must resolve the motion. (Gov. Code, § 11450.30, subd. (b).) I read all briefs submitted prior to the hearing and I listened to the arguments given at the hearing.

### Issues

MCWRA raises three issues in its motion:

1. The information requested in the subpoena is not relevant to the issues noticed for hearing on Application 30532.
2. The information requested in the subpoena is confidential by MCWRA ordinance 3717 and is protected by an outstanding order of the Monterey County Superior Court.
3. The subpoena is not valid because it was not served properly, not accompanied by a proof of service, and not accompanied by an affidavit.

### Discussion

#### Relevance

MCWRA ordinance 3717 requires the annual reporting of groundwater extraction data and water conservation information on forms provided by MCWRA. The information reported is compiled in the MCWRA's Groundwater Extraction Management System (GEMS) database.

Pursuant to an order of the Monterey County Superior Court (Order on Motion to Compel Production of Well Extraction Data, *Orradre Ranch, et al. v. Monterey County Resources Agency*, No. 115777), Mr. Maloney has been given the water extraction data in the GEMS database aggregated by township and range without the personally identifiable portions. The court order does not address the conservation data.

The protestants contend that the groundwater extraction data and the water conservation data (items 1 and 2 in the subpoena) are relevant for four purposes:

1. To rebut MCWRA's water availability analysis;
2. To establish the protestants' conjunctive use of water in the Salinas Valley;
3. To "optimize" the water resources of the Salinas Valley; and
4. To determine how much water each person in the Salinas Valley should be allowed to pump.

The amount of water extracted from and conserved in the Salinas Valley groundwater basin may be relevant to the water availability issue noticed for the hearing on Application 30532. Water is not available for appropriation to the extent it deprives groundwater users of recharge on which they depend. The recharge serves groundwater extractors as a group, however, and it is the amount extracted in the aggregate – data that have already been made available to Mr. Maloney - not the amount extracted by any individual user, that is relevant to the inquiry. The personally identifiable portions of the reports in which extraction and conservation data are recorded are not relevant to any of the issues noticed for hearing.

The protestants contend that the subpoenaed data are needed as a matter of fundamental fairness to test the accuracy of the calculations, assumptions, and methodology used in MCWRA's water availability analysis. MCWRA developed and uses the Salinas Valley Integrated Groundwater and Surface water Model (SVIGSM) as a planning tool to analyze the hydrogeology of the Salinas Basin. MCWRA did not use the data in the GEMS database to develop or calibrate the SVIGSM. (Reply Brief, Exhibit A.) MCWRA did not use the GEMS database in developing its testimony, exhibits, or analysis for the hearing on Application 30532. (Reply Brief, Exhibit B.)

The protestants also contend that they need the subpoenaed information to establish their conjunctive use of water in the Salinas Valley. The protestants can use their own extraction and conservation data to show their use. The personally identifiable portions of the reports submitted by other groundwater users is not relevant to that issue.

The protestants contend that they need the subpoenaed information to enable the State Water Resources Control Board (SWRCB) to “optimize” the water resources of the Salinas Valley. The protestants contend that the SWRCB needs the subpoenaed information to develop a “rational solution” to the water problems in the the Salinas Valley. Neither optimizing the water resources of the Salinas Valley nor solving all of the water problems in the Salinas Valley is within the scope of the hearing on Application 30532. The purpose of the hearing on Application 30532 is to determine whether there is water available for the project described in the application. The subpoenaed information is not relevant to issues that are within the scope of the hearing.

The protestants contend that they need the subpoenaed information to determine how much water each person in the Salinas Valley should be allowed to pump. A determination of the amount of water each person should be allowed to pump would require an adjudication of the water rights of the Salinas Valley. An adjudication of water rights is outside the scope of the hearing and the subpoenaed information is not relevant to resolution of the issues noticed for the hearing on Application 30532.

The protestants have failed to establish the relevance of the subpoenaed information to the issues within the scope of the hearing.

#### Confidentiality

As described above, MCWRA ordinance 3717 requires the annual reporting of groundwater extraction data and water conservation information on forms provided by MCWRA. Section 1.01.13 of ordinance 3717 states that:

“The Agency shall restrict access to and distribution of personally identifiable information consistent with privacy protections and requirements and trade secret protections.”

Pumpers have relied on the confidentiality provision in complying with the ordinance. Without the confidentiality provision in the ordinance and promises of confidentiality made by MCWRA to the growers, it is doubtful that growers would submit the information. Many growers consider the information required to be submitted to be a trade secret. MCWRA needs the cooperation of the growers to get the information it needs to manage the water resources within its jurisdiction.

Section 1.01.02 of ordinance 3717 describes the purpose of the ordinance. The purpose includes:

1. Determine actual amounts of water extracted from the basin.
2. Provide information that can be used to develop demand management programs created by an inadequate water supply.
3. Facilitate and encourage water conservation by monitoring water use patterns and practices.

4. Facilitate the development of new water supplies by using the data collected to determine whether new water projects are necessary.
5. Allow MCWRA to allocate the costs of water management activities in the Salinas Basin and any new water projects for the basin, based on actual water use.

The success of MCWRA in managing the water resources within its jurisdiction depends on the cooperation of the pumpers in complying with ordinance 3717. Compliance with the ordinance depends on the promise to maintain the confidentiality of the information submitted. Without compliance, MCWRA is unable to use a valuable management tool. The protestants have not demonstrated that their need for the personally identifiable information outweighs the need of MCWRA to keep this information confidential.

The protestants contend that the SWRCB has waived the confidentiality of the subpoenaed data because it “ordered the Agency to craft a water availability analysis” and “[b]y ordering such an analysis to be placed into the public record, the Board has already determined that the confidentiality of water data is outweighed by the Board’s statutory responsibility to determine whether water is available to the Agency.” Neither statement is true. In fact, the SWRCB neither waived confidentiality nor made any determination as to whether other considerations outweighed the need to maintain confidentiality. SWRCB staff merely informed MCWRA, by letter dated March 26, 1999, that MCWRA must submit information that demonstrates a reasonable likelihood that unappropriated water is available for appropriation under Application 30532. There is no correspondence or any other documentation in the files to show that the SWRCB considered or made any determination regarding the confidentiality of data submitted pursuant to ordinance 3717.

#### Validity of Subpoena

MCWRA contends that the subpoena was not served properly, not accompanied by a proof of service, and not accompanied by an affidavit as required by law.

Government Code section 11450.20, subdivision (b), provides three ways to issue a subpoena: personal service, certified mail, and messenger. Messenger service was used to issue the subpoena. A copy of the written notation of acknowledgment of the subpoena, required by Government Code section 11450.20, subdivision (b), was not served on the parties or the SWRCB, but service of the acknowledgment is not required. MCWRA obviously received the subpoena. Failure to file proof of acknowledgment does not invalidate the subpoena. Proof of service of the subpoena was served on the SWRCB.

