

ENDORSED-FILED

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MENDOCINO

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

NO. 55595

13 Petitioners,)

14 vs.)

15 STATE OF CALIFORNIA DEPARTMENT)
16 OF HEALTH SERVICES and DOES)
17 ONE through TEN,)

PETITION FOR
WRIT OF MANDAMUS

18 Respondents.)

19 REDWOOD VALLEY COUNTY WATER)
20 DISTRICT,)

21 Real Party in Interest.)

22 Petitioners RESIDENTS FOR ADEQUATE WATER, OLIVER L. SAUSE
23 and MICHAEL E. SWEENEY petition for a Writ of Mandamus under
24 Code of Civil Procedure Sections 1085 and 1086 and Health and
25 Safety Code Sections 4010 through 4037 directed to Respondents
26 STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES and DOES ONE
27 through TEN and by this verified Petition represent that:
28

1 1. Petitioner RESIDENTS FOR ADEQUATE WATER is an unincorporated
2 association of more than 20 individuals who reside within
3 the boundaries of the REDWOOD VALLEY COUNTY WATER DISTRICT,
4 located in the County of Mendocino, State of California, and
5 who obtain their water supply from said WATER DISTRICT or from
6 groundwater, or from both.

7 2. Petitioners OLIVER L. SAUSE and MICHAEL E. SWEENEY are
8 individuals who reside and own property within the boundaries of
9 the REDWOOD VALLEY COUNTY WATER DISTRICT and are customers of
10 said WATER DISTRICT and rely upon it as their sole source of
11 water.

12 3. Respondent STATE OF CALIFORNIA DEPARTMENT OF HEALTH
13 SERVICES (hereinafter, "DEPARTMENT") is a duly constituted divi-
14 sion of the executive branch of the government of the State of
15 California which exercises regulatory authority over public
16 water systems pursuant to the Health and Safety Code.

17 4. Respondents DOES ONE through TEN are officers and
18 employees of the DEPARTMENT who have a specific duty from office
19 for the regulation and supervision of the REDWOOD VALLEY COUNTY
20 WATER DISTRICT. Petitioners will pray leave to amend this
21 Petition to insert the true names and capacities of DOES ONE
22 through TEN at such time as they are ascertained.

23 5. Real Party in Interest REDWOOD VALLEY COUNTY WATER
24 DISTRICT (hereinafter, "WATER DISTRICT") is a County Water District
25 and public water system, as defined in Health and Safety Code
26 Section 4010.1, organized under the Water Code of the State of
27 California, which provides treated water to approximately 936
28 service connections and irrigation water to approximately 129

1 service connections.

2 6. On or about June 16, 1977, the WATER DISTRICT applied to
3 the DEPARTMENT for a permit to construct and operate a domestic
4 water supply system which would utilize Lake Mendocino as its
5 sole source of water. The DEPARTMENT's Sanitary Engineering
6 Section prepared an Engineering Report on the permit application,
7 and, based upon it, the DEPARTMENT issued the WATER DISTRICT
8 Water Permit No. 77-043 on or about September 23, 1977. Said
9 Engineering Report did not consider in any way the WATER DIS-
10 TRICT's right or lack of right to pump water from Lake Mendocino
11 or the possibility of interruption of such pumping. Said permit
12 and Engineering Report are attached and incorporated herein as
13 Exhibit "A."

14 7. On or about November, 1979, the WATER DISTRICT commenced
15 operations by pumping water from Lake Mendocino through its
16 pumping caisson constructed on the lake shore, treating the
17 water and distributing it to domestic customers.

18 8. The WATER DISTRICT does not possess a water supply that
19 will adequately and dependably supply the total requirements of
20 all users under maximum demand conditions. As described herein,
21 the WATER DISTRICT's existing source of supply will become even
22 less reliable in the future.

23 9. The WATER DISTRICT holds a water rights permit from the
24 State of California Water Resources Control Board which
25 authorizes diversion of water only at those times when the Lake
26 Mendocino water supply pool is full and discharges are being
27 made through Coyote Dam to preserve the flood control capabili-
28 ties of the reservoir. These conditions exist only intermittently

1 during the winter of a typical year. At all other times, the
2 WATER DISTRICT obtains its right to pump water from Lake Mendocino
3 by purchasing water under a contract with the Mendocino
4 County Russian River Flood Control & Water Conservation
5 Improvement District (hereinafter, "Improvement District"). A
6 copy of said contract, which takes the form of a Judgment in
7 Civil Action No. 42059, is attached and incorporated herein as
8 Exhibit "B."

9 10. The Improvement District, which is a public water
10 system organized under the Water Code of the State of California,
11 holds an entitlement to 8,000 acre-feet-per-annum (AFA) of
12 Lake Mendocino stored water pursuant to Permit 12947B from the
13 State Water Resources Control Board. The contract between the
14 Improvement District and the WATER DISTRICT only allows sale of
15 water that is surplus to the needs of water users within the
16 Improvement District's boundaries. Upon notice from the
17 Improvement District that surplus water is no longer available,
18 the WATER DISTRICT must cease pumping water from Lake Mendocino,
19 unless the WATER DISTRICT disputes the lack of surplus water, in
20 which case the issue will be referred to arbitrators who must
21 render a decision within seven days.

22 11. In the resolution of protests which arose against said
23 contract, the State Water Resources Control Board ruled in
24 Order WR 79-15, dated June 21, 1979, that water will be available
25 to the WATER DISTRICT "only until the same is necessary to
26 supply water for any existing or future use of water within the
27 Mendocino County Russian River Flood Control and Water Conserva-
28 tion Improvement District. Neither the Redwood Valley County

1 Water District nor any user within that district will acquire a
2 ~~vested right to water available under Permit 12947B as a result~~
3 of this change in place of beneficial use."

4 12. On or about March 31, 1977, the Improvement District
5 sent a letter to the WATER DISTRICT warning that "In a year
6 such as this there well might not be nearly sufficient water for
7 the needs of this [Improvement] District, and if you were--this
8 summer--anticipating use of water, the same would, in all
9 likelihood, not be available to you." A copy of said letter is
10 attached and incorporated herein as Exhibit "C".

11 13. On or about May 2, 1978, the Improvement District sent
12 a Progress Report to the State Water Resources Control Board
13 reporting use of 9,249 acre-feet in 1977, a violation of its
14 8,000 AFA limitation. At that time the WATER DISTRICT had not
15 yet commenced operations, so that no WATER DISTRICT use was
16 included in the 9,249 acre-feet total. A copy of said Progress
17 Report is attached and incorporated herein as Exhibit "D."

18 14. The contract for surplus water from the Improvement
19 District was never intended to be a permanent source of supply
20 for the WATER DISTRICT. When preliminary commitments for said
21 contract were first made in 1972, the Improvement District
22 stated that no surplus water would be available by 1990. Both
23 parties to said contract expected that the WATER DISTRICT would
24 secure its own permanent rights to Lake Mendocino water; however,
25 this has never occurred.

26 15. Since 1977, water usage within the Improvement District
27 for urban uses has greatly increased. As a result, the probabili-
28 ty has increased that the Improvement District will use its

1 entire 8,000 AFA entitlement within its own boundaries in years
2 of low rainfall and that no surplus water will be available to
3 the WATER DISTRICT.

4 16. Substantial future population growth is planned for
5 communities within the Improvement District. At some future date,
6 the Improvement District will use its entire 8,000 AFA entitle-
7 ment under normal rainfall years and no surplus water will be
8 available to the WATER DISTRICT at any time. If the Improvement
9 District modified certain assumptions it makes in calculating
10 its annual water usage from Lake Mendocino storage, or if it
11 were required to make such modifications, it would report usage
12 of the entire 8,000 AFA at the present time under normal rainfall
13 conditions.

14 17. At a water surface level of approximately 695 feet
15 above mean sea level in Lake Mendocino, the pumping caisson of
16 the WATER DISTRICT will become inoperable. In 1977, Lake
17 Mendocino fell below this level for approximately four months.

