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7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MENDOCINO

10 RESIDENTS FOR ADEQUATE WATER, OLIVER)
11 L. SAUSE, and MICHAEL E. SWEENEY,)

No. 55595

12 Petitioners,)

STATEMENT OF DECISION

13 v.)

14 STATE OF CALIFORNIA DEPARTMENT OF)
15 HEALTH SERVICES and REDWOOD VALLEY)
16 COUNTY WATER DISTRICT,)

17 Respondents.)

18 INTRODUCTION

19 In this mandamus proceeding, Petitioners seek a writ to
20 prevent Respondent REDWOOD VALLEY COUNTY WATER DISTRICT from
21 making new domestic water service connections.

22 Petitioner RESIDENTS FOR ADEQUATE WATER is an unincorporated
23 association of individuals who live in Redwood Valley in
24 Mendocino County and who obtain their domestic water from the
25 Respondent WATER DISTRICT or from groundwater sources or from
26 both. Petitioners OLIVER L. SAUSE and MICHAEL E. SWEENEY are
27 individual customers of the WATER DISTRICT.
28

1 Respondent REDWOOD VALLEY COUNTY WATER DISTRICT ("WATER
2 DISTRICT") is a county water district and a public water system
3 within the meaning of Health & Safety Code §4010.1 with about 940
4 service connections for treated domestic water. The WATER
5 DISTRICT also has additional service connections for untreated
6 irrigation water. All of WATER DISTRICT's service connections
7 are within Redwood Valley.

8 Respondent STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES
9 ("DEPARTMENT") is the division of the executive branch of state
10 government charged with the responsibility to regulate public
11 water systems in California. Health & Safety Code §§103, 4010-
12 4037.

13 This proceeding is based on Petitioners' contentions that:

14 1. Respondent WATER DISTRICT does not possess a water
15 source capacity sufficient to supply adequately, dependably and
16 safely the total requirements of all its users under maximum
17 demand conditions as required by applicable law; and that

18 2. Nevertheless, Respondents continue to permit new service
19 connections to be added to the WATER DISTRICT's water system; and
20 that

21 3. Therefore, Petitioners are entitled to a writ of mandate
22 to compel Respondents to impose an immediate and absolute
23 moratorium on new service connections to the WATER DISTRICT's
24 system.

25 THE EVIDENCE

26 As will become clear, analysis and resolution of
27 Petitioners' contentions require consideration of the evidence in
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1 relation to the WATER DISTRICT's water needs, its legal rights to
2 take water, the actual practical availability of water to its
3 users, the effectiveness of the DEPARTMENT's regulation of the
4 WATER DISTRICT, and the position of the State Water Resources
5 Control Board with respect to any new legal right the WATER
6 DISTRICT might acquire to take water from Lake Mendocino. With
7 respect to these matters, the evidence presented at trial
8 established the following facts.

9 The WATER DISTRICT's Water Needs

10 The WATER DISTRICT operates two water systems: An
11 agricultural system and a domestic system. The agricultural
12 system services approximately 3,330 acres with untreated water.
13 The domestic system serves approximately 940 service connections
14 with treated water. Besides single family residences, the
15 domestic connections include some large water users such as
16 schools, mobile home parks, and a winery. Averaging in these
17 large users, Respondents have determined that the WATER
18 DISTRICT's domestic system presently serves a total of 1,350
19 "equivalent residential units," totalling about 5,000 persons.
20 The WATER DISTRICT's domestic system is presently designed to
21 serve up to 1,800 equivalent residential units.

22 During the winter months -- November 1 through April 30 --
23 the WATER DISTRICT's needs for water have been fully met by its
24 permit from the State Water Resources Control Board to withdraw
25 up to 4,900 acre-feet of water from Lake Mendocino during those
26 months each year. Use under this permit is conditional on there
27 being at least 72,000 acre-feet of water in the Lake and that
28

1 flood waters are actually being released, but these conditions
2 apparently have not been consciously honored or enforced.
3 Petitioners do not contend that the WATER DISTRICT's supply of
4 water during those months is inadequate.

5 During the summer months of May 1 through October 31, in the
6 years 1984-85, 1985-86, and 1986-87, the WATER DISTRICT's annual
7 use of Russian River Project water has averaged 1,220 acre-feet,
8 based on reports from the WATER DISTRICT to the Mendocino County
9 Russian River Flood Control and Water Conservation Improvement
10 District ("Improvement District,") the agency that sells the
11 WATER DISTRICT its summer water.¹ These reports were based on
12 the WATER DISTRICT's pumping records. They are accurate and
13 represent totals for both agricultural and domestic use combined.

14 Of the total acre-feet of water used by the WATER DISTRICT
15 each summer, about 55% to 60% has been delivered through its
16 agricultural system and used for irrigation, stock and other
17 agricultural purposes. From 1984 through the summer of 1988, the
18 number of equivalent residential unit domestic service

19
20 ¹ The Improvement District's water users are located in the
21 Ukiah and Sanel Valleys downstream from Lake Mendocino along the
22 Russian River to the Mendocino-Sonoma County line. The
23 Improvement District does not operate a water system and has no
24 pumps or other facilities; its individual members draw water
25 directly out of the Russian River with their own pumps. The
26 water users in the District include the City of Ukiah, the
27 Russian River Estates subdivision, the Masonite Corporation, the
28 Georgia Pacific Corporation, the Millview Water District, the
Willow Water District, the East Sanel Water District, the Hopland
Public Utility District, and numerous grape and pear growers and
other ranchers. Many of the users have rights to draw other,
non-project water from the river, but the total entitlement of
all the member-users to use Russian River Project water is 8,000
acre-feet per year.

1 connections increased from 1,130 to 1,350, about 100 of which
2 were added during the last year. The new domestic service
3 connections generally represent a conversion of land from
4 agricultural to residential use.

5 Because of the substantial increase in residential service
6 connections in the last year, the WATER DISTRICT's present summer
7 water needs are something in excess of the average 1,220 acre-
8 feet it used during the summer months of the three years ending
9 1986-87.

10 The WATER DISTRICT's Legal Rights To Take Water

11 As stated above, the WATER DISTRICT has a permit from the
12 Department of Water Resources under which its water needs have
13 been abundantly met during the months of November through April
14 each water year, and the adequacy of the WATER DISTRICT's supply
15 source during those months is not questioned in this proceeding.

16 During the months of May through October each year, the
17 WATER DISTRICT's only effective legal entitlement to water is by
18 a stipulated judgment entered May 30, 1980, in Mendocino County
19 Superior Court Action No. 42059, Mendocino County Russian River
20 Flood Control and Water Conservation Improvement District v.
21 Redwood Valley County Water District. In effect a court-approved
22 contract between the two districts, the judgment acknowledges
23 that the Improvement District has a State Water Resources Control
24 Board permit to consume 8,000 acre-feet per year of the Russian
25 River Project Water stored in Lake Mendocino, and provides that
26 the WATER DISTRICT has the right to buy from the Improvement
27 District any part of the 8,000 acre-feet not used by the
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1 Improvement District. The judgment also provides that the
2 Improvement District may notify the WATER DISTRICT in the event
3 no surplus water from the 8,000 acre-feet is available for the
4 WATER DISTRICT to use. If the WATER DISTRICT disagrees, the
5 matter is to be resolved by fast arbitration. If the final
6 determination is that there is no surplus water, then the WATER
7 DISTRICT is to cease drawing water.

8 The Improvement District's right to use 8,000 acre-feet per
9 year is its total entitlement to Project Water in Lake Mendocino.
10 During the years 1981 through 1986 while the judgment between the
11 Improvement District and the WATER DISTRICT has been in effect,
12 figures reported by the Improvement District and accepted as
13 accurate by the DEPARTMENT indicate that the Improvement District
14 and the WATER DISTRICT combined have diverted less than 5,000
15 acre-feet per year of Project water.

