

SUPERIOR COURT OF CALIFORNIA
FOR MENDOCINO COUNTY

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

No. 55595

Dated: June 3, 1994

vs.

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

RULING ON DISTRICT'S RENEWED MOTION
TO MODIFY JUDGMENT AND WRIT OF MANDATE

DISTRICT'S Present Compliance?

The 86 New Connections

Respondent REDWOOD VALLEY COUNTY WATER DISTRICT correctly points out that the 1,350 equivalent domestic water service connections permitted by the writ included domestic water service connections that were allocated by the DISTRICT to the Calpella County Water District ("Calpella.") Based on the declaration of Keith Tiemann filed February 4, 1994, and its attached exhibits, I find that, in 1989, there were the equivalent of 86 domestic water service connections in Calpella to which water now is no longer being delivered by the DISTRICT.

The delivery system between the DISTRICT and Calpella still exists. The DISTRICT's new contract with Calpella obligates each district to supply domestic water to the other in an emergency. And it calls upon the DISTRICT to supply domestic water to Calpella in the future, but only under conditions which provide protection to the DISTRICT's water users and residents; see paragraphs 4 (in particular, 4c) and 5 of the "agreement" portion of the "addendum."

For these reasons, I conclude that the 86 new connections in Redwood Valley authorized by the DISTRICT May 6, 1993, did not result in a net increase over the 1,350 equivalent domestic water service connections allowed by the writ.

The 26 New Rancheria Connections

This is another matter. Before 1992, the DISTRICT provided water to a household on the part of the Redwood Valley Rancheria that is within the DISTRICT's boundaries. On May 7, 1992, the DISTRICT authorized water service to new houses on the Rancheria property outside the DISTRICT's boundaries. As a result, the DISTRICT is now providing domestic water service to 27 residences on the Rancheria. Although the DISTRICT is still delivering water to the Rancheria through a single pipeline, the effect of the authorization is to add 26 single family residences to the DISTRICT's domestic water system.

The writ issued January 24, 1989, commands the DISTRICT to cease making any net increase in physical domestic water service connections. Any ambiguity in this language is cleared up by the ruling dated February 20, 1990, stating that the DISTRICT can make new connections only if the new connections result in no net increase in the 1,350 equivalent domestic water service connections permitted by the writ.

The reason the writ was issued was because the DISTRICT doesn't have enough water to service new water users. The purpose of the writ is to protect the DISTRICT'S existing water users by maintaining the status quo until the DISTRICT obtains a new water source. The plain force of the writ orders the DISTRICT not to obligate itself to provide water to new users until the court determines that the DISTRICT has the water to provide.

Before 1992, the DISTRICT had no obligation to deliver water to the portion of the Rancheria that lay outside the DISTRICT. The DISTRICT'S own policy prohibited it from providing new water service outside its boundaries. On May 7, 1992, the DISTRICT adopted a resolution modifying its policy for the specific purpose of providing such service to the Rancheria. It thereby obligated itself to provide domestic water to 26 additional single family residences without any corresponding offset in disconnected service. By its action, the DISTRICT put itself in clear violation of the writ.

The DISTRICT'S violation would justify refusal to hear its present request to modify the writ. Continued violations would justify tightening of the writ to prohibit all new connections without regard to whether there were offsetting disconnections.

However, when called upon to do so, the DISTRICT explained the new connections it has made since the writ was issued, showed that most of them were allowed by the writ, and attempted to show that the others were too. The DISTRICT is under enormous pressure to find new water for new and present water users in Redwood Valley.

Treating the DISTRICT'S violation as a stalemate of its request for modification would benefit no party to this case at this time. For these reasons, despite the DISTRICT'S noncompliance with the writ, I reach the merits of its motion and consider whether there has been a change of circumstances justifying modification of the writ.

Motion for Modification

The DISTRICT contends that there has been a significant change in its water supply since the writ issued in 1989, and that therefore the writ should be dissolved or modified.

The new water supply availability argued by the DISTRICT is based on a contract dated May 19, 1992, between the Sonoma County Water Agency ("Agency") and the Mendocino County Russian River Flood Control and Water Conservation Improvement District ("Improvement District") for the sale of up to 13,000 acre-feet of surplus water from the Agency to the Improvement District.