Code of Civil Procedure section 1985, subdivision (b), requires service of an affidavit with the subpoena. (See also Gov. Code, § 11450.20, subd. (a); 25 Cal.L.Rev.Comm. Reports 55 (1995).) The affidavit must include the following:

1. Show good cause for the production of the documents described in the subpoena.
2. Specify the exact documents requested to be produced.

3. Set forth in full detail the relevance of the desired documents to the issues noticed for hearing.
4. State that the MCWRA has the desired documents in its possession or under its control.

An affidavit was not served with the subpoena issued to MCWRA. Failure to serve the required affidavit at the time the subpoena is served invalidates the subpoena.

The protestants contend that an affidavit is not required and that the SWRCB's subpoena form allows a subpoena for documents without an affidavit. Contrary to the protestants' contention, the SWRCB's subpoena form provides notice of the necessity of an affidavit. (See SWRCB subpoena form at page 1, part 2 (a) and page 2, part 1.) The protestants cite Code of Civil Procedure sections 1985, subdivision (b), and 2020 as support for their contention that an affidavit is not required. The sections cited by the protestants do not support their contention.

Code of Civil Procedure section 1985, subdivision (b) requires an affidavit be served with a subpoena duces tecum. Subdivision (b) of section 1985 states: "A copy of an affidavit shall be served with a subpoena duces tecum issued before trial..." (emphasis added).

Code of Civil Procedure section 2020 does not apply to a subpoena duces tecum; it only applies to a deposition subpoena for the production of business records for copying. Section 2020 does not require service of an affidavit with the subpoena if the subpoena commands only the production of business records for copying. (Code Civ. Proc., § 2020, subd. (d)(1).) The subpoenaed information is not a business record because the water extraction reports and the water conservation reports were not prepared by MCWRA. (Evid. Code, § 1561, subd. (a)(3).) Accordingly, section 2020 does not apply.

The subpoena is not valid because Mr. Maloney failed to serve the required affidavit as required by Code of Civil Procedure section 1985, subdivision (b). Failure to provide the SWRCB and the parties with proof of service showing the manner of service does not invalidate the subpoena. Although failure to obtain the required written notation of acknowledgment may also call into question the validity of a subpoena, I do not believe the subpoena should be quashed on that basis, however, because there is no dispute regarding receipt of the subpoena and no indication that any party was prejudiced by the omission.

## **Conclusion**

I find that:

1. The information requested in items 1 and 2 of the subpoena is not relevant to the issues noticed for the hearing on Application 30532.
2. The information requested in items 1 and 2 of the subpoena is confidential and should not be disclosed to the protestants.

3. The subpoena is not valid for failure to serve the affidavit required by Code of Civil Procedure section 1985, subdivision (b).

Accordingly, the motion to quash is granted. The subpoena is quashed as to items 1 and 2.

If you have any questions regarding my ruling, please contact Barbara Katz at (916) 657-2097.

Sincerely,

*ORIGINAL SIGNED BY:*

John W. Brown  
Hearing Officer

cc: Barbara Katz, Esq.  
Office of Chief Counsel  
State Water Resources Control Board  
901 P Street [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100

List of Persons to Exchange Information

Mr. Kevin Long  
Mr. Mike Mainz  
Division of Water Rights  
State Water Resources Control Board  
901 P Street [95814]  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Monterey County Water Resources Agency Nacimiento Reservoir Hearing  
July 18 and 19, 2000, to be continued if necessary, on July 24, 25 and 26, 2000  
(dated June 6, 2000)**

California Sportfishing Protection Alliance  
c/o Mr. Robert J. Baiocchi  
Consultant/Agent  
P.O. Box 1790  
Graeagle, CA 96103  
Phone: (530) 836-1115  
Fax: (530) 836-2062  
E-mail: [cspa@psln.com](mailto:cspa@psln.com)

Clark Colony Water Company  
Rosenberg Family Ranch, LLC  
c/o Mr. Alan B. Lilly  
Bartkiewicz, Kronick & Shanahan  
1011 Twenty-Second Street  
Sacramento, CA 95816-4907  
Phone: (916) 446-4254  
Fax: (916) 446-4018  
E-mail: [abl@bkslawfirm.com](mailto:abl@bkslawfirm.com)

East Side Water Alliance  
c/o Ms. Martha H. Lennihan  
Lennihan Law  
2311 Capitol Avenue  
Sacramento, CA 95816  
Phone: (916) 321-4460  
Fax: (916) 321-4422  
E-mail: [mlennihan@lennihan.net](mailto:mlennihan@lennihan.net)

Marina Coast Water District  
c/o Mr. Michael Armstrong  
11 Reservation Rd  
Marina, CA 93933  
Phone: (831) 582-2604  
Fax: (831) 384-2479  
E-mail: [marmstrong@mcwd.org](mailto:marmstrong@mcwd.org)

Monterey County Water Resources Agency  
c/o Mr. Kevin O'Brien  
Downey, Brand, Seymour & Rohwer, LLP  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814-4686  
Phone: (916) 441-0131  
Fax: (916) 441-4021  
E-mail: [kobrien@dbsr.com](mailto:kobrien@dbsr.com)

National Marine Fisheries Service  
c/o Mr. Steve Edmondson  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404  
Phone: (707) 575-6080  
Fax: (707) 578-3435  
E-mail: [Steve.Edmondson@noaa.gov](mailto:Steve.Edmondson@noaa.gov)

Salinas Valley Protestants  
c/o Mr. Patrick J. Maloney  
Law Offices of Patrick J. Maloney  
2425 Webb Avenue, Suite 100  
Alameda, CA 94501  
Phone: (510) 521-4575  
Fax: (510) 521-4623  
E-mail: [PJMLaw@pacbell.net](mailto:PJMLaw@pacbell.net)

Salinas Valley Water Coalition  
c/o Ms. Janet K. Goldsmith  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814  
Phone: (916) 321-4500  
Fax: (916) 321-4555  
E-mail: [jgoldsmith@kmtg.com](mailto:jgoldsmith@kmtg.com)

City of San Luis Obispo  
c/o Robert J. Saperstein  
Hatch and Parent  
P.O. Drawer 720  
Santa Barbara, CA 93102-0720  
Phone: (805) 963-7000  
Fax: (805) 965-4333  
E-mail: [Rsaperstein@Hatchparent.com](mailto:Rsaperstein@Hatchparent.com)

Tanimura & Antle, Inc.  
c/o Mr. Robert E. Donlan  
Ellison & Schneider L.L.P.  
2015 H Street  
Sacramento, CA 95814  
Phone: (916) 447-2166  
Fax: (916) 447-3512  
E-mail: [red@eslawfirm.com](mailto:red@eslawfirm.com)



**STATE WATER RESOURCES CONTROL BOARD**

THE PAUL R. BONDERSON BUILDING  
901 P STREET  
SACRAMENTO, CA 95814

(916) 657-1989

FAX: (916) 657-2388

Mailing Address

**DIVISION OF WATER RIGHTS**

P.O. BOX 2000, Sacramento, CA 95812-2000



JULY 14 1992

In Reply Refer To:

363:RF:262.0(40-03-06) ✓

231

Mr. Gerald King  
United Agricultural Association  
Route 1, Box 1  
Templeton, CA 93465

Mr. Manuel Poundeda  
Atascadero Mutual Water Company  
5005 El Camino Real  
Atascadero, CA 93422

Gentlemen:

**COMPLAINT BY UNITED AGRICULTURAL ASSOCIATION AGAINST ATASCADERO MUTUAL WATER COMPANY, SALINAS RIVER, SAN LUIS OBISPO COUNTY (APPLICATION 231)**

State Water Resources Control Board (State Water Board), Division of Water Rights (Division) staff has completed an investigation of the complaint filed by the United Agricultural Association against the Atascadero Mutual Water Company (Company). A copy of the report is enclosed with this letter.