18 18. Beginning in 1984, streamflows in the Russian River
19 below Coyote Dam were increased pursuant to an agreement between
20 the State Department of Fish & Game and the Sonoma County Water
21 Agency, which controls Coyote Dam operations. The new streamflow
22 schedule, with minor modifications, was adopted and ordered by
23 the State Water Resources Control Board in Decision 1610 in
24 April, 1986. As a result, stored water in Lake Mendocino has
25 declined to lower minimum levels in each year since 1984. Lower
26 lake levels have significantly increased the probability of a
27 pumping outage for the WATER DISTRICT, and increased the probable
28 duration of such an outage. The State Water Resources Control

1 Board predicted in Decision 1610 that "Lake Mendocino will be
2 lowered faster and to lower levels than has been experienced
3 since 1959," and further noted that "Redwood Valley has an
4 inadequate water supply for its developing uses, and at this
5 time has no feasible source other than Lake Mendocino."

6 19. In a letter to the DEPARTMENT on or about December 3,
7 1985, WATER DISTRICT General Manager Keith Tiemann stated:
8 "There has never been a water supply crisis since the District
9 has been in operation, but the potential is there in drought
10 years. In those years, we have no assurance of an adequate
11 supply from Lake Mendocino. The District has attempted to
12 negotiate with Sonoma County Water Agency for water rights out
13 of Lake Mendocino, but those negotiations have failed." A copy
14 of said letter is attached and incorporated herein as Exhibit "E".

15 20. If the WATER DISTRICT is unable to pump from Lake
16 Mendocino for any reason, it will have no water supply other
17 than a small terminal pond situated behind the WATER DISTRICT's
18 treatment plant. Due to losses from evaporation, leakage,
19 filter backwash, sedimentation, fire department use, and other
20 factors, this terminal pond would supply the normal summer
21 season demand of the WATER DISTRICT's treated water customers
22 for less than three weeks.

23 21. On or about October 12, 1987, the WATER DISTRICT sent
24 out a first-stage rationing warning to all water customers,
25 requesting reduced water use due to the low level of Lake
26 Mendocino.

27 22. Despite the lack of reliability of its water supply,
28 the WATER DISTRICT added approximately 100 new service connec-

1 tions in 1987 and plans to add up to 650 more connections as soon
2 as applications are made for them.

3 23. On or about May 2, 1986, the WATER DISTRICT applied to
4 the DEPARTMENT for an amendment to its permit to allow the
5 construction of a major addition to its water treatment plant to
6 increase the capacity from 1,200 to 1,800 household equivalents.
7 The DEPARTMENT has not granted said amended permit, but the
8 WATER DISTRICT has nevertheless built the addition to its
9 treatment plant and placed it in operation. A copy of said
10 application for an amended permit is attached and incorporated
11 herein as Exhibit "F."

12 24. The continued addition of service connections by the
13 WATER DISTRICT constitutes a threat to Petitioners, and to the
14 public health and safety generally, because the WATER DISTRICT's
15 terminal pond, or any other emergency supply, will be consumed
16 more quickly in the event of a cut-off from Lake Mendocino,
17 leaving a large population with inadequate or no water supply.

18 25. The WATER DISTRICT has no reasonable prospect of
19 securing a replacement for its temporary water supply from the
20 Improvement District. Each additional service connection,
21 therefore, will deprive Petitioners of a portion of any meager
22 emergency water supply, including groundwater, which may be
23 available when a cut-off from Lake Mendocino occurs, and thereby
24 inflicts irreparable harm on Petitioners.

25 26. On or about October 20, 1987, 25 customers of the
26 WATER DISTRICT, associated with Petitioner RESIDENTS FOR ADEQUATE
27 WATER, sent a letter of complaint to the DEPARTMENT alleging
28 that the WATER DISTRICT had violated the California Waterworks

1 Standards and requesting that the DEPARTMENT take action to
2 prevent harm to existing customers caused by the addition of
3 new service connections. A copy of this letter is attached and
4 incorporated herein as Exhibit "G."

5 27. At the regular meeting of the Board of Directors of
6 the WATER DISTRICT on or about November 5, 1987, Petitioners
7 RESIDENTS FOR ADEQUATE WATER, OLIVER L. SAUSE and MICHAEL E.
8 SWEENEY requested that the WATER DISTRICT halt new service
9 connections until adequate water supply is available.