The Improvement District presently has the right to consume up to 8,000 acre-feet of water annually from the Russian River Project water stored in Lake Mendocino. The DISTRICT'S contract-right to use Project water each year is limited to whatever part of this 8,000 acre-feet the Improvement District doesn't use.

From the DISTRICT'S perspective, the idea of the new 13,000 acre-feet contract between the Agency and the Improvement District is that it will free up for the DISTRICT'S use however much of the Improvement District's 8,000 acre-feet of water the DISTRICT needs to serve its existing and new users.

I am concerned that, like the DISTRICT'S present contract with the Improvement District for up to 8,000 acre-feet, the new 13,000 acre-feet contract is for only surplus water. In any year in which the Agency determines that it has no surplus water, it will have no obligation to provide any of the 13,000 acre-feet to the Improvement District.

I am also concerned that the new contract is not effective yet and will not become effective unless the Water Resources Control Board approves it. Knowing that a primary purpose of the contract is to permit the DISTRICT to divert more Project water out of Lake Mendocino, it is foreseeable that the Board will not approve the new contract without imposing restrictions similar to those it imposed in Board Decision 1610 on the Agency's proposal to sell 7,500 acre-feet of water directly to the DISTRICT in 1986. Those restrictions effectively prevented the DISTRICT from using the 7,500 acre-feet by prohibiting withdrawals of that water from the Lake during those times when it would have the greatest need for the water. The Board imposed the restrictions because of its determination that, in nine of every 56 years, there will not be

enough water to serve Redwood Valley and at the same time both leave enough water in Lake Mendocino for storage and maintain required stream flows downstream from the Lake.

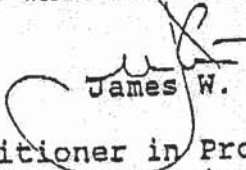
Nevertheless, if for some good and reliable reason, the Water Resources Control Board determines that the situation has significantly improved and now is no longer that critical or dire, and approves the new 13,000 acre-feet contract between the Agency and the Improvement District without conditions or restrictions, I would be persuaded that the reasons that necessitated issuance of the writ in 1989 may no longer exist. I would want to consider dissolving the writ or modifying it to permit the DISTRICT to make a substantial net increase in the number of equivalent domestic water service connections the writ allows. Even if the Board approves the new contract with some conditions, so long as those conditions do not prevent a real and significant quantity of new water from actually being made available to the DISTRICT, I would want to consider modifying the writ to permit more connections.

Ruling

The DISTRICT'S renewed motion to modify the judgment and writ of mandate is denied without prejudice.

The DISTRICT should renew its motion again after the Water Resources Control Board acts on the Agency's application for approval of the new contract for sale of 13,000 acre-feet of surplus water to the Improvement District.

If the DISTRICT is then in full compliance with the writ, I will hear its motion and decide whether to dissolve or modify the writ.


James W. Luther, Judge

cc: Oliver L. Sause, Petitioner in Propria Persona
Michael E. Sweeney, Petitioner in Propria Persona
Asher Ruben, Deputy Attorney General
David J. Rapport, Esq.

1 DAVID RIEMENSCHNEIDER
2 NELSON & RIEMENSCHNEIDER
3 P.O. BOX N
4 UKIAH, CA 95482
5 (707) 462-1351

6 Attorney for Petitioners

FILED

JAN 25 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

12 Petitioners,

13 vs.

PEREMPTORY WRIT
OF MANDATE

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

Respondents.

17 TO: REDWOOD VALLEY COUNTY WATER DISTRICT and STATE OF
18 CALIFORNIA DEPARTMENT OF HEALTH SERVICES, RESPONDENTS:

19 WHEREAS Petitioners served and filed herein their duly
20 verified Petition for Writ of Mandate, and a hearing was held on
21 May 6, 1988, May 9, 1988, June 13, 1988, June 14, 1988 and June
22 16, 1988;

23 WHEREAS it appears to this Court that Petitioners have no
24 other plain, speedy and adequate remedy in the ordinary course
25 of law;

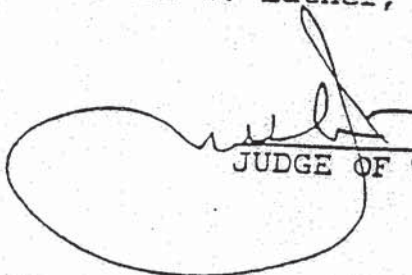
26 WHEREAS it appears to this Court that Respondent REDWOOD
27 VALLEY COUNTY WATER DISTRICT has failed to perform its legal
28 duty by continuing to make new domestic service connections

1 despite the fact that it is not in compliance with the
2 California Water Works Standards Requirement for source
3 capacity;

4 WHEREAS it appears to this Court that Respondent STATE OF
5 CALIFORNIA DEPARTMENT OF HEALTH SERVICES has failed to perform
6 its legal duty by failing to prohibit Respondent REDWOOD VALLEY
7 COUNTY WATER DISTRICT from making new domestic service
8 connections to said Water District despite the failure of said
9 Water District to be in compliance with the California Water
10 Works Standards Requirement for source capacity;

11 THEREFORE, you, REDWOOD VALLEY COUNTY WATER DISTRICT, are
12 hereby commanded immediately after receipt of this writ to cease
13 making any net increase in physical domestic service connections
14 to said REDWOOD VALLEY COUNTY WATER DISTRICT, and you, STATE OF
15 CALIFORNIA DEPARTMENT OF HEALTH SERVICES, are hereby commanded
16 immediately after receipt of this writ to prohibit REDWOOD
17 VALLEY COUNTY WATER DISTRICT from making any net increase in
18 physical domestic service connections to said REDWOOD VALLEY
19 COUNTY WATER DISTRICT.

20 WITNESS the Honorable James W. Luther, Judge of the
21 Superior Court.

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23 
24 JUDGE OF THE SUPERIOR COURT

25 Attest my hand and the seal of the Court this 24th day
26 of January, 1989.

27 CLERK OF THE COURT

28 BY : Sherry Mobley
Deputy

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David Riemenschneider
Nelson & Riemenschneider
Post Office Box N
Ukiah, California 95482

Asher Rubin
Deputy Attorney General
350 McAllister Street, Room 6000
San Francisco, California 94102

INFORMATIONAL COPY TO:

Norman Knoll
Department of Health
Services
Post Office Box 942732
Sacramento, CA
94234-7320

**DECLARATION OF SERVICE
BY MAIL**

I am a citizen of the United States and a resident of Mendocino County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is Savings Bank Building P.O. Box 419, Ukiah, California. On this date I served the foregoing document, by placing true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Ukiah, California, addressed in the manner set forth immediately above this declaration.

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

Executed at Ukiah, California 1-30-89

Rennie Tuso

1 DAVID RIEMENSCHNEIDER
2 NELSON & RIEMENSCHNEIDER
3 P.O. BOX N
4 UKIAH, CA 95482
5 (707) 462-1351

6 Attorney for Petitioners

RECORDED
JAN 21 1989
MARGA A. YOUNG
MENDOCINO COUNTY CLERK

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

12 Petitioners,

JUDGMENT

13 vs.

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

17 Respondents.

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

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

The cause having been argued and submitted for decision,

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: 1/24/89

'JAMES W. LUTHER'

22
23 JUDGE OF THE SUPERIOR COURT
24
25
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27
28

1 DAVID RIEMENSCHNEIDER
NELSON & RIEMENSCHNEIDER
2 P.O. BOX N
UKIAH, CA 95482
3 (707) 462-1351

4 Attorney for Petitioners

FILED

JAN 25 1989

MARSHA A. YOUNG
MENDOCINO COUNTY CLERK
Deputy

5

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

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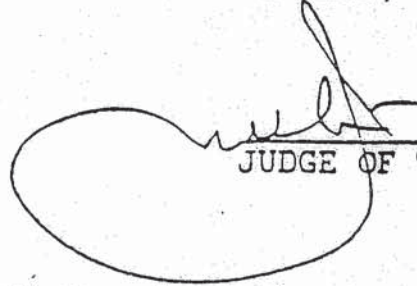
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28 Deputy

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Nelson & Riemenschneider
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Asher Rubin
Deputy Attorney General
350 McAllister Street, Room 6000
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Executed at Ukiah, California 1-30-89

Rennie Tuso

1 DAVID RIEMENSCHNEIDER
2 NELSON & RIEMENSCHNEIDER
3 P.O. BOX N
4 UKIAH, CA 95482
5 (707) 462-1351

6 Attorney for Petitioners

RECORDED
JAN 21 1988
BARBARA A. YOUNG
MENDOCINO COUNTY CLERK

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

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