

# Salinas Valley Water Coalition



P.O. Drawer 2670 • Greenfield, CA 93927  
(831) 674-3783 • FAX (831) 674-3835

OCTOBER 2000

## STATE WATER RESOURCES CONTROL BOARD HEARING

The State Water Resources Control Board (SWRCB) held a hearing on the water right application of Monterey County Water Resources Agency (MCWRA) for additional storage in Nacimiento Reservoir. This application is to obtain a water right for the 27,900 acre-feet of water not covered under the Agency's existing license, which allows for storage of 350,000 acre-feet of water.

The Orradre et al group [known as the Salinas Valley Protestants (SVP) in the hearing] along with California Department of Fish and Game (CDGF), California Sportfishing Association (CSPA) and National Marine Fisheries Service filed protests to the application before the SWRCB. The purpose of the hearing was to afford the applicant and the protestants and others who filed a Notice of Intent to Appear to present testimony and evidence that may assist the SWRCB in determining whether there is unappropriative water available for appropriation to supply the additional 27,900 acre-feet.

The City of San Luis Obispo originally filed a protest but withdrew it before the hearing. SWRCB Hearing Officer John Brown stated for the record that the CDGF, CSPA and National Marine Fisheries Service did not comply with the prehearing submittal requirements, and accordingly they were dismissed as parties to the proceedings.

In addition to the MCWRA and the SVP, those persons who submitted a Notice of Intent to Appear and written testimony and exhibits were Clark Colony Water Company; Rosenberg Family Ranch, LLC; Tanimura & Antle and Marina Coast Water District [although Marina Coast did not appear]. The Salinas Valley Water Coalition submitted a Notice of Intent to Appear and reserved the opportunity for rebuttal if necessary. The East Side Water Alliance submitted a Notice of Intent to Appear and reserved the opportunity for cross-examination and/or rebuttal if necessary.

Hearing Officer Mr. Brown stated at the beginning of the hearing that the hearing had a narrow focus. It was not an *adjudication of water rights in the Salinas Valley, nor was it an adjudication of the protestants' water rights or any other parties' water rights*. He went on to state that the Board [SWRCB] does not have the authority to make a final determination regarding any water rights other than post-1914 water rights. He said it was not a proceeding to determine whether diversions and extractions of water and uses of water in the Salinas Valley are reasonable. And finally, he said it was not a proceeding to develop a management plan for water diversions and use in the Salinas Valley.

Mr. Brown made the following statement for the record: "For the record, I would like to state that a claim made by Mr. Maloney regarding a determination of sufficiency of his clients' protest is not correct. Neither the Division of Water Rights and the Board

made any finding or final determination regarding the sufficiency of the Salinas Valley Protestants' protest or whether a prima facie case has been made regarding the existence of water rights and whether there has been injury to any of the claimed rights caused by the Agency's diversion to storage of the 27,900 acre-feet that is the subject of this hearing. Since there were other outstanding protests requiring a hearing on the application, it was decided to let the Salinas Valley Protestants participate in the hearing."

Because the Orradre et al group [Salinas Valley Protestants] had submitted voluminous documents to the SWRCB for the hearing that appeared to be an attempt to establish definite amounts of water rights for themselves as well as for everyone else, the Salinas Valley Water Coalition participated in the hearings solely to ensure that the hearing did not turn into a water rights adjudication – and that if it did, the members of the Coalition would be parties to it.

Throughout the hearing the Orradre et al group constantly attempted to place individual water right information/documents into the record – they consistently attempted to turn the hearing into a water rights adjudication. They presented testimony that stated there would be an additional 110,000 acres of vineyard planted from Greenfield south within the next 5 – 10 years and that these 100,000 acres would need 440,000 acre-feet of water. They also presented testimony that implied they wanted to establish a definitive water right for their lands and that they then would be allowed to transfer [and/or sell] that amount of right they didn't utilize to others including to areas such as San Luis Obispo outside of the basin. It appeared as though they are developing an intensive water-marketing scheme.

As an overlying landowner you have a right to use the water from your lands on your lands to the fullest extent possible as long as it is in a reasonable and beneficial manner. This allows you to place those lands that have not been previously irrigated into agricultural production and it also allows you to change crops to higher water using crop from one of lower usage. However, the MCWRA's legislative act prohibits the exportation of water outside the basin.

The Orradre et al group through their attorney, Mr. Maloney, have continued to include certain individuals, lands and water right claims as being represented by them and within their group – that are not. In behalf of some of these individuals, the Salinas Valley Water Coalition and others presented testimony at the hearing to show that Mr. Maloney did not represent all the lands included in his documents.