16 But the periodic reports required to be filed by water
17 diverters, in which the Improvement District reported these
18 figures, are not considered reliable by knowledgeable people in
19 the water business, including the staff of the State Division of
20 Water Rights.^{1-A} And there are particular compelling reasons to

21
22 1-A This was made clear by the testimony of the General
Manager of the Sonoma County Water Agency:

23 A Well basically, it's the position of the
24 Water Agency that the report that's filed
25 under (appropriative) rights permits with the
26 Division of Water Rights are not a reliable
27 source of information for drawing that type
28 of conclusion. Those reports are not used by
the Division itself in determining licensing
quantities under the permits in our judgment,
nor should they be used by anybody else in

1 support the conclusion that the Improvement District's reported
2 figures are grossly inaccurate and represent less than half the
3 water actually taken. For one, the Improvement District has not
4 updated its list of diverters in at least six years, and there
5 are at least 55 diversion points within the District -- about
6 half the diverters within its boundaries -- that it is not
7 reporting at all. For another, based on figures reported by the
8 Sonoma County Water Agency and accepted as accurate by the State
9 Water Resources Control Board and the DEPARTMENT, diversions out
10 of the Russian River between Lake Mendocino and Healdsburg in
11 Sonoma County more than doubled between 1976 and 1987. In 1976,
12 before there was any diversion for Redwood Valley, the
13 Improvement District reported that it diverted 5,025 acre-feet of
14 Project water. Assuming that the Improvement District took no
15 more than that amount in 1976, then its total diversion of
16 Project water 1987 was 10,000 acre-feet or more.

17 drawing conclusions. There are better
18 sources of information.

19 Q Why do you concur with the State Department
20 of Water Rights on that matter?

21 A One reason is because we filed dozens of
22 those reports ourselves and we would not use
23 our own reports.

24 Q All right. Takes one. But what's the -- why
25 not? To me a layman, why not?

26 A The reports don't clearly define the sources
27 of the data. They don't define the
28 methodologies used in drawing the conclusions
set forth in the reports. And the reports
frequently, generally speaking, don't comply
with the priorities and the processes
dictated by California water rights law."

1 The Improvement District's permit entitles it to consume --
2 not just divert -- 8,000 acre-feet of Project water per year.
3 Some of the water diverted returns later back into the River
4 through drainages and percolation. Nobody knows how much water
5 returns; the Sonoma County Water Agency estimates that it could
6 be between 5% and 35% of the total water diverted. Assuming the
7 median of this estimate range -- 20% -- to be correct, then the
8 Improvement District actually consumed about 8,000 acre-feet of
9 Project water during 1987.

10 This indicates that the WATER DISTRICT's legal right to take
11 surplus water under its judgment-contract with the Improvement
12 District entitled it to take no water in 1987.

13 Although the judgment-contract between the Improvement
14 District and the WATER DISTRICT permits the Improvement District
15 to notify the WATER DISTRICT when there is no surplus water for
16 the WATER DISTRICT to use, the Improvement District does not
17 monitor or report its diverters' withdrawals from the River until
18 after the water year is over, and has not taken the trouble to
19 develop a way to enforce its right to limit the WATER DISTRICT to
20 only the surplus of the Improvement District's 8,000 acre-foot
21 entitlement.

22 Other than the Improvement District's 8,000 acre-feet, all
23 the Project water stored in Lake Mendocino belongs to the Sonoma
24 County Water Agency.² Based on its own perception of its

25 2 The Sonoma County Water Agency operates the Russian River
26 Project, which is a water diversion and storage project that
27 includes Lake Mendocino and Lake Sonoma. The Project furnishes
28 water from the Russian River, the East Fork of the Russian River,

1 enlightened self-interest as a water agency in California, and
2 its wish to contract with either the Improvement District or some
3 other entity for the sale of water to the WATER DISTRICT, the
4 Sonoma County Water agency will probably not object if diverters
5 north of the Mendocino-Sonoma County line withdraw more than
6 8,000 acre-feet of Project water in a particular year. As the
7 Agency's General Manager testified;

8 "It would be sound general public policy not to deny
9 Redwood Valley water that's needed for -- particularly
10 for a municipal and industrial use based on, you know,
the artificiality of this massive -- the regulatory
system that we enjoy in California."

11 And if the WATER DISTRICT used too much water:

12 "...One, we wouldn't know. And secondly, if we did
13 know, we probably wouldn't care."

14 In April, 1986, the WATER DISTRICT obtained approval from
15 the State Water Resources Control Board to buy 7,500 acre-feet of
16 Project water per year from the Sonoma County Water Agency and to
17 take it out of Lake Mendocino under the Sonoma County Water
18 Agency's water right (Board Decision 1610). However, as will be
19 explained, the use conditions and limitations attached by the
20 Board render this new entitlement illusory and useless to the
21 WATER DISTRICT.

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24 _____
25 and Dry Creek for domestic, industrial, municipal, irrigation and
26 recreational uses. The Sonoma County Water Agency supplies water
27 to the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa, and
Sonoma, and the Forestville County Water District, the North
Marin Water District, the Valley of the Moon Water District, the
Marin Municipal Water District, and several individuals.

The Actual Practical Availability of Water
to the WATER DISTRICT's Users

Although it is exploring groundwater sources in Redwood Valley, the WATER DISTRICT's only present water source is Lake Mendocino. The DISTRICT's three pumps can pull a total of 13,000 gallons per minute out of the lake and into its water distribution system; the lowest of the three pumps can continue to pump water, but at a drastically reduced rate, when the lake level is down to within five feet of the lake bottom in the area of the WATER DISTRICT's pumping caisson.

As among the WATER DISTRICT, the Improvement District, and the Sonoma County Water Agency, the WATER DISTRICT pumps right out of the Lake and is the first diverter physically in line. Next physically in line is the Improvement District, whose diverters draw water out of the Russian River downstream from Lake Mendocino to the Mendocino-Sonoma County line. Last physically in line is the Sonoma County Water Agency.

The WATER DISTRICT's only storage facility is a 68 acre-foot storage pond, of which about 54.5 acre-feet is considered by the DEPARTMENT to be usable for domestic consumption in the event of a cut-off of water from Lake Mendocino.

In a crisis or drought year, the WATER DISTRICT's plan calls for restrictions on its agricultural users down to a cut-off of water, and imposition of conservation measures on its domestic users down to limiting water use to 400 gallons per day per equivalent service connection. If water from Lake Mendocino becomes unavailable, then the WATER DISTRICT intends to ration

1 water to its domestic users from its 68 acre-foot pond down to
2 100 gallons per day per equivalent service connection. (Based on
3 reports submitted to the DEPARTMENT by the WATER DISTRICT, the
4 domestic water consumed per equivalent residential unit
5 connection from 1984 through 1987 averaged 457 gallons per day
6 year-round, 807 gallons per day during the maximum demand month
7 in the summer, and 1,004 gallons per day on the maximum demand
8 day. These figures are probably accurate.) There has not been a
9 water supply crisis since the WATER DISTRICT was formed in 1979,
10 but 1976-77 was a severe drought during which the Improvement
11 District reported that it diverted more than 9,000 acre-feet of
12 water from the Russian River. Based on history, the DEPARTMENT
13 estimates that a water supply crisis requiring the WATER DISTRICT
14 to implement any restrictions will occur less than two years in
15 every 75, or less than 3% of the time.

16 With respect to normal use, independent studies done by the
17 Department of Water Resources, the Sonoma County Water Agency,
18 and the newly formed Mendocino County Water Agency support the
19 conclusion that there is adequate water to meet maximum demands
20 by all users at least until the year 2000. But studies by the
21 same three agencies show that there will be a general water
22 deficiency in Mendocino County by the year 2000. And its April,
23 1986, Decision 1610, granting the WATER DISTRICT heavily
24 conditioned approval to take water out of Lake Mendocino under
25 the Sonoma County Water Agency's right, the State Water Resources
26 Control Board predicted that Lake Mendocino will be lowered
27 faster and to lower levels than have been experienced since 1959,
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1 and noted that Redwood Valley has an inadequate water supply
2 source for its developing uses and no feasible source other than
3 Lake Mendocino.

4 The DEPARTMENT recognizes that a shortage in the supply of
5 water in Lake Mendocino could occur before 2000, based on the
6 diversions between Lake Mendocino and Healdsburg having doubled
7 between 1976 and 1987 as well as the significantly increased
8 stream flows out of the Lake since April, 1986, due to Fish &
9 Game Department needs.

10 The Effectiveness of the DEPARTMENT's Regulation
11 of the WATER DISTRICT

12 In September, 1978, the DEPARTMENT issued its permit to the
13 WATER DISTRICT to build and operate its domestic water system.
14 Before issuing the permit, the DEPARTMENT did not consider
15 whether or not the WATER DISTRICT had any right to pump water
16 from Lake Mendocino, or the possibility that pumping from the
17 Lake might be interrupted.

18 In 1982, the issue of the reliability of the WATER
19 DISTRICT's water supply was inquired into by the DEPARTMENT, and
20 the DEPARTMENT apparently then first became informed that the
21 WATER DISTRICT's only summer water source was its judgment-
22 contract for surplus water from the Improvement District.
23 Between 1982 and 1985, the DEPARTMENT made inquiries to the WATER
24 DISTRICT concerning the WATER DISTRICT's progress in acquiring
25 new supply sources, and the WATER DISTRICT responded with
26 information about its unsuccessful attempts to contract with the
27 Sonoma County Water Agency for more water.

1 The DEPARTMENT's permit to the WATER DISTRICT authorized a
2 water system to serve a maximum of 1,200 equivalent residential
3 service connections. In 1986, the WATER DISTRICT completed
4 physical additions to its facilities which increased its
5 distribution capability to serve up to 1,800 equivalent
6 residential domestic service connections.

7 On May 2, 1986, the WATER DISTRICT submitted an application
8 to the DEPARTMENT for an amended permit, requesting approval of
9 the additional construction it had undertaken, and requesting
10 permission to operate the additions to the plant to connect with
11 and serve up to 1,800 connections.

12 For a long time, the DEPARTMENT took no action on the WATER
13 DISTRICT's application. In the meantime, as indicated above, the
14 WATER DISTRICT continued to make new service connections
15 resulting in a total substantially in excess of the 1,200
16 equivalent connections allowed under its 1978 permit from the
17 DEPARTMENT.

18 On January 7, 1988, Petitioners filed this action.

19 On May 5, 1988, one day before trial commenced in this
20 action, Respondent DEPARTMENT issued its amended permit to
21 Respondent WATER DISTRICT based on the WATER DISTRICT's
22 application filed two years before.

23 By its terms, the new permit is temporary and will expire on
24 September 30, 1992. It permits the WATER DISTRICT to add up to
25 30 new domestic service connections per year, not to exceed a
26 total of 120, so long as the WATER DISTRICT completes an
27 agreement with the Sonoma County Water Agency for the purchase of
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1 water rights by June, 1989, to be operational by June, 1992. The
2 permit also requires the WATER DISTRICT to provide the DEPARTMENT
3 by November 1, 1988, with an engineering report and plan for the
4 acquisition of other water rights, construction of additional
5 water storage facilities, and development of groundwater sources.
6 In the event of noncompliance with any of these conditions, the
7 DEPARTMENT will re-evaluate the permit provisions and determine
8 whether an immediate ban on new service connections should be
9 imposed. The permit also requires other compliances by the WATER
10 DISTRICT at times certain, and requires the WATER DISTRICT to
11 provide written quarterly progress reports to the DEPARTMENT.

12 The Position of the State Water Resources Control Board
13 with Respect to Additional Diversions by WATER DISTRICT

14 As noted above, in April, 1986, in its Decision 1610, the
15 State Department of Water Resources granted approval for the
16 withdrawal by the WATER DISTRICT of 7,500 acre-feet per year from
17 the Sonoma County Water Agency's stored water in Lake Mendocino.
18 But the Board placed the following conditions and restrictions on
19 the WATER DISTRICT's withdrawals:

- 20 1. The WATER DISTRICT cannot withdraw any of the 7,500
21 acre-feet when, as of April 1, Lake Pillsbury (which supplies
22 Lake Mendocino) has not accumulated 50,000 acre-feet of water;
- 23 2. The WATER DISTRICT cannot withdraw any of the 7,500
24 acre-feet when, as of May 1, Lake Pillsbury has not accumulated
25 90,000 acre-feet;
- 26 3. If the WATER DISTRICT is prevented from withdrawing
27 water based on either of the two foregoing restrictions, it
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1 cannot resume withdrawals until it demonstrates to the State
2 Division of Water Rights that Lake Mendocino will not fall below
3 30,000 acre-feet of water;

4 4. If not already prevented from withdrawing water under
5 any of the foregoing restrictions, anytime Lake Mendocino drops
6 below 30,000 acre-feet, the WATER DISTRICT can withdraw only 50%
7 of the average monthly diversion it made during the same month of
8 the previous three years.

9 These restrictions and conditions are so onerous that the
10 Board's approval is basically of no benefit to the WATER
11 DISTRICT; whenever the WATER DISTRICT has the greatest need to
12 withdraw water, the conditions would prevent it from withdrawing
13 water.

14 The restrictions and conditions were imposed by the Board
15 based on its finding that in nine out of every 56 years, there
16 won't be enough water to serve Redwood Valley and at the same
17 time both leave enough water in Lake Mendocino for storage and
18 maintain the required minimum stream flow downstream from the
19 Lake.

20 The regulation of California's water resources is a function
21 of the State Water Resources Control Board. Water Codes 174.
22 Any future agreement for the sale of water by the Sonoma County
23 Water Agency to the WATER DISTRICT will require the approval of
24 the Board.

25 None of the evidence presented at trial suggested any reason
26 why the Board would not impose the same conditions and
27 restrictions on its approval of any such future agreement as it
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1 imposed in its April, 1986, Decision 1610.

2
3 THE LAW

4 To prevail in this proceeding, Petitioners must show that
5 they have a clear and beneficial right to compel Respondents to
6 perform a clear and present duty imposed upon them by law. Code
7 of Civil Procedure §§1085, 1086; see, generally, Witkin,
8 California Procedure (3d Ed.) "Extraordinary Writs" §65.

9 The WATER DISTRICT has a law-imposed duty to provide a
10 reliable and adequate supply of potable water to its customers.
11 Health & Safety Code §4017. The WATER DISTRICT has a further
12 duty to refrain from modifying its distribution system (for
13 example, by adding new service connections) as authorized by its
14 permit without first applying for and receiving an amended permit
15 authorizing such change, unless the modification complies in all
16 particulars with the Waterworks Standards; that is, regulations
17 adopted by the DEPARTMENT pursuant to Health & Safety Code
18 §§4010.1(h) and 4026. Health & Safety Code §4019.

19 The DEPARTMENT has a law-imposed duty to thoroughly
20 investigate, consider and determine the WATER DISTRICT's petition
21 for a new or amended permit to operate its water system. Health
22 & Safety Code §§4013, 4019. The DEPARTMENT also has a duty to
23 deny the WATER DISTRICT's petition unless the WATER DISTRICT
24 establishes that it will supply a continuous and adequate supply
25 of potable water to its customers. Health & Safety Code §4015.

26 Pursuant to its authority under Health & Safety Code
27 §§4010.1(h) and 4026, the DEPARTMENT has adopted regulations
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1 known as the Waterworks Standards which as part of Title 22 of
2 the California Administrative Code, have the force and effect of
3 state law. Alta-Dena Dairy v. San Diego County (1969) 271
4 Cal.App.2d 66.

5 A new service connection may be added to a water system's
6 distribution system only if the water system will comply with
7 Title 22 California Administrative Code §64562 after the new
8 service connection is added. Title 22 California Administrative
9 Code §64568.

10 Sufficient water is required to be available from the water
11 source to supply adequately, dependably, and safely the total
12 requirements of all users under maximum demand conditions. Title
13 22 California Administrative Code §64562(a). The DEPARTMENT
14 interprets §64562(a) to require that the supply must be capable
15 of reliably meeting the maximum day demand conditions except
16 during drought, emergency, or other unusual conditions that would
17 occur not more than 5% of the time; that is, not more than once
18 every 20 years. During water short periods, the supply must be
19 capable of meeting basic public health needs through
20 implementation of a mandatory water conservation and rationing
21 program. According to the DEPARTMENT, basic health needs can be
22 defined as 50-75 gallons per person per day.

23 The source capacity of a purchased water connection shall be
24 included in the total source capacity of the purchasing water
25 system only if the purchaser has sufficient storage to meet use
26 requirements during reasonably foreseeable shutdowns by the
27 supplier. Title 22 California Administrative Code §64563.

1 In reviewing the actions of the WATER DISTRICT and the
2 DEPARTMENT, I am limited to a determination of whether their
3 actions were arbitrary, capricious, or entirely lacking in
4 evidentiary support; I am not authorized to exercise my own
5 independent judgment on the evidence. United States v. State
6 Water Resources Control Board (1986) 182 Cal.App.3d 82, 112-113;
7 Carolton Santee Corp. v. Padre Dam Mun. Water Dist. (1981) 120
8 Cal.App.3d 14, 18-19; Swanson v. Marin Mun. Water Dist. (1976) 56
9 Cal App.3d 512, 519.

11 CONCLUSION

12 The evidence does not support a finding that the WATER
13 DISTRICT's present annual summer water needs are anything less
14 than the 1,220 acre-feet it averaged during the summers of 1984-
15 85, 1985-86, and 1986-87, or that more than very little, if any,
16 of the Improvement District's 8,000 acre-feet per year is legally
17 available as surplus for the WATER DISTRICT to use. It follows
18 that the WATER DISTRICT lacks a legal water source sufficient to
19 supply adequately, dependably, and safely its users' normal
20 needs, let alone their total requirements under maximum demand
21 conditions.

22 And during a drought, emergency, or other unusual condition
23 causing the WATER DISTRICT's Lake Mendocino supply to be cut off,
24 the WATER DISTRICT's storage pond is an insufficient water source
25 to supply its users with adequate water even if the phrase
26 "maximum demand conditions" is read to permit rationing. The
27 WATER DISTRICT's rationing plan would limit domestic water to 100
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1 gallons per day to each of the WATER DISTRICT's 1,350 equivalent
2 residential service connections which serve about 5,000 people,
3 or 3.7 persons per connection. That works out to only 27 gallons
4 per person per day, and the DEPARTMENT's own standards call for a
5 minimum of 50-75 gallons per person per day to meet basic health
6 needs.

7 It was clear from the evidence that the Improvement District
8 isn't enforcing its right to limit the WATER DISTRICT's use to
9 only the Improvement District's unused surplus from its 8,000
10 acre-feet, and that the Sonoma County Water Agency isn't
11 enforcing its right to limit Project water use by the Improvement
12 District and the WATER DISTRICT together to the Improvement
13 District's 8,000 acre-feet. Nevertheless, it is the duty of the
14 State through its regulatory agencies to

15 "...take vigorous action to enforce the terms and
16 conditions of existing permits and licenses to
17 appropriate water and to prevent the unlawful diversion
of water." Water Code Section 1825.

18 In any event, the requirements of "a reliable and adequate
19 supply" (Health & Safety Code § 4017), "a continuous and adequate
20 supply" (Health & Safety Code § 4015), and "sufficient water...to
21 supply adequately, dependably, and safely the total requirements
22 of all users" (Title 22 California Administrative Code §
23 64562(a)) are not met by a water source that is capable of
24 meeting the water system users' needs only because other
25 diverters with superior rights choose not to enforce them.

26 Finally, the temporary and conditional nature of the amended
27 permit does not justify its authorization to continue making new
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1 service connections. The whole ultimate salvation aimed at by
2 the permit is an eventual contract with the Sonoma County Water
3 Agency for the sale of some of the Agency's water to the WATER
4 DISTRICT. The State Water Resources Control Board has already
5 amended the Sonoma County Water Agency's permit to allow the
6 negotiation of such a contract -- for up to 7,500 acre-feet of
7 water per year -- but under conditions that make such a contract
8 useless to the WATER DISTRICT. And no witness or other source of
9 evidence has suggested any reason why the Board would approve a
10 new contract without imposing the same conditions.

11 Respondents' determination that the WATER DISTRICT's water
12 supply source is sufficient to adequately and dependably supply
13 its users' requirements is entirely lacking in evidentiary
14 support. Petitioners have established that Respondents have a
15 clear and present duty to immediately cease authorizing and
16 making new water service connections. As customers of the WATER
17 DISTRICT and users of the water from its domestic water system,
18 Petitioners have a clear and beneficial right to compel
19 Respondents to perform their duty; without doubt a public policy
20 objective sought to be achieved by Health & Safety Code §§ 4015
21 and 4017 and Title 22 §§ 64562(a) and 64568 is to protect
22 existing users from a water shortage disaster resulting from
23 expansion of the water system beyond the capabilities of its
24 supply source.

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1 DAVID RIEMENSCHNEIDER
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6 Attorney for Petitioners

FILED

JAN 24 1989

MARSHA A. YOUNG
MENDOCINO COUNTY CLERK
Deputy

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

9 RESIDENTS FOR ADEQUATE WATER,
10 OLIVER L. SAUSE, and MICHAEL
11 E. SWEENEY,

CASE NO. 55595

11 Petitioners,

JUDGMENT

12 vs.

13 STATE OF CALIFORNIA DEPARTMENT
14 OF HEALTH SERVICES and REDWOOD
15 VALLEY COUNTY WATER DISTRICT,

15 Respondents.

16
17 This cause came on regularly for hearing before this Court
18 on May 6, 1988, May 9, 1988, June 13, 1988, June 14, 1988 and
19 June 16, 1988, before the Honorable James Luther, pursuant to
20 the verified petition of Petitioners RESIDENTS FOR ADEQUATE
21 WATER, OLIVER L. SAUSE, and MICHAEL E. SWEENEY. David
22 Riemenschneider appeared as attorney for Petitioners, Charles
23 Bell appeared as attorney for Respondent REDWOOD VALLEY COUNTY
24 WATER DISTRICT, and Asher Ruben appeared as attorney for
25 Respondent STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES.

26 The cause was heard and evidence, both oral and
27 documentary, was received.

28 The cause having been argued and submitted for decision,

*Amended by
Writ
Issued*

JANUARY 24 1989
ENTERED 1-24-89
PAGE 173

1 the Court being fully advised, and the Court having directed
2 that judgment and peremptory writ of mandate should issue in
3 this cause,

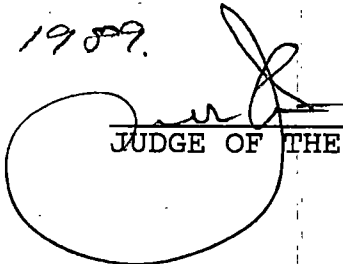
4 IT IS ORDERED, ADJUDGED AND DECREED:

5 1) That a peremptory writ of mandate issue commanding
6 Respondent REDWOOD VALLEY COUNTY WATER DISTRICT to cease making
7 any net increase in physical domestic service connections to
8 REDWOOD VALLEY COUNTY WATER DISTRICT and commanding Respondent
9 STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES to prohibit
10 Respondent REDWOOD VALLEY COUNTY WATER DISTRICT from making any
11 net increase in physical domestic service connections to REDWOOD
12 VALLEY COUNTY WATER DISTRICT. This Court reserves jurisdiction
13 to modify the said Writ in the event of any change in said
14 DISTRICT's water supply;

15 2) That Petitioners have and recover from Respondents,
16 jointly and severally, costs in the amount of \$ _____; and

17 3) This court reserves jurisdiction over the issue of
18 attorney's fees, and the right to and the amount of attorney's
19 fees, to be awarded to Petitioners shall be determined in a
20 separate proceeding by this trial court.

21 Dated: *JANUARY 24, 1989.*

22 
23 JUDGE OF THE SUPERIOR COURT
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

Date: January 23, 1989

RESIDENTS FOR ADEQUATE WATER,)
et al.,)
 Petitioners,)
 vs.)
STATE OF CALIFORNIA DEPARTMENT OF)
HEALTH SERVICES, et al.,)
 Respondents.)
_____)

No. 55595

MINUTE ORDER ON STATEMENT OF DECISION

The tentative decision filed December 7, 1988, is amended as follows:

1. The words "Department of Water Resources" appearing on page 3 at line 22 and on page 5 at line 13 are deleted and the words "State Water Resources Control Board" are substituted therefor.
2. The words "State Water Resources Control Board" on page 6 at lines 19 and 20 are deleted and the words "State Division of Water Rights" are substituted therefor.
3. On page 6 at line 20, between the sentences ending and beginning on that line, a reference to a footnote 1-A is added. At the bottom of the page, footnote 1-A is added to read as follows:

"1-A/ This was made clear by the testimony of the General Manager of the Sonoma County Water Agency:

A Well basically, it's the position of the Water Agency that the report that's filed under (appropriative) rights permits with the Division of Water Rights are not a reliable source of information for drawing that type of conclusion. Those reports are not used by the Division itself in determining licensing quantities under the permits in our judgment, nor should they be used by anybody else in drawing conclusions. There are better sources of information.

Q Why do you concur with the State Department of Water Rights on that matter?

A One reason is because we filed dozens of those reports ourselves and we would not use our own reports.

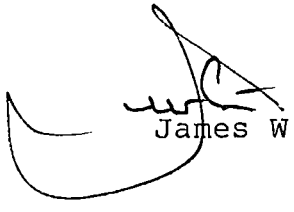
Q All right. Takes one. But what's the -- why not? To me a layman, why not?

A The reports don't clearly define the sources of the data. They don't define the methodologies used in drawing the conclusions set forth in the reports. And the reports frequently, generally speaking, don't comply with the priorities and the processes dictated by California water rights law."

4. On page 19 at line 5 the words "given its approval to such a contract" are deleted and the words "amended the Sonoma County Water Agency's permit to allow the negotiation of such a contract" are substituted therefor.

As so amended, the tentative decision is adopted as the court's statement of decision. Counsel for petitioners is requested to prepare the statement of decision as adopted for signature.

In all other respects, the request for statement of decision filed by respondent REDWOOD VALLEY COUNTY WATER DISTRICT on December 16, 1988, is denied.


James W. Luther, Judge

Copies issued 1/23/89 *W*

cc: David Riemenschneider, Esq.
✓ Charles Bell, Esq. *Hand delivered*
Asher Rubin, Deputy Attorney General

RECEIVED TO FILE
CHARLES A. FOSTER Executive
Clerk Mendocino County

DEC -7 1988

Superior Court
By Deputy Clerk _____

FILED

DEC 7 - 1988

MARSHA A. YOUNG
MENDOCINO COUNTY CLERK
By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

RESIDENTS FOR ADEQUATE WATER, OLIVER)
L. SAUSE, and MICHAEL E. SWEENEY,)

Petitioners,)

vs.)

STATE OF CALIFORNIA DEPARTMENT OF)
HEALTH SERVICES and REDWOOD VALLEY)
COUNTY WATER DISTRICT,)

Respondents.)

No. 55595

TENTATIVE DECISION
Rule 232(a)

INTRODUCTION

In this mandamus proceeding, petitioners seek a writ to prevent respondent REDWOOD VALLEY COUNTY WATER DISTRICT from making new domestic water service connections.

Petitioner RESIDENTS FOR ADEQUATE WATER is an unincorporated association of individuals who live in Redwood Valley in Mendocino County and who obtain their domestic water from the respondent WATER DISTRICT or from groundwater sources or from both. Petitioners OLIVER L. SAUSE and MICHAEL E. SWEENEY are individual customers of the WATER DISTRICT.

Respondent REDWOOD VALLEY COUNTY WATER DISTRICT ("WATER

1 DISTRICT") is a county water district and a public water system
2 within the meaning of Health & Safety Code § 4010.1 with about
3 940 service connections for treated domestic water. The WATER
4 DISTRICT also has additional service connections for untreated
5 irrigation water. All of WATER DISTRICT's service connections
6 are within Redwood Valley.

7 Respondent STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES
8 ("DEPARTMENT") is the division of the executive branch of state
9 government charged with the responsibility to regulate public
10 water systems in California. Health & Safety Code §§ 103, 4010-
11 4037.

12 This proceeding is based on petitioners' contentions that:

13 1. Respondent WATER DISTRICT does not possess a water
14 source capacity sufficient to supply adequately, dependably, and
15 safely the total requirements of all its users under maximum
16 demand conditions as required by applicable law; and that

17 2. Nevertheless, respondents continue to permit new service
18 connections to be added to the WATER DISTRICT's water system; and
19 that

20 3. Therefore, petitioners are entitled to a writ of
21 mandate to compel respondents to impose an immediate and absolute
22 moratorium on new service connections to the WATER DISTRICT's
23 system.

24 THE EVIDENCE

25 As will become clear, analysis and resolution of
26 petitioners' contentions require consideration of the evidence in
27 relation to the WATER DISTRICT's water needs, its legal rights to
28 take water, the actual practical availability of water to its

1 users, the effectiveness of the DEPARTMENT's regulation of the
2 WATER DISTRICT, and the position of the State Water Resources
3 Control Board with respect to any new legal right the WATER
4 DISTRICT might acquire to take water from Lake Mendocino. With
5 respect to these matters, the evidence presented at trial
6 established the following facts.

7 The WATER DISTRICT's Water Needs

8 The WATER DISTRICT operates two water systems: An
9 agricultural system and a domestic system. The agricultural
10 system services approximately 3,330 acres with untreated water.
11 The domestic system serves approximately 940 service connections
12 with treated water. Besides single family residences, the
13 domestic connections include some large water users such as
14 schools, mobile home parks, and a winery. Averaging in these
15 large users, respondents have determined that the WATER
16 DISTRICT's domestic system presently serves a total of 1,350
17 "equivalent residential units," totalling about 5,000 persons.
18 The WATER DISTRICT's domestic system is presently designed to
19 serve up to 1,800 equivalent residential units.

20 During the winter months -- November 1 through April 30 --
21 the WATER DISTRICT's needs for water have been fully met by its
22 permit from the State Department of Water Resources to withdraw
23 up to 4,900 acre-feet of water from Lake Mendocino during those
24 months each year. Use under this permit is conditional on there
25 being at least 72,000 acre-feet of water in the Lake and that
26 flood waters are actually being released, but these conditions
27 apparently have not been consciously honored or enforced.
28 Petitioners do not contend that the WATER DISTRICT's supply of

1 water during those months is inadequate.

2 During the summer months of May 1 through October 31, in the
3 years 1984-85, 1985-86, and 1986-87, the WATER DISTRICT's annual
4 use of Russian River Project water has averaged 1,220 acre-feet,
5 based on reports from the WATER DISTRICT to the Mendocino County
6 Russian River Flood Control and Water Conservation Improvement
7 District ("Improvement District,") the agency that sells the
8 WATER DISTRICT its summer water.^{1/} These reports were based on
9 the WATER DISTRICT's pumping records. They are accurate and
10 represent totals for both agricultural and domestic use combined.

11 Of the total acre-feet of water used by the WATER DISTRICT
12 each summer, about 55% to 60% has been delivered through its
13 agricultural system and used for irrigation, stock, and other
14 agricultural purposes. From 1984 through the summer of 1988, the
15 number of equivalent residential unit domestic service
16 connections

17
18 ^{1/} The Improvement District's water users are located in
19 the Ukiah and Sanel valleys downstream from Lake Mendocino
20 along the Russian River to the Mendocino-Sonoma County
21 line. The Improvement District Does not operate a
22 water system and has no pumps or other facilities;
23 its individual members draw water directly out of
24 the Russian River with their own pumps. The water
25 users in the District include the City of Ukiah, the
26 Russian River Estates subdivision, the Masonite
27 Corporation, the Georgia Pacific Corporation, the
28 Millview Water District, the Willow Water District,
the East Sanel Water District, the Hopland Public
Utility District, and numerous grape and pear
growers and other ranchers. Many of the users have
rights to draw other, non-project water from the
river, but the total entitlement of all the
member-users to use Russian River Project water is
8,000 acre-feet per year.

1 increased from 1,130 to 1,350, about 100 of which were added
2 during the last year. The new domestic service connections
3 generally represent a conversion of land from agricultural to
4 residential use.

5 Because of the substantial increase in residential service
6 connections in the last year, the WATER DISTRICT's present summer
7 water needs are something in excess of the average 1,220 acre-
8 feet it used during the summer months of the three years ending
9 1986-87.

10 11 The WATER DISTRICT's Legal Rights to Take Water

12 As stated above, the WATER DISTRICT has a permit from the
13 Department of Water Resources under which its water needs have
14 been abundantly met during the months of November through April
15 each water year, and the adequacy of the WATER DISTRICT's supply
16 source during those months is not questioned in this proceeding.

17 During the months of May through October each year, the
18 WATER DISTRICT's only effective legal entitlement to water is by
19 a stipulated judgment entered May 30, 1980, in Mendocino County
20 Superior Court Action No. 42059, Mendocino County Russian River
21 Flood Control and Water Conservation Improvement District vs.
22 Redwood Valley County Water District. In effect a court-approved
23 contract between the two districts, the judgment acknowledges
24 that the Improvement District has a State Water Resources Control
25 Board permit to consume 8,000 acre-feet per year of the Russian
26 River Project Water stored in Lake Mendocino, and provides that
27 the WATER DISTRICT has the right to buy from the Improvement
28 District any part of the 8,000 acre-feet not used by the

1 Improvement District. The judgment also provides that the
2 Improvement District may notify the WATER DISTRICT in the event
3 no surplus water from the 8,000 acre-feet is available for the
4 WATER DISTRICT to use. If the WATER DISTRICT disagrees, the
5 matter is to be resolved by fast arbitration. If the final
6 determination is that there is no surplus water, then the WATER
7 DISTRICT is to cease drawing water.

8 The Improvement District's right to use 8,000 acre-feet per
9 year is its total entitlement to Project Water in Lake Mendocino.
10 During the years 1981 through 1986 while the judgment between the
11 Improvement District and the WATER DISTRICT has been in effect,
12 figures reported by the Improvement District and accepted as
13 accurate by the DEPARTMENT indicate that the Improvement District
14 and the WATER DISTRICT combined have diverted less than 5,000
15 acre-feet per year of Project water.

16 But the periodic reports required to be filed by water
17 diverters, in which the Improvement District reported these
18 figures, are not considered reliable by knowledgeable people in
19 the water business, including the staff of the State Water
20 Resources Control Board. And there are particular compelling
21 reasons to support the conclusion that the Improvement District's
22 reported figures are grossly inaccurate and represent less than
23 half the water actually taken. For one, the Improvement District
24 has not updated its list of diverters in at least six years, and
25 there are at least 55 diversion points within the District --
26 about half the diverters within its boundaries -- that it is not
27 reporting at all. For another, based on figures reported by the
28 Sonoma County Water Agency and accepted as accurate by the

1 State Water Resources Control Board and the DEPARTMENT,
2 diversions out of the Russian River between Lake Mendocino and
3 Healdsburg in Sonoma County more than doubled between 1976 and
4 1987. In 1976, before there was any diversion for Redwood
5 Valley, the Improvement District reported that it diverted 5,025
6 acre-feet of Project water. Assuming that the Improvement
7 District took no more than that amount in 1976, then its total
8 diversion of Project water 1987 was 10,000 acre-feet or more.

9 The Improvement District's permit entitles it to consume --
10 not just divert -- 8,000 acre-feet of Project water per year.
11 Some of the water diverted returns later back into the River
12 through drainages and percolation. Nobody knows how much water
13 returns; the Sonoma County Water Agency estimates that it could
14 be between 5% and 35% of the total water diverted. Assuming the
15 median of this estimate range -- 20% -- to be correct, then the
16 Improvement District actually consumed about 8,000 acre-feet of
17 Project water during 1987.

18 This indicates that the WATER DISTRICT's legal right to take
19 surplus water under its judgment-contract with the Improvement
20 District entitled it to take no water in 1987.

21 Although the judgment-contract between the Improvement
22 District and the WATER DISTRICT permits the Improvement District
23 to notify the WATER DISTRICT when there is no surplus water for
24 the WATER DISTRICT to use, the Improvement District does not
25 monitor or report its diverters' withdrawals from the River until
26 after the water year is over, and has not taken the trouble to
27 develop a way to enforce its right to limit the WATER DISTRICT to
28 only the surplus of the Improvement District's 8,000 acre-foot

1 entitlement.

2 Other than the Improvement District's 8,000 acre-feet, all
3 the Project water stored in Lake Mendocino belongs to the Sonoma
4 County Water Agency.^{2/} Based on its own perception of its
5 enlightened self-interest as a water agency in California, and
6 its wish to contract with either the Improvement District or some
7 other entity for the sale of water to the WATER DISTRICT, the
8 Sonoma County Water agency will probably not object if diverters
9 north of the Mendocino-Sonoma County line withdraw more than
10 8,000 acre-feet of Project water in a particular year. As the
11 Agency's General Manager testified:

12 "It would be sound general public policy not to deny
13 Redwood Valley water that's needed for -- particularly
14 for a municipal and industrial use based on, you know,
the artificiality of this massive -- the regulatory
system that we enjoy in California."

15 And if the WATER DISTRICT used too much water:

16 "...One, we wouldn't know. And secondly, if
17 we did know, we probably wouldn't care."

18 In April, 1986, the WATER DISTRICT obtained approval from
19 the State Water Resources Control Board to buy 7,500 acre-feet of
20 Project water per year from the Sonoma County Water Agency and to
21 take it out of Lake Mendocino under the Sonoma County Water

22
23 ^{2/} The Sonoma County Water Agency operates the Russian River
24 Project, which is a water diversion and storage project
25 that includes Lake Mendocino and Lake Sonoma. The Project
26 furnishes water from the Russian River, the East Fork of
27 the Russian River, and Dry Creek for domestic, industrial,
28 municipal, irrigation, and recreational uses. The Sonoma
County Water Agency supplies water to the cities of
Cotati, Petaluma, Rohnert Park, Santa Rosa, and Sonoma,
and the Forestville County Water District, the North Marin
Water District, the Valley of the Moon Water District, the
Marin Municipal Water District, and several individuals.

1 Agency's water right (Board Decision 1610.) However, as will be
2 explained, the use conditions and limitations attached by the
3 Board render this new entitlement illusory and useless to the
4 WATER DISTRICT.

5
6 The Actual Practical Availability of Water
7 to the WATER DISTRICT's Users

8 Although it is exploring groundwater sources in Redwood
9 Valley, the WATER DISTRICT's only present water source is Lake
10 Mendocino. The DISTRICT's three pumps can pull a total of 13,000
11 gallons per minute out of the lake and into its water distribut-
12 ion system; the lowest of the three pumps can continue to pump
13 water, but at a drastically reduced rate, when the lake level is
14 down to within five feet of the lake bottom in the area of the
15 WATER DISTRICT's pumping caisson.

16 As among the WATER DISTRICT, the Improvement District, and
17 the Sonoma County Water Agency, the WATER DISTRICT pumps right
18 out of the Lake and is the first diverter physically in line.
19 Next physically in line is the Improvement District, whose
20 diverters draw water out of the Russian River downstream from
21 Lake Mendocino to the Mendocino-Sonoma County line. Last
22 physically in line is the Sonoma County Water Agency.

23 The WATER DISTRICT's only storage facility is a 68 acre-foot
24 storage pond, of which about 54.5 acre-feet is considered by the
25 DEPARTMENT to be useable for domestic consumption in the event of
26 a cut-off of water from Lake Mendocino.

27 In a crisis or drought year, the WATER DISTRICT's plan calls
28 for restrictions on its agricultural users down to a cut-off of

1 water, and imposition of conservation measures on its domestic
2 users down to limiting water use to 400 gallons per day per
3 equivalent service connection. If water from Lake Mendocino
4 becomes unavailable, then the WATER DISTRICT intends to ration
5 water to its domestic users from its 68 acre-foot pond down to
6 100 gallons per day per equivalent service connection. (Based on
7 reports submitted to the DEPARTMENT by the WATER DISTRICT, the
8 domestic water consumed per equivalent residential unit
9 connection from 1984 through 1987 averaged 457 gallons per day
10 year-round, 807 gallons per day during the maximum demand month
11 in the summer, and 1,004 gallons per day on the maximum demand
12 day. These figures are probably accurate.) There has not been a
13 water supply crisis since the WATER DISTRICT was formed in 1979,
14 but 1976-77 was a severe drought during which the Improvement
15 District reported that it diverted more than 9,000 acre-feet of
16 water from the Russian River. Based on history, the DEPARTMENT
17 estimates that a water supply crisis requiring the WATER DISTRICT
18 to implement any restrictions will occur less than two years in
19 every 75, or less than 3% of the time.