In summary, staff concluded:

- ° License 11114 allows for the direct diversion of 7.0 cubic feet per second (cfs) not to exceed 3,070 acre-feet per year (AFA).
- ° Eight of the nine notices of pre-1914 appropriation were not diligently developed in accordance with Section 1416 of the Civil Code of Procedure and were therefore lost.
- ° The remaining notice of pre-1914 appropriation for 5,000 miner's inches of water near the Southern Pacific Railroad depot site was developed in a diligent manner and placed to beneficial use to the extent of 0.42 cfs or 302 AFA. This quantity appears to be the maximum beneficial use that had been perfected at the time of the filing of Application 231.
- ° The Company's total diversion rights are therefore limited to a maximum diversion rate of 7.42 cfs and a total diversion amount of 3,372 AFA for all points of diversion under License 11114 and the Company's pre-1914 water right claim.
- ° Wells 6 through 9 are pumping from the Paso Robles Ground Water Basin and are not within the jurisdiction of the State Water Board.
- ° The Company was in violation of the conditions in License 11114 for the six years 1983 through 1988.

Records  
7/8/92  
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DWR 540 REV. 1/85

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7/9/92

7-13

Mr. King and  
Mr. Pouneda

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JULY 14 1992

Continued diversion of water in excess of a maximum diversion rate of 7.42 cfs and/or a total diversion quantity of 3,372 AFA from all diversion points other than wells 6, 7, 8, and 9 constitutes a trespass against the State and a violation of the conditions of License 11114. If there is hydrogeologic data documenting that the diversions are drawing exclusively from ground water, then a violation will not have occurred.

Therefore, the Division directs the Company as follows:

- ° The Company shall submit, on an annual basis, a certified copy of the monthly pumping record for each of their wells during the years 1992 and 1993.
- ° For all years beyond 1993, the Company shall attach to the Report of Licensee a copy of the monthly diversion for each of their wells for the period identified in the report.

To the extent that the Company fails to comply with these directives, appropriate enforcement action in accordance with Section 1050 et seq. of the Water Code (Unauthorized Diversion and use of Water), Section 1675 et seq. of the Water Code (Revocation of Water Right Licenses), or Section 1825 et seq. of the Water Code (Cease and Desist Action) may be taken.

In addition, the Division proposes to amend License 11114 as follows:

Upon a judicial determination that the place of use under this License is entitled to the use of water by riparian and/or pre-1914 appropriative right, the rights so determined and the right acquired under this License shall not result in a combined right in excess of a maximum diversion rate of 7.42 cfs and a total diversion quantity of 3,372 AFA.

The intent of this term is to clarify the Company's right which represents the diversion of 7.0 cfs and 3,070 AFA under License 11114, and 0.42 cfs and 302 AFA under the pre-1914 claim.

If you disagree with these findings or the proposed license term, you may request a hearing before the State Water Board. A request for hearing must be made within 30 days of the date of this letter. However, in the absence of any significant and convincing documentation that would lead to different conclusions, staff will not recommend a hearing.

If we can be of further assistance, please telephone me at (916) 657-1359. The staff person who worked on this issue was Ricardo Fuentes, and he can be reached at (916) 657-1989.

Sincerely,

**ORIGINAL SIGNED BY.**

Edward C. Anton, Chief  
Division of Water Rights

RFUENTES:knox:6/18/92  
final:Latasca:

State of California

**M e m o r a n d u m**

To: Complaint Files  
363:262.0(40-03-06) ✓  
231

Date: JULY 14 1992

**ORIGINAL OWNED BY.**

From: Ricardo Fuentes  
Associate WRC Engineer  
Complaint Section

Subject: COMPLAINT BY THE UNITED AGRICULTURAL GROWERS ASSOCIATION AGAINST  
ATASCADERO MUTUAL WATER COMPANY, SALINAS RIVER, SAN LUIS OBISPO COUNTY,  
LICENSE 11114 (APPLICATION 231)

**INTRODUCTION**

On July 27, 1990, the State Water Resources Control Board (State Water Board) received a complaint from the United Agricultural Growers Association (Complainant) alleging that the Atascadero Mutual Water Company (Company) was diverting water from the Salinas River underflow in excess of the amount allowed in the Company's License 11114 (Application 231) issued by the State Water Board. In the "Answer to Complaint", the Company claimed that the amount of water pumped in excess of the licensed amount is covered by a pre-1914 appropriative water right. This is the basis of claim for Statement of Water Diversion and Use Number 8285 filed in 1974.

The principal issue in this complaint is whether the Company has water rights that cover the water being diverted in excess of the amount in the water right license. The complaint requires evaluation of both the pre- and post-1914 water rights and evaluation of the Company's "diligence" in developing the pre-1914 water right.

**PRE-1914 WATER RIGHTS**

As part of the response to the complaint, Mr. Hamilton submitted nine notices for pre-1914 appropriative water rights filed on July 13, 1913 by H. T. Cory, consulting engineer for the Company. These rights were recorded on page 12, Book B, of the San Luis Obispo County records. Mr. Cory transferred these claims to the Company in 1915.

Of the nine claims, only one appears to have been diligently developed. This claim is located in the vicinity of the facilities constructed by the Company for Application 231. This filing claimed 5,000 miner's inches of water [approximately 125 cubic-feet-per-second (cfs) or 88,000 acre-feet per year (AFA)] from the Salinas River at the Southern Pacific Railroad (SPRR) station

*Ricardo*  
6/22/92  
SURNAME  
DWR 540 REV. 1/86

*MZ*  
7/8/92

site for domestic, municipal, and irrigation purposes. Mr. Hamilton provided a map of the Atascadero Colony dated 1926 which clearly shows the SPRR depot located at the same location Mr. Hamilton had indicated during the field investigation. The Division of Water Rights (Division) also has on file a map dated December 1, 1913 that identifies a well on the west bank of the Salinas River just downstream of Atascadero Creek. While the SPRR depot location is a couple hundred yards from the subject well site, Section 1706 of the Water Code allows for the change in location of a point of diversion for a pre-1914 water right.

#### STATE WATER BOARD PERMIT & LICENSE

The Company filed Application 231 on January 13, 1916. The application was for direct diversion of 30 cfs. Application 231 identified the points of diversion (POD) as three "batteries". Each battery was a pumping plant consisting of a pump or pumps connected to a well or wells through a manifold system. Point of Diversion 1 is known as the "South" battery which utilizes well 8. Point of Diversion 2 is known as the "Atascadero" battery and utilizes wells 1, 3, and 5. Point of Diversion 3 is known as the "Asuncion" battery which utilizes wells 4, 6, 7, and 9. An amended Application 231 was filed on April 5, 1917 that added POD 4 known as the "Sycamore" battery. This last battery uses well 2. The location of the wells are shown on the attached location map.

An inspection report written by Division staff in 1921 identifies the four pumping plants but does not identify the individual wells. That report indicates that pumping plants 1, 2 and 3 were interconnected to 8 wells with depths of 60 feet. A letter from the Company to the Water Commission dated June 18, 1925 indicated the Asuncion Battery as having 3 wells, the Sycamore Battery had 1 well, and the Atascadero Battery had 13 wells. They were all 14 inch diameter wells and ranged from 26 feet to 50 feet in depth. It further stated that pumping plant 3 was not in use at that time. The record does not indicate the order of the development of the wells. It appears the wells were added at different times and were taken in and out of production as circumstances warranted.

Records show that Division staff conducted an inspection of the Company's facilities and signed a proof of development dated August 29, 1977. The Company filed a Request for License on December 1, 1977 and the State Water Board issued License 11114 on April 22, 1981. License 11114 allows the Company to divert 7 cfs with a maximum of 3,070 AFA. Recent Reports of Licensee submitted by the Company to the State Water Board show that the water diverted by the Company began exceeding the 3070 AFA condition of License 11114 in 1981 and averaged 3,620 AFA for the years 1983 through 1989.

In 1985, Division staff conducted a compliance inspection to evaluate the apparent violation of License 11114. As a result of the field inspection, well logs and documents obtained from San Luis Obispo County, staff concluded that wells 6 through 9 are deep wells pumping from the Paso Robles ground water basin and are not pumping underflow from the Salinas River. The Company's reported annual diversion quantities for the years 1981 through 1983 were

adjusted to eliminate the quantity of water diverted by wells 6 through 9 and the results of the recomputation of annual use indicated that the Company had not exceeded the licensed quantity of 3,070 AFA for the years 1981 and 1982. The records indicate that the Company had exceeded the licensed quantity in 1983, 1984, and 1985. However, the Company was not directed to cease diversions in excess of its licensed water right. In 1986 the Company petitioned the State Water Board to remove wells 6 through 9 as points of diversion because they were deep wells drawing from the Paso Robles Ground Water basin and not the underflow of the Salinas River. The State Water Board approved the request after reviewing the evidence presented by the Company.

As part of the complaint investigation, the Company was asked to provide the individual monthly diversions from all of their wells for the period 1970 to 1991. As indicated in the attached table, the Company exceeded the amount allowed under License 11114 for the years 1983 through 1988.

#### FIELD INVESTIGATION

Staff conducted a field investigation on February 14, 1991. Mr. Bob Hamilton, Manager of the Company, escorted staff to the Company's point of diversion that was the subject of the complaint. He also pointed out the location of the old SPRR depot which was demolished at an undetermined time. The well and the old SPRR depot site are on the west side of the Salinas River with the well located on the levee of the river and the SPRR depot site located approximately two hundred yards to the west of the well. Staff did not visit the other "batteries" or points of diversion covered by the license because the well near the old SPRR depot site is the closest to the point of diversion identified in the pre-1914 claim. Mr. Gerald King and Mr. William Collins representing the Complainants guided staff on a separate tour of the lands and well sites of the Complainants.

#### DISCUSSION

Diligence: A key element in the appropriative water right system is that the party seeking to establish a water right must exercise diligence in completing the proposed project and applying water to beneficial use. The California Supreme Court held in 1859:

"The title to water does not arise from the manifestation of a purpose to take, but from the effectual prosecution of that purpose. This prosecution, therefore, is a necessary element of title..."

See: Kimball v. Gearhart (1859) 12 Cal. 27, 50.

With respect to pre-1914 appropriations, Section 1416 of the Civil Code requires that a project be constructed diligently and without interruption. Section 1416 requires that the claimant commence the excavation or construction of the works, proposed diversion or related surveying within 60 days of when the notice is posted. Once begun, the statute requires that the work be prosecuted diligently and uninterrupted to completion, unless temporarily interrupted by rain or snow.

Diligence is essential to prohibit a claimant from putting water rights in "cold storage" for speculative use. The Court of Appeal for the Third Appellate District recently affirmed that the requirement to proceed with due diligence in completing a water appropriation does not allow a party to place water rights in "cold storage" where there is no intent to proceed promptly with development. California Trout Inc. v. State Water Resources Control Board (1989) 207 Cal. App. 3d. 585, 255 Cal. Rptr. 184, 204. It is important to recognize that the requirement of due diligence also applies to the actual use of water for the beneficial purpose proposed by the appropriator.

Correspondence in the Division's files shows that the Water Commission, in 1917, was reluctant to issue a permit for the storage portion of Application 231 because the Company did not own the property where the reservoirs were to be built. In response to the Commission's concern at that time, Mr. Cohen, attorney for the Company, submitted a brief to the State Water Commission.

- ° Page 1, paragraph 3 of the brief states "...the permit in its entirety may never need to be exercised, even if granted."
- ° Page 1, Paragraph 4 states "The situation of your applicant at present is such that its only requirements are for domestic use and almost negligible (emphasis added). The requirements ten years hence, however, may be seven second feet ... or they may be more, depending upon the rate of growth of Atascadero."
- ° Page 2, paragraph 4, states "... the need or desirability of any irrigation for the orchards of the Atascadero project is uncertain ... the average gross and average net cash returns for the orchards on the project will be greater without than with irrigation."
- ° Page 3, paragraph 2 states "...your petitioner has made the pending application for a permit ... to the end that the opportunity may unquestionably be held open without doubt until the necessary additional experience ... on the one hand be secured, and on the other hand, until the land purchasers have arrived in Atascadero in sufficient numbers ... and are qualified to intelligently decide for themselves the questions involved."

This document shows that the Company held a vision that there would someday be a fully developed colony in Atascadero. But there was no defined schedule for real property development. Timing of development and utilization of the water was left to the uncertainty of when and how many people would migrate to the area, and whether the new inhabitants were qualified and intelligent enough to "determine the questions involved."

The 1913 appropriation also included irrigation. The 1917 brief questioned the economics of irrigation. Eight years later, in 1921, irrigation was dropped as a beneficial use. This is a clear indication that there was not a definite water development plan.

Mr. Cory's nine claims provide for 1,615,000 miner's inches of water, equivalent to 40,375 cfs or 29,231,500 AFA. This amount is greater than the annual runoff for the entire watershed and would provide enough water so that the entire 23,000 acre Atascadero Colony would be covered with water to a depth of 1,270 feet. Obviously the amount of use anticipated in the pre-1914 claims was not derived from a study of the water needed for any specific project and represents an unreasonable claim.

Limit of Pre-1914 Claim: Application 231 identified three points of diversion, one of them being the point described in the only developed pre-1914 filing. Since Application 231 was filed for the same point of diversion, type of use, and place of use as the pre-1914 claim, it appears that the Company was signaling the limit of development for the pre-1914 claim and the initiation of a new appropriative right under Application 231. If the Company had intended to continue development of the pre-1914 right it should have acquired a certificate documenting the right under Section 12 of the Water Commission Act of 1914. Such an action would have preserved the earlier priority of 1913 for 125 cfs instead of the 1916 priority of 7 cfs evidenced by Application 231.

In 1925, the Company petitioned the State Water Commission for an extension of time to develop the appropriation under Application 231. The petition gives an annual accounting of the number of water service connections served by the Company. The listing indicates that for the years 1914, 1915, and 1916 there were a total of 121 water service connections. Since Application 231 was filed in 1916, a number of these services were made before the application was filed. If the development of the 121 water service connections was relatively uniform over time, then approximately two thirds of the services (80) would have been established prior to filing Application 231. The petition assigned a duty of 1,800 gallons per day per service. This is an equivalence of 0.22 cfs and 161 AFA for the 80 connections.

In a separate Division staff memorandum, filed in connection with a field inspection of the project relative to the petition, data identifying an average daily use of 209,300 gallons per day (gpd) for September of 1915 was noted. In July of 1920, the month of maximum use for that year, the average daily use had increased to 645,000 gpd and the quantity used during September 1920 was 500,000 gpd. Assuming uniformity in growth and annual usage, the maximum quantity of water that would have been used in July of 1915 would have been approximately 270,000 gpd, which is equivalent to a continuous diversion rate of 0.42 cfs and 302 AFA. Although both water quantity computations are based on assumptions, the second calculation is derived from actual usage figures and therefore is assumed to be more appropriate for considerations in identifying the amount of water developed under the pre-1914 notice of appropriation.

Ground water: Section 5000 of the California Water Code defines ground water as being water beneath the surface of the ground, whether or not flowing through a known and definite channel. Section 1200 provides that the State

Water Board has jurisdiction over surface water and subterranean streams flowing through known and definite channels. Ground water that constitutes the underflow of surface streams or is bounded by geologic "bed and banks" and has a consistent direction of flow is included within this designation. If the source of ground water meets the above criteria, then a basis of right is required for the diversion (pumping) of water. If the source of ground water does not meet the above criteria, then the source is identified as percolating ground water and a water right permit issued by the State Water Board is not required.

The 1985 San Luis Obispo County engineering geology report and the well logs for wells 6, 7, 8, and 9 indicate that water pumped from these wells is from the Paso Robles Ground Water Basin and not the underflow of the Salinas River.

### CONCLUSIONS

As a result of the investigation of the Company's use of water from the Salinas River, staff has reached the following conclusions:

- ° License 11114 allows for the direct diversion of 7.0 cubic feet per second (cfs) not to exceed 3,070 acre-feet per year (AFA).
- ° Eight of the nine notices of pre-1914 appropriation were not diligently developed in accordance with Section 1416 of the Civil Code of Procedure and were therefore lost.
- ° The remaining notice of pre-1914 appropriation for 5,000 miner's inches of water near the SPRR depot site was developed in a diligent manner and placed to beneficial use to the extent of 0.42 cfs or 302 AFA. This quantity appears to be the maximum beneficial use that had been perfected at the time of the filing of Application 231.
- ° The Company's total diversion rights are therefore limited to a maximum diversion rate of 7.42 cfs and a total diversion amount of 3,372 AFA for all points of diversion under License 11114 and the Company's pre-1914 water right claim.
- ° Wells 6 through 9 are pumping from the Paso Robles Ground Water Basin and are not within the jurisdiction of the State Water Board.
- ° The Company was in violation of the conditions in License 11114 for the six years 1983 through 1988.

## RECOMMENDATIONS

Staff recommends:

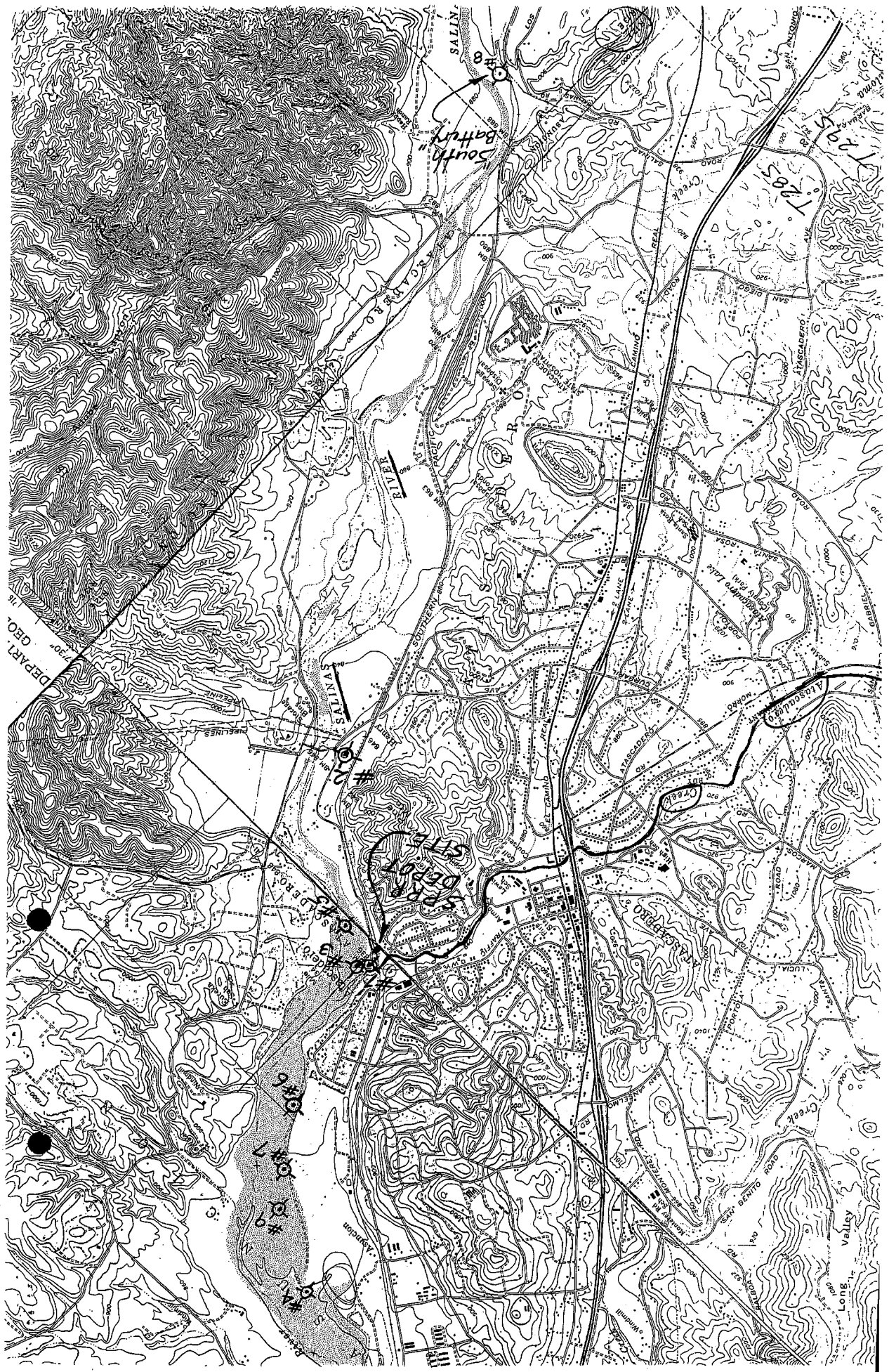
- ° License 11114 of the Company should be amended to include the following standard water right license term:

Upon a judicial determination that the place of use under this license is entitled to the use of water by riparian and/or pre-1914 appropriative right, the right so determined and the right acquired under this license shall not result in a combined right in excess of a maximum diversion rate of 7.42 cfs and a total diversion quantity of 3,372 acre-feet per year.

This represents a diversion of 7.0 cfs, and 3,070 AFA under License 11114 and 0.42 cfs, and 302 AFA under the pre-1914 claim.

- ° The Company should be advised that continued diversion of water in excess of a maximum diversion rate of 7.42 cfs and/or a total diversion quantity of 3,372 AFA from diversion points other than wells 6 through 9, without hydrologic confirmation that the diversion point is drawing water exclusively from ground water, constitutes a violation of the conditions of License 11114.
- ° The Company shall submit, on an annual basis, a certified copy of the monthly pumping record for each of their wells during the years 1992 and 1993.
- ° For all years beyond 1993, the Company shall attach to the Report of Licensee a copy of the monthly diversion for each of their wells.
- ° To the extent that the Company fails to comply with these recommendations, appropriate enforcement action should be taken in accordance with Section 1050 et seq. of the Water Code (Unauthorized Diversion and Use of Water), Section 1675 et seq. of the Water Code (Revocation of Water Right License), and Section 1825 et seq. of the Water Code (Cease and Desist Action).

RFUENTES:knox  
Matasca2:final:6/18/92



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23308,  
23455, 23503, 23508, 23511, 23528,  
23602, 23603, 23662, 23754, 23774,  
23775, 23777, 23791, 23821, 23843,  
23856, 23896, 23897, 23900, 23922,  
23930, 23932, 23933 and 23934 of  
CHARLES B. SEE, et al to Appropriate  
from Streams in the Napa River Watershed  
in Napa County.

Decision 1404

DECISION APPROVING APPLICATIONS IN PART

Charles B. See, et al, having filed the subject applications for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on March 21 and 22, 1972; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Applications

1. The essential features of these applications are set forth in Table I attached to this decision. A map showing the locations of the proposed appropriations is also attached.

Protestants

2. The protestants and applications protested are listed in Table II attached to this decision. The majority of the protests are based on the lack of unappropriated water in the Napa River

during the months of March, April and May when the water is used for frost protection and the supply is inadequate to meet all requirements.

3. Department of Fish and Game protested the applications in order to maintain a minimum flow in the Napa River to sustain fishlife. The following is the permit term recommended by Fish and Game for the mainstem of the Napa River between Calistoga and City of Napa:

"Permittee shall during the period (1) from November 1 through November 14 bypass a minimum of 1.0 cubic foot per second or the flow of the stream whenever it is less than 1.0 cubic foot per second at the point of diversion, (2) from November 15 through February 29 bypass a minimum of 15 cubic feet per second or the flow of the stream whenever it is less than 15 cubic feet per second at the point of diversion, and (3) from March 1 through May 31 bypass a minimum of 10 cubic feet per second or the flow of the stream whenever it is less than 10 cubic feet per second at the point of diversion to maintain fishlife.

All applicants whose applications are approved by this decision have agreed to the inclusion of this term in their permits.

#### Source

4. The Napa River heads on the south side of Red Hill in Kimball Canyon at an elevation of 2,000 feet. It enters the Napa Valley just below Kimball Canyon Dam and courses in a generally

southeasterly direction about 60 miles to the Carquinez Strait where it enters San Pablo Bay. The portion of the river of interest in this decision is that portion north of Napa since the Napa River from Trancas Road to the Bay is affected by tidal action. The portion of the river above Napa comprises about 35 miles.

#### Water Supply

5. There are two U. S. Geological Survey gaging stations on the Napa River that measure streamflow continuously. Records for the upper station near St. Helena are available for the periods 1929 to 1932 and 1939 to the present. The recorder is located 2-1/4 miles east of St. Helena and 0.2 mile upstream from the Zinfandel Road bridge. Records for the second station near Napa are available for the periods 1929 to 1932 and 1959 to the present. The recorder is located about five miles north of Napa at the Oak Knoll Avenue bridge.

The mean annual runoff at the upper station is 65,400 acre-feet per annum (afa) (RT 70) and at the lower station it is about 120,000 afa.

There is no controversy over availability of unappropriated water for storage from about November 1 through the 15th of March. Average flows at the lower gage during these months are shown below. Essentially all of this water wastes to San Pablo Bay.

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Average Streamflow (1961 - 1970)  
Napa River near Napa in cfs (from USGS records)

---

November	41
December	223
January	544
February	640
March	320

---

The concern is over availability of unappropriated water and replenishment of depleted storage during the period March 15 through May 15 for frost protection. Average streamflow at the lower gage is shown below:

---

Average Streamflow  
Napa River near Napa in cfs (from USGS records)

---

March 15 to March 31	121	cfs
April	69.6	cfs
May 1 to May 15	34.8	cfs

---

The only continuous requirement of these flows during this period of the year is 10 cfs for fish. The records show, however, that flow in the river is frequently substantially below the average during periods of actual frost.

Demand by riparian owners during this period for direct diversion for frost protection is substantial and frequently will exceed the available flows during an actual frost; however, long-time frost records in the valley show that there is an average of only about 18 hours during the critical frost damage month of April where temperatures are below 34°, the temperature below which sprinkler systems are customarily operated. Thus, about 97 percent of the time the streamflow, in excess of fish requirements, is available for pumping to offstream storage as proposed in the applications under consideration.

#### Frost Protection

6. Section 659, Title 23 of the California Administrative Code precludes approval of the portions of the applications which seek to divert directly without storage after March 15 and requires that action on the portions of the applications which seek to divert water after March 15 of each year to replenish winter storage be withheld until a water distribution program is established.

#### Beneficial Use of Water Directly Diverted

7. Water directly diverted without storage cannot be put to beneficial use for frost protection during the winter season prior to March 15, as the crop is not subject to frost damage prior to that time. Therefore, all applications and portions of applications for water to be diverted directly to use prior to March 15 should be denied.

Availability of Unappropriated Water

8. Unappropriated water is available to supply the applicants who seek to divert water to storage between November 1 and March 15, and, subject to suitable conditions, such water may be diverted to storage and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 23508, 23511, 23528, 23754, 23774, 23775, 23777, 23791, 23821, 23843, 23856, 23896, 23897, 23900, 23922, 23930, 23932, 23933 and 23934 should be approved in part and that permits should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: subject applications in this matter and all relevant information on file therewith.

ORDER

IT IS HEREBY ORDERED that Applications 23508, 23511, 23528, 23754, 23774, 23775, 23777, 23791, 23821, 23843, 23856, 23896, 23897, 23900, 23922, 23930, 23932, 23933 and 23934 be, and they are, approved in part, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions.

1. The water appropriated shall be limited to the quantities which can be beneficially used and shall not exceed the

acre-feet per annum by offstream storage to be collected during the seasons set forth in Table III attached to this decision.

The maximum rates of diversion to storage shall not exceed those set forth in said Table III.

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

2. Permittee shall during the period (1) from November 1 through November 14 bypass a minimum of 1.0 cubic foot per second or the flow of the stream whenever it is less than 1.0 cubic foot per second at the point of diversion, (2) from November 15 through February 29 bypass a minimum of 15 cubic feet per second or the flow of the stream whenever it is less than 15 cubic feet per second at the point of diversion, and (3) from March 1 through May 31 bypass a minimum of 10 cubic feet per second or the flow of the stream whenever it is less than 10 cubic feet per second at the point of diversion to maintain fish life.

The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish.

3. For the protection of fish no diversion shall be made which depletes the flow of the stream to less than the amount stated in the preceding paragraph during the corresponding season. No water shall be diverted until the permittee has

installed in the stream immediately below his point of diversion a staff gage, or other device satisfactory to the State Water Resources Control Board, showing the levels which correspond to aforementioned flows. As a condition to the continuing diversion said measuring device shall be properly maintained.

4. In accordance with Section 6100 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 fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

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

6. Actual construction work shall begin on or before nine 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.

7. Said construction work shall be completed on or before December 1, 1973.

8. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

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

10. 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 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. Permittee shall take all reasonable steps necessary to minimize waste of water, and may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate 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. At any time after notice to affected parties and opportunity for hearing, the Board may impose specific requirements over and above those contained in this permit, with a view to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

11. 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.

12. 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.

13. This permit is subject to the continuing authority of the State Water Resources Control Board to impose further appropriate conditions to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

IT IS FURTHER ORDERED that, until a water distribution program is established among the water users in the Napa River watershed, action is withheld on Application 23308 and the portions of applications listed in attached Table III in the column entitled "Action Withheld" which are for diversion after March 15 of each year to replenish water stored in reservoirs prior to that date. No water shall be diverted after March 15 of each year under any of these applications until further order of the State Water Resources Control Board. If a water distribution program is not established by March 15, 1975, or any subsequent date fixed by the Board, the

portions of the applications upon which action has been withheld shall be deemed denied.

IT IS FURTHER ORDERED that Applications 23455, 23503, 23602, 23603 and 23662 be denied herewith.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: November 2, 1972

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

E. F. DIBBLE

E. F. Dibble, Member

ABSENT

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

TABLE I

<u>App No.</u>	<u>Date Filed</u>	<u>Applicant</u>	<u>Section</u>	<u>TWP &amp; Range</u>	<u>cfs</u>	<u>acft</u>	<u>Season</u>	<u>Acres</u>
23308	7-9-69	Charles B See dba Silverado Vineyards	NWSE 31	7N4W	1c	60	DD 4/1-6/30 S 3/15-6/30	110
23455	3-3-70	John P Jr. & Karen Kirk Lowney	SWNW 15	7N5W	0.08c		DD 4/1-8/1	32
23503	5-11-70	Joseph & Suzanne G Wilson	SESE 23	8N6W	0.2c		DD 3/15-7/15	18
23508	5-18-70	Calistoga Vineyards A Partnership	NWSW 36	9N7W	0.44c	30	DD 2/1-5/31 S 10/1-5/31	35
23511	5-19-70	Robert Mondavi Vineyards, Inc.	SESE 6	6N4W	5c	125	DD 3/1-10/1 S 10/1-5/1	400
23528	6-8-70	John P Jr & Karen Kirk Lowney	SWNW 15	7N5W	0.35c	20	DD 3/1-8/1 S 11/1-5/1	32
23602	9-10-70	Mont La Salle Vineyards	NENW 22	7N5W	0.6c		DD 3/1-6/30	83.8
*23603	9-10-70	Mont La Salle Vineyards	SWSE 18	6N4W	0.66c		DD 3/1-5/31	101
23662	12-21-70	Zinfandel Associates	SWSW 33	8N5W	0.24c		DD 3/15-5/30	20
23754	4-8-71	Connecticut Mutual Life Insu Co.	NWSW 15	7N5W	11.4c	74	DD 3/1-5/15 S 11/1-5/15	700
23774	4-30-71	Marion C Jaeger	NWSW 15	7N5W		30	S 1/15-5/15	40
23775	4-30-71	Marion C Jaeger	NWSE 16	6N4W		120	S 1/15-5/15	180
23777	5-3-71	R & M Harris; J & D Hoxsey	SWNE 26	7N5W	0.9c	24	DD 3/1-8/1 S 3/1-6/1	80
23791	5-27-71	Alfred Charles Godward	SWNE 26	9N7W		20	S 10/1-4/30	53
23821	7-6-71	Chateau Montelena A Partnership	NWNE 26	9N7W	3c	20	DD 3/1-5/15 S 11/1-5/15	100
23843	8-13-71	The R G Ranch	NESE 22	7N5W		30	S 11/1-4/30	79
23856	8-23-71	J M & Joye J Westerman	NWNE 8	8N6W		1.5	S 11/1-4/30	8
23896	10-14-71	John J & Marie C Angeloni	NENW 22	7N5W		6.1	S 11/1-4/30	35
23897	10-14-71	Kenneth G & Madelynne H Wolfe	NWNW 14	8N6W	0.57c	3.	DD 3/1-5/15 S 11/1-4/30	15
23900	10-18-71	Jules E & Barbara J Alcouffe	SENW 10	8N6W	1.5c	7	DD 3/15-5/15 S 11/1-4/30	40
**23922	11-15-71	J M Garoutte	SWNE 22	8N6W		20	S 11/15-6/15	30
***23930	11-26-71	Roy Chavez	NWSE 8	7N5W	1c	5	DD 4/1-5/30 S 11/1-5/30	35
23932	12-1-71	Sterling Vineyards	SESW 5	8N6W	2.67c	110	DD 3/1-5/15 S 11/1-4/30	165
23933	12-1-71	Sterling Vineyards	NESW 6	8N6W	2.67c	23	DD 3/1-5/15 S 11/1-4/30	65
23934	12-1-71	Sterling Vineyards	NENW 9	8N6W	2.67c	26	DD 3/1-5/15 S 11/1-4/30	70

DD - Direct Diversion; S - Storage

Source in Napa River except:

- \* Dry Creek trib Napa River
- \*\* Hirsch Creek trib Napa River
- \*\*\* Unnamed Stream trib Bale Slough thence Napa River

TABLE II

Department of Fish and Game	X	23308
	* X	23455
	* X	23503
	X	23508
	* X	23511
	* X	23528
	* X	23602
	* X	23603
	X	23662
	* X	23754
	* X	23774
	* X	23775
	* X	23777
		23791
	X	23821
	* X	23843
	* X	23856
	X	23896
	X	23897
	X	23900
		23922
		23930
		23932
		23933
		23934
Angelo Regusci	X	
Paul Jaeger	X	
Charles B. See	X	
Robert E. Connolly	X	
Lewis Carpenter, Jr.	X	
Tamagni Dairy	X	
R. W. Griffin	X	
John Angeloni	X	
Napoco Vineyards	X	
Vinifera Development Corp.	X	
Mont La Salle Vineyards	X	

(not protested)

\* Agreement with applicant

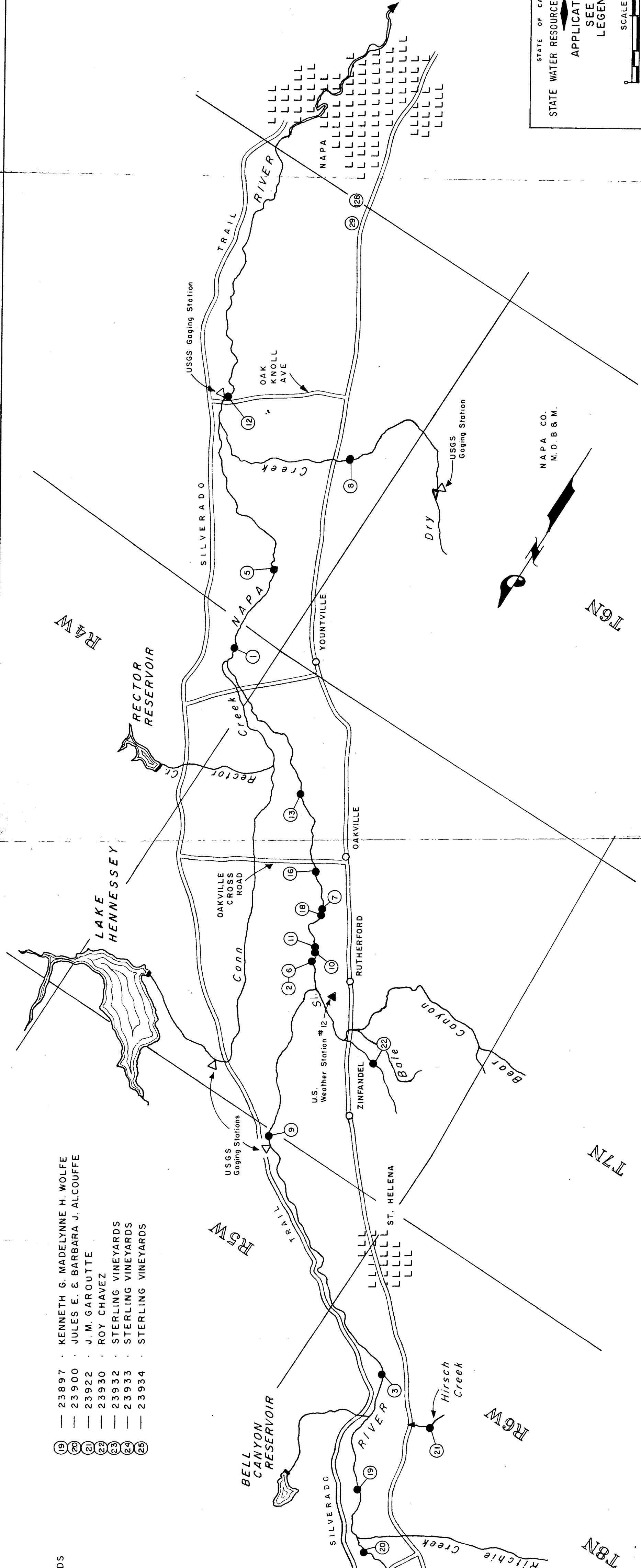
TABLE III

## ACTION TAKEN ON APPLICATIONS BY DECISION

Application	Approved in Part	Action Withheld	Denied	Source	Storage Quantities afa	Season	Rate of Diversion to off-stream storage in cfs	Place of use - acres
23308		X		Napa R.				
23455			X					
23503			X					
23508	X	X		Napa R.	30	10/1-3/15	3.0	35
23511	X	X		"	70	10/1-3/15	5.0	400
23528	X	X		"	10	11/1-3/15	0.5	32
23602			X	"				
23603			X	Dry Creek				
23662			X	Napa R.				
23754	X	X		"	74	11/1-3/15	11.4	700
23774	X	X		"	10	1/15-3/15	1.125	40
23775	X	X		"	40	1/15-3/15	2.99	180
23791	X	X		"	24	2/1/-3/15	0.9	80
23791	X	X		"	20	11/1-3/15	3.33	53
23821	X	X		"	20	11/1-3/15	3.0	100
23843	X	X		"	10	11/1-3/15	4.66	79
23856	X	X		"	1.5	11/1-3/15	400 gpm	8
23896	X	X		"	6.1	11/1-3/15	750 gpm	35
23897	X	X		"	3	11/1-3/15	0.57	15
23900	X	X		"	7	11/1-3/15	1.5	40
23922	X	X		Hirsch Cr.	20	11/1-3/15	0.5	30
23930	X	X		Unn. Stream	5	11/1-3/15	1.0	35
23932	X	X		Napa R.	55	11/1-3/15	2.67	165
23933	X	X		"	11.5	11/1-3/15	2.67	65
23934	X	X		"	13	11/1-3/15	2.67	70

DS

- 19 — 23897 · KENNETH G. MADELYNNE H. WOLFE  
20 — 23900 · JULES E. & BARBARA J. ALCOUFFE  
21 — 23922 · J. M. GAROUTTE  
22 — 23930 · ROY CHAVEZ  
23 — 23932 · STERLING VINEYARDS  
24 — 23933 · STERLING VINEYARDS  
25 — 23934 · STERLING VINEYARDS



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

APPLICATIONS  
SEE  
LEGEND

SCALE  
0 1 2 MI.

DATE DEC - 71	DRAWN C-C.W.	CHECKED J.T.A.	DWG. 2946
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1	23308
2	23455
3	23503
4	23508
5	23511
6	23528
7	23602
8	23603
9	23662
10	23754
11	23774
12	23775
13	23777
14	23791
15	23821
16	23843
17	23856
18	23896