The hearing lasted three full days. Nancy Isakson, our consultant, monitored the entire hearing in our behalf, and our attorney, Jan Goldsmith, presented an opening statement and attended as necessary. Closing briefs were submitted to the SWRCB and reply briefs have been filed. The administrative record for the hearing closed September 15<sup>th</sup>. It will probably be a few months before a draft decision is issued. Once the draft decision is issued by the SWRCB, it is our understanding that a hearing will be held on the draft decision and then a final decision issued.

We believe the Salinas Valley Water Coalition's participation has again made a difference in furtherance of the protection of your water rights. To this end, our attorney made the following statement in her closing brief to the SWRCB:

**".....the Coalition [SVWC] urges the Board to closely scrutinize the language it employs in rendering its decision on this**

application, to avoid any potential for an inference that could affect the water rights of the Salinas Valley farmers and water users.”

**ORRADRE ET AL. v.  
MONTEREY COUNTY WATER  
RESOURCES AGENCY**

On September 22<sup>nd</sup> Judge Richard Silver heard a motion for summary judgment submitted by the Orradre et al. group regarding its litigation with the Monterey County Water Resources Agency. A summary judgment essentially asks the court to render a preverdict judgment on the basis that one or more of the issues lacks factual dispute and therefore there is no need to send those issue to trial. A summary judgment is a device designed to effect a prompt disposition of controversies on their merits without resorting to a lengthy trial, if in essence there is no real dispute as to salient facts or if only a question of law is involved.

Judge Silver made it very clear that the remaining issues were going to trial. **He denied the Orradre et al. group their motion for summary judgment.**

The trial is set to begin October 30<sup>th</sup> --- 9:00 am in Judge Silver’s courtroom, Department 15, at the courthouse in Monterey. It has been estimated to take four days to complete. It is open to the public. SVWC members are encouraged to attend.

**WHO IS THE  
SALINAS VALLEY WATER  
COALITION**

**The Salinas Valley Water Coalition is the “watchdog” of County/State government**

**on water issues. The Salinas Valley Water Coalition supports an appropriate and just solution to the water problems of the Salinas Valley and recognizes that participation is the price that must be paid in order to sustain both agricultural production and our quality of life. The Coalition Board of Directors’ commitment to their members is to maintain a pro-active role in the Salinas Valley water issues in an effort to ensure this protection and to respond with appropriate action as necessary.**

**Assessments --- who should pay and how much ---** this has always been the age-old question. The Salinas Valley Water Coalition has maintained its position that assessments are required to be paid proportionate to the benefit received – this has been the law and was further clarified with the passage of Proposition 218 which amended the California Constitution.

The Coalition has appreciated the Monterey County Water Resources Agency’s past willingness and commitment to work with the community in the restructuring of its budget and the accompanying assessments after the passage of Proposition 218. The water standby and availability charges (WSAC) as they appear today reflect a more realistic picture of the true operation and maintenance for the two reservoirs than budgets prior to Proposition 218.

**However.....the work is not complete.** Pre and post Proposition 218 requires these assessments to be proportional to benefit received. It has been shown that there is a wide disparity of benefits conferred to lands from the reservoirs – yet all lands continue to pay at a uniform rate.

The Coalition has supported the current WSAC because 1) the Agency followed through with their commitment in restructuring their budget and 2) it is our understanding that the Agency intends to

consider further evaluation of the manner in which these assessments are applied.

The above are comments made by the Coalition's consultant to the Board of Supervisors when they adopted the WSAC for fiscal year 1998-99 – the comments continue to reflect the Coalition's position with regards to the WSAC and its support of Agency activities. The Coalition is committed to working with the Agency in a re-evaluation of the manner in which the current WSAC are applied to lands within the Salinas Valley --- so that the assessments will be applied in a manner that is proportionate to the benefits conferred. ---- This is just one way that your Coalition membership has worked for you and continues to work for you!

**THANK YOU FOR YOUR  
CONTINUED SUPPORT OF THE  
SALINAS VALLEY WATER  
COALITION!**

**Salinas Valley Water Coalition  
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#### **CALENDAR**

- **October 23<sup>rd</sup> 1:00 pm --- MCWRA Board of Directors meeting**
- **October 30<sup>th</sup> 9:00 am – beginning of Orradre et al. v. MCWRA trial**
- **November 2<sup>nd</sup> 8:30 am – MCWRA BMP**
- **November 9<sup>th</sup> 8:30 am – MCWRA Planning Committee**
- **November 10<sup>th</sup> 9:00 am – MCWRA Finance Committee**

**NEW MEMBERS ARE WELCOMED!  
DO YOU KNOW SOMEONE WHO  
WOULD LIKE TO BE A MEMBER?  
CALL NANCY**

**Published by Salinas Valley Water  
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