10 28. On or about December 28, 1987, counsel for Petitioners
11 sent a letter to the DEPARTMENT, with a copy to the WATER
12 DISTRICT, requesting that the DEPARTMENT prohibit new service
13 connections by the WATER DISTRICT. A copy of this letter is
14 attached and incorporated herein as Exhibit "H."

15 29. The DEPARTMENT has taken no action against the WATER
16 DISTRICT in response to aforesaid complaints, and the WATER
17 DISTRICT continues to make new service connections.

18 30. Pursuant to Health & Safety Code Sections 4010.1(h) and
19 4026(b), the DEPARTMENT has adopted mandatory regulations for
20 public water systems known as the California Waterworks
21 Standards, which comprise Title 22, Sections 64551 through
22 64644 of the California Administrative Code.

23 31. Section 64562 of the California Waterworks Standards
24 requires that public water systems possess a "source capacity"
25 sufficient to "supply adequately, dependably and safely the
26 total requirements of all users under maximum demand conditions."

27 32. Section 64563(c) of the California Waterworks Standards
28 states that "The source capacity of a purchased water connection

1 between two public water systems shall be included in the total
2 source capacity of the purchaser if the purchaser has sufficient
3 storage or standby source capacity to meet user requirements
4 during reasonably foreseeable shutdowns by the supplier."

5 33. Section 64568 of the California Waterworks Standards
6 states that "A new service connection may be added to a
7 distribution system only if the water system will comply with
8 Section 64562 after the new service connection is added...."

9 34. The WATER DISTRICT is not, and has never been, in
10 compliance with aforesaid California Waterworks Standards
11 because it lacks sufficient storage or standby source capacity
12 to meet user requirements during reasonably foreseeable
13 interruptions of its contractual supply from the Improvement
14 District. Therefore, continued new service connections by the
15 WATER DISTRICT constitute a change in distribution system
16 which violates Health & Safety Code Sections 4017 and 4019 and
17 California Waterworks Standards Sections 64562, 64563(c) and
18 64568.

19 35. The DEPARTMENT has a duty pursuant to Health & Safety
20 Code Sections 4010 through 4037 and California Waterworks
21 Standards Sections 64562, 64563(c) and 64568 to prohibit the
22 WATER DISTRICT from making new service connections until it
23 possesses the required source capacity, but the DEPARTMENT has
24 failed to do so.

25 36. Petitioners have exhausted the available administrative
26 remedies and do not have a plain, speedy and adequate remedy in
27 the ordinary course of law.

28 37. Petitioners are personally obligated to pay their

1 attorney for legal services to prosecute this action. Petitioners
2 do not know the total amount of attorney's fees and costs, but
3 will ask leave of the Court to amend this Petition to state the
4 sums when they have been ascertained.

5 WHEREFORE, Petitioners pray:

6 1. That the Court issue an Alternative Writ of Mandamus
7 ordering the Respondent to prohibit new domestic service
8 connections by the WATER DISTRICT and to continue said prohibi-
9 tion until the WATER DISTRICT acquires sufficient storage or
10 standby source capacity to dependably meet the total requirements
11 of all users during reasonably foreseeable interruptions of its
12 Lake Mendocino supply due to a cease-pumping notice from the
13 Improvement District or a drop in the Lake to a level that
14 renders the WATER DISTRICT's pumps inoperative; or, in the
15 alternative, to show cause why they have not done so;

16 2. That the Court issue a Preremptory Writ of Mandamus
17 ordering Respondent to make the prohibition set forth in
18 Prayer (1) above;

19 3. For reasonable attorney's fees and costs incurred
20 herein; and

21 4. For such other relief as the Court deems proper.
22

23 Respectfully submitted,

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25 DAVID RIEMENSCHNEIDER
26 Attorney for Petitioners

27 January 7, 1988
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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,)	No. 55595
)	
Petitioners,)	<u>TENTATIVE DECISION</u>
)	Rule 232(a)
vs.)	
)	
STATE OF CALIFORNIA DEPARTMENT OF)	
HEALTH SERVICES and REDWOOD VALLEY)	
COUNTY WATER DISTRICT,)	
)	
Respondents.)	

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