STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Determination of the Rights of the Various Claimants to the Waters of SAN GREGORIO CREEK STREAM SYSTEM, In San Mateo County, California	)	ORDER: WR 89-16 SOURCE: San Gregorio Creek Stream System COUNTY: San Mateo

ORDER APPROVING AND DENYING PETITIONS FOR RECONSIDERATION OF ORDER WR 89-7

BY THE BOARD:

1.0 INTRODUCTION

The Board having adopted the Order of Determination for the San Gregorio Creek Stream System Adjudication (Resolution No. 89-29) on April 20, 1989; the Board having received timely petitions for reconsideration from Helen Carey; Karen Moty and Edwin Klingman; Cuesta La Honda Guild; William Baskin; the City and County of San Francisco; Gerda Isenberg; the Trustees of Peter Folger Trust and Peter M. Folger; and Elliot Roberts, Norman and Beverly Oaks; and the Board having considered the petitions, finds as follows:

2.0 GROUNDS FOR RECONSIDERATION

Water Code Section 2702(a) provides that any party affected by an Order of Determination may petition the

Board for reconsideration. Resolution No. 89-29 which approved the Order of Determination states that the Board shall order reconsideration on petitions which are filed in a timely manner and which allege that:

> "(1) Property was acquired without actual or constructive notice of the adjudication proceedings and a use of surface water of the San Gregorio Creek Stream System is being made which is not authorized in the order; or,
>
> "(2) The claimant or successor in interest has changed the purpose of use or place of use of water from the allocation specified in the order of determination."

All other petitions must be justified on a case by case basis consistent with Title 23, California Code of Regulations Section 768 which provides that reconsideration of a Board order may be requested for any of the following causes:

> "(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
>
> "(b) The decision or order is not supported by substantial evidence;
>
> "(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
>
> "(d) Error in law."

3.0 SUMMARY AND DISCUSSION OF PETITIONS

3.1 Petition of Helen Carey

Summary of Petition

On May 22, 1989, Helen Carey filed a petition for reconsideration alleging that the Order of Determination is the result of procedural irregularities, is an abuse of discretion, is not supported by substantial evidence, and there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing. She requests that various alleged errors in the Order be corrected and that the 240 acre parcel with frontage on Kingston Creek be allocated 12.6 acre feet per year by direct diversion and 4.0 acre feet per year by storage as follows:

a. 450 gpd for domestic use

b. 600 gpd for stockwatering

c. 0.1 cfs for irrigation (64,632 gpd).

The alleged errors that she requests be corrected are:

1. The 536 acre parcel abuts two unnamed intermittent streams, not Coyote Creek.
2. There are currently 60 head of cattle on the 536 acre parcel. An additional 20 head of cattle were put on the property after the 1985 hearing and water should be allocated for the additional 20 head of cattle.

3. There is a fourth spring on the 536 acre parcel which should be shown on Sheet 2 of Map 1. The spring feeds a cattle trough and then flows into an intermittent stream near the eastern boundary of the parcel.
4. The reference to "Carey" on Sheet 2 of Map 1 should read "Carey, et al."
5. The 3.8 acre parcel should be identified on the map. The two acres of the 3.8 acre parcel to which water is allocated for irrigation purposes should be symbolized on the map as other irrigated portions of parcels are so symbolized.

Discussion

The following clerical errors will be corrected:

1. The record will reflect that the 536 acre parcel abuts two unnamed intermittent streams, not Coyote Creek.
2. The fourth spring on the 536 acre parcel will be identified on Sheet 2 of Map 1.
3. The reference to "Carey" on Sheet 2 of Map 1 will be corrected to read "Carey, et al."
4. The 3.8 acre parcel will be identified on Sheet 2 of Map 1. The two acres of the 3.8 acre parcel to which water is allocated for irrigation purposes will be symbolized on the map as other irrigated portions of parcels are so symbolized.

5. The location of the three springs and the two acre stockpond on the 536 acre parcel will be shown on Sheet 2 of Map 1.