20 With respect to normal use, independent studies done by the
21 Department of Water Resources, the Sonoma County Water Agency,
22 and the newly formed Mendocino County Water Agency support the
23 conclusion that there is adequate water to meet maximum demands
24 by all users at least until the year 2000. But studies by the
25 same three agencies show that there will be a general water
26 deficiency in Mendocino County by the year 2000. And in its
27 April, 1986, Decision 1610, granting the WATER DISTRICT heavily
28 conditioned approval to take water out of Lake Mendocino under

1 the Sonoma County Water Agency's right, the State Water Resources
2 Control Board predicted that Lake Mendocino will be lowered
3 faster and to lower levels than have been experienced since
4 1959, and noted that Redwood Valley has an inadequate water
5 supply source for its developing uses and no feasible source
6 other than Lake Mendocino.

7 The DEPARTMENT recognizes that a shortage in the supply of
8 water in Lake Mendocino could occur before 2000, based on the
9 diversions between Lake Mendocino and Healdsburg having doubled
10 between 1976 and 1987 as well as the significantly increased
11 stream flows out of the Lake since April, 1986, due to Fish &
12 Game Department needs.

13
14 The Effectiveness of the DEPARTMENT's Regulation
15 of the WATER DISTRICT

16 In September, 1978, the DEPARTMENT issued its permit to the
17 WATER DISTRICT to build and operate its domestic water system.
18 Before issuing the permit, the DEPARTMENT did not consider
19 whether or not the WATER DISTRICT had any right to pump water
20 from Lake Mendocino, or the possibility that pumping from the
21 Lake might be interrupted.

22 In 1982, the issue of the reliability of the WATER
23 DISTRICT's water supply was inquired into by the DEPARTMENT, and
24 the DEPARTMENT apparently then first became informed that the
25 WATER DISTRICT's only summer water source was its judgment-
26 contract for surplus water from the Improvement District.
27 Between 1982 and 1985, the DEPARTMENT made inquiries to the WATER
28 DISTRICT concerning the WATER DISTRICT 's progress in acquiring

1 new supply sources, and the WATER DISTRICT responded with
2 information about its unsuccessful attempts to contract with the
3 Sonoma County Water Agency for more water.

4 The DEPARTMENT's permit to the WATER DISTRICT authorized a
5 water system to serve a maximum of 1,200 equivalent residential
6 service connections. In 1986, the WATER DISTRICT completed
7 physical additions to its facilities which increased its
8 distribution capability to serve up to 1,800 equivalent
9 residential domestic service connections.

10 On May 2, 1986, the WATER DISTRICT submitted an application
11 to the DEPARTMENT for an amended permit, requesting approval of
12 the additional construction it had undertaken, and requesting
13 permission to operate the additions to the plant to connect with
14 and serve up to 1,800 connections.

15 For a long time, the DEPARTMENT took no action on the WATER
16 DISTRICT's application. In the meantime, as indicated above, the
17 WATER DISTRICT continued to make new service connections
18 resulting in a total substantially in excess of the 1,200
19 equivalent connections allowed under its 1978 permit from the
20 DEPARTMENT.

21 On January 7, 1988, petitioners filed this action.

22 On May 5, 1988, one day before trial commenced in this
23 action, respondent DEPARTMENT issued its amended permit to
24 respondent WATER DISTRICT based on the WATER DISTRICT's
25 application filed two years before.

26 By its terms, the new permit is temporary and will expire
27 on September 30, 1992. It permits the WATER DISTRICT to add up
28 to 30 new domestic service connections per year, not to exceed a

1 total of 120, so long as the WATER DISTRICT completes an
2 agreement with the Sonoma County Water Agency for the purchase of
3 water rights by June, 1989, to be operational by June, 1992. The
4 permit also requires the WATER DISTRICT to provide the DEPARTMENT
5 by November 1, 1988, with an engineering report and plan for the
6 acquisition of other water rights, construction of additional
7 water storage facilities, and development of groundwater
8 sources. In the event of noncompliance with any of these
9 conditions, the DEPARTMENT will re-evaluate the permit provisions
10 and determine whether an immediate ban on new service connections
11 should be imposed. The permit also requires other compliances by
12 the WATER DISTRICT at times certain, and requires the WATER
13 DISTRICT to provide written quarterly progress reports to the
14 DEPARTMENT.

15
16 The Position of the State Water Resources Control Board
17 with Respect to Additional Diversions by WATER DISTRICT

18 As noted above, in April, 1986, in its Decision 1610, the
19 State Department of Water Resources granted approval for the
20 withdrawal by the WATER DISTRICT of 7,500 acre-feet per year from
21 the Sonoma County Water Agency's stored water in Lake Mendocino.
22 But the Board placed the following conditions and restrictions on
23 the WATER DISTRICT's withdrawals:

24 1. The WATER DISTRICT cannot withdraw any of the 7,500
25 acre-feet when, as of April 1, Lake Pillsbury (which supplies
26 Lake Mendocino) has not accumulated 50,000 acre-feet of water;

27 2. The WATER DISTRICT cannot withdraw any of the 7,500
28 acre-feet when, as of May 1, Lake Pillsbury has not accumulated

1 90,000 acre-feet;

2 3. If the WATER DISTRICT is prevented from withdrawing
3 water based on either of the two foregoing restrictions, it
4 cannot resume withdrawals until it demonstrates to the State
5 Division of Water Rights that Lake Mendocino will not fall below
6 30,000 acre-feet of water;

7 4. If not already prevented from withdrawing water under
8 any of the foregoing restrictions, anytime Lake Mendocino drops
9 below 30,000 acre-feet, the WATER DISTRICT can withdraw only 50%
10 of the average monthly diversion it made during the same month of
11 the previous three years.

12 These restrictions and conditions are so onerous that the
13 Board's approval is basically of no benefit to the WATER
14 DISTRICT; whenever the WATER DISTRICT has the greatest need to
15 withdraw water, the conditions would prevent it from withdrawing
16 water.

17 The restrictions and conditions were imposed by the Board
18 based on its finding that in nine out of every 56 years, there
19 won't be enough water to serve Redwood Valley and at the same
20 time both leave enough water in Lake Mendocino for storage and
21 maintain the required minimum stream flow downstream from the
22 Lake.

23 The regulation of California's water resources is a function
24 of the State Water Resources Control Board. Water Code § 174.
25 Any future agreement for the sale of water by the Sonoma County
26 Water Agency to the WATER DISTRICT will require the approval of
27 the Board.

28 None of the evidence presented at trial suggested any reason

1 why the Board would not impose the same conditions and
2 restrictions on its approval of any such future agreement as it
3 imposed in its April, 1986, Decision 1610.

4 5 THE LAW

6 To prevail in this proceeding, petitioners must show that
7 they have a clear and beneficial right to compel respondents to
8 perform a clear and present duty imposed upon them by law. Code
9 of Civil Procedure §§ 1085, 1086; see, generally, Witkin,
10 California Procedure (3d Ed.) "Extraordinary Writs" § 65.

11 The WATER DISTRICT has a law-imposed duty to provide a
12 reliable and adequate supply of potable water to its customers.
13 Health & Safety Code § 4017. The WATER DISTRICT has a further
14 duty to refrain from modifying its distribution system (for
15 example, by adding new service connections) as authorized by its
16 permit without first applying for and receiving an amended permit
17 authorizing such change, unless the modification complies in all
18 particulars with the Waterworks Standards; that is, regulations
19 adopted by the DEPARTMENT pursuant to Health & Safety Code §§
20 4010.1(h) and 4026. Health & Safety Code § 4019.

21 The DEPARTMENT has a law-imposed duty to thoroughly
22 investigate, consider and determine the WATER DISTRICT's petition
23 for a new or amended permit to operate its water system. Health
24 & Safety Code §§ 4013, 4019. The DEPARTMENT also has a duty to
25 deny the WATER DISTRICT's petition unless the WATER DISTRICT
26 establishes that it will supply a continuous and adequate supply
27 of potable water to its customers. Health & Safety Code § 4015.

28 Pursuant to its authority under Health & Safety Code §§

1 4010.1 (h) and 4026, the DEPARTMENT has adopted regulations known
2 as the Waterworks Standards which as part of Title 22 of the
3 California Administrative Code, have the force and effect of
4 state law. Alta-Dena Dairy v. San Diego County (1969) 271
5 Cal.App.2d 66.

6 A new service connection may be added to a water system's
7 distribution system only if the water system will comply with
8 Title 22 California Administrative Code § 64562 after the new
9 service connection is added. Title 22 California Administrative
10 Code § 64568.

11 Sufficient water is required to be available from the water
12 source to supply adequately, dependably, and safely the total
13 requirements of all users under maximum demand conditions. Title
14 22 California Administrative Code § 64562(a). The DEPARTMENT
15 interprets § 64562(a) to require that the supply must be capable
16 of reliably meeting the maximum day demand conditions except
17 during drought, emergency, or other unusual conditions that would
18 occur not more than 5% of the time; that is, not more than once
19 every 20 years. During water short periods, the supply must be
20 capable of meeting basic public health needs through
21 implementation of a mandatory water conservation and rationing
22 program. According to the DEPARTMENT, basic health needs can be
23 defined as 50-75 gallons per person per day.

24 The source capacity of a purchased water connection shall be
25 included in the total source capacity of the purchasing water
26 system only if the purchaser has sufficient storage to meet use
27 requirements during reasonably foreseeable shutdowns by the
28 supplier. Title 22 California Administrative Code § 64563.

1 In reviewing the actions of the WATER DISTRICT and the
2 DEPARTMENT, I am limited to a determination of whether their
3 actions were arbitrary, capricious, or entirely lacking in
4 evidentiary support; I am not authorized to exercise my own
5 independent judgment on the evidence. United States v. State
6 Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 112-113;
7 Carolton Santee Corp. v. Padre Dam Mun. Water Dist. (1981) 120
8 Cal.App.3d 14, 18-19; Swanson v. Marin Mun. Water Dist. (1976) 56
9 Cal.App.3d 512, 519.

11 CONCLUSION

12 The evidence does not support a finding that the WATER
13 DISTRICT's present annual summer water needs are anything less
14 than the 1,220 acre-feet it averaged during the summers of 1984-
15 85, 1985-86, and 1986-87, or that more than very little, if any,
16 of the Improvement District's 8,000 acre-feet per year is legally
17 available as surplus for the WATER DISTRICT to use. It follows
18 that the WATER DISTRICT lacks a legal water source sufficient to
19 supply adequately, dependably, and safely its users' normal
20 needs, let alone their total requirements under maximum demand
21 conditions.

22 And during a drought, emergency, or other unusual condition
23 causing the WATER DISTRICT's Lake Mendocino supply to be cut off,
24 the WATER DISTRICT's storage pond is an insufficient water source
25 to supply its users with adequate water even if the phrase
26 "maximum demand conditions" is read to permit rationing. The
27 WATER DISTRICT's rationing plan would limit domestic water to 100
28 gallons per day to each of the WATER DISTRICT's 1,350 equivalent

1 residential service connections which serve about 5,000 people,
2 or 3.7 persons per connection. That works out to only 27 gallons
3 per person per day, and the DEPARTMENT's own standards call for a
4 minimum of 50-75 gallons per person per day to meet basic health
5 needs.

6 It was clear from the evidence that the Improvement District
7 isn't enforcing its right to limit the WATER DISTRICT's use to
8 only the Improvement District's unused surplus from its 8,000
9 acre-feet, and that the Sonoma County Water Agency isn't
10 enforcing its right to limit Project water use by the Improvement
11 District and the WATER DISTRICT together to the Improvement
12 District's 8,000 acre-feet. Nevertheless, it is the duty of the
13 state through its regulatory agencies to

14 "...take vigorous action to enforce
15 the terms and conditions of existing
16 permits and licenses to appropriate
water and to prevent the unlawful
diversion of water."

17 Water Code § 1825.

18 In any event, the requirements of "a reliable and adequate
19 supply" (Health & Safety Code § 4017), "a continuous and adequate
20 supply" (Health & Safety Code § 4015), and "sufficient water...to
21 supply adequately, dependably, and safely the total requirements
22 of all users" (Title 22 California Administrative Code §
23 64562(a)) are not met by a water source that is capable of
24 meeting the water system users' needs only because other
25 diverters with superior rights choose not to enforce them.

26 Finally, the temporary and conditional nature of the amended
27 permit does not justify its authorization to continue making new
28

1 service connections. The whole ultimate salvation aimed at by
2 the permit is an eventual contract with the Sonoma County Water
3 Agency for the sale of some of the Agency's water to the WATER
4 DISTRICT. The State Water Resources Control Board has already
5 given its approval to such a contract -- for up to 7,500 acre-
6 feet of water per year -- but under conditions that make such a
7 contract useless to the WATER DISTRICT. And no witness or other
8 source of evidence has suggested any reason why the Board would
9 approve a new contract without imposing the same conditions.

10 Respondents' determination that the WATER DISTRICT's water
11 supply source is sufficient to adequately and dependably supply
12 its users' requirements is entirely lacking in evidentiary
13 support. Petitioners have established that respondents have a
14 clear and present duty to immediately cease authorizing and
15 making new water service connections. As customers of the WATER
16 DISTRICT and users of the water from its domestic water system,
17 petitioners have a clear and beneficial right to compel
18 respondents to perform their duty; without doubt a public policy
19 objective sought to be achieved by Health & Safety Code §§ 4015
20 and 4017 and Title 22 §§ 64562(a) and 64568 is to protect
21 existing users from a water shortage disaster resulting from
22 expansion of the water system beyond the capabilities of its
23 supply source.

24 25 DECISION

26 For the reasons stated, judgment is for the petitioners and
27 against the respondents for a peremptory writ of mandate
28 commanding respondent WATER DISTRICT to forbear forthwith from

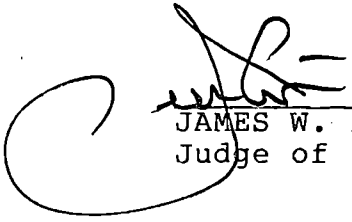
1 making any new domestic service connections to its water system
2 and commanding respondent DEPARTMENT to prohibit forthwith the
3 making of such connections.

4 Petitioners will also recover their costs.

5 The issue of attorney's fees is ordered deferred until
6 joined by appropriate post-judgment motion.

7 This tentative decision shall constitute the court's
8 statement of decision unless within ten days any party specifies
9 controverted issues not resolved by this decision or makes
10 proposals for the inclusion of matters not covered by this
11 decision. Counsel for petitioners is requested to prepare and
12 serve a proposed judgment and, if required, a proposed statement
13 of decision.

14 Dated: December 7, 1988.

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18 JAMES W. LUTHER
19 Judge of the Superior Court
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DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF MENDOCINO ss

I, Doreen R. Venturi, hereby declare that

I am a citizen of the United States, over the age of 18 years and a resident of the County of Mendocino, employed by the County of Mendocino, and not a party to the within action; I am readily familiar with the County's practice for collection and processing of correspondence for mailing with the U.S. Postal Service; I served a copy of the Tentative Decision

_____ by placing a true and correct copy thereof in an envelope addressed to

Hand-delivered to David Riemenschneider, Attorney at Law, P.O. Box N,
Ukiah, CA 95482

Hand-delivered to Charles R. Bell, Attorney at Law, P. O. Box 419,
Ukiah, CA 95482

Asher Rubin, Deputy Attorney General, 350 McAllister St., San Francisco,
CA 94102

and by then sealing and depositing said envelope in a central County mail facility at the Courthouse, Ukiah, California, following ordinary business practices, to be deposited this date, with postage thereon fully prepaid, in the U.S. Mail; further I declare that I am Clerk of the Superior Court of the County of Mendocino, State of California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 1988, at Ukiah, California.

SUPERIOR COURT CLERKS

BY Doreen R. Venturi