The Order allotted water for 40 head of cattle on the 536 acre parcel. Carey argues that because an additional 20 head of cattle were put on the 536 acre parcel after the 1985 hearing, water should be allocated for the additional 20 head of cattle. The reconsideration process is inappropriate to use for increasing an allotment. The Order reflects the facts in the hearing record; changes that increased consumptive use after the close of the hearing record are not included. Paragraphs 14, 27 and 28 of the Order provide mechanisms for obtaining an allotment for the additional 20 head of cattle. Paragraph 14 provides that new applications for the appropriation of unappropriated water within the Stream System may be filed with the Board under Water Code Section 1200, et seq. Paragraphs 27 and 28 provide mechanisms for activating unexercised riparian rights and for increasing riparian allotments.

The Order did not allocate any water for the 240 acre parcel which is riparian to Kingston Creek because the Board found that the riparian rights were unexercised.

Carey states that the property had fallen into disuse because her father, Thomas J. Callen (the previous owner of the parcel), had died many years before the Board's hearing and the parcel was the subject of Probate Court administration of the San Mateo County Superior Court until December, 1985 (petition, p. 5). She argues that she should be given an allotment for this parcel because water had been used on the property in the past.

Regarding the use of water, the Board evaluates the facts and circumstances of each case on its own merits. Here, the stated reason for non-use of water was that the property had not been distributed by the Probate Court. The executor of an estate has a duty to preserve and protect the assets of an estate (Probate Code Section 571 (repealed July 1, 1988 and replaced by Section 9600); Lobro v. Watson, 42 Cal.App.3d 180, 189, 116 Cal.Rptr. 533, 539 (1974); Estate of Turino, 8 Cal.App.3d 642, 647, 87 Cal.Rptr. 581, 585 (1970)). The right to use water is a usufruct of the 240 acre parcel which is an asset of the estate. With knowledge that the adjudication proceedings were in progress, the executors of the Estate of Thomas J. Callen were under a duty to exercise the riparian right if that was in the best interest of the Estate, provided that the

water was used beneficially. Helen Carey was a co-executor of the estate with notice of the proceedings (Transcript, Vol. I, p. 62).

The evidence is not clear regarding when the orchard was last irrigated but it was a period of several years before the Board's hearing. The evidence was undisputed that no water was being used to irrigate the orchard. Based on the facts and circumstances of this case, the Board concluded that it was reasonable to characterize the riparian rights for the 240 acre parcel as unexercised. Paragraphs 27 and 28 of the Order provide mechanisms for activating unexercised riparian rights.

Carey argues that reconsideration should be granted "because of the fact that Petitioner had been led by staff to believe that she would be allocated water and because of the fact that she was unaware of the need to file an application subsequent to the August, 1985 hearing and the capacity of the Board to accept and process such an application which would have permitted her to receive an allocation of water" (petition, p. 7). These are not appropriate grounds for reconsideration.

The hearing officer stated that "the full Board will adopt a final order of determination" (Transcript, Vol. I, p. 2) and Water Code Section 2700 clearly states that the Board, not staff, shall adopt an order. Carey and her attorney apparently sought assurances from Board staff that they would recommend that water be allotted for irrigation of the orchard and that the stockwatering allotment be increased to reflect the additional 20 head of cattle. It was inappropriate for Carey and her attorney to seek such assurances from a staff member who clearly has no authority to speak for the Board and there was no reasonable basis for reliance upon any such statements. While any such representations by staff are inappropriate, we have nothing to indicate that she relied upon such representations to her detriment. Whatever statements were made by staff after the hearing were superceded by the Order.

Further, the Water Code clearly establishes the procedures for obtaining appropriative water rights and Water Code Section 1250, et seq., requires the Board to act on all applications to appropriate water. There is nothing in the Water Code or Title 23 of the California Code of Regulations which would indicate that applications to appropriate water would not be accepted

or processed by the Board because the proposed project was located in an area which was being adjudicated. Paragraph 14 of the Order of Determination confirms that new applications to appropriate water may be filed with the Board and that the Board shall continue to administer incomplete appropriations initiated by application under Water Code Section 1200, et seq.

3.2 Petition of Karen Moty and Edwin Klingman

Summary of Petition

On May 30, 1989, Karen Moty and Edwin Klingman filed a petition for reconsideration on the grounds that the Order is based on an error in law and is not supported by substantial evidence; there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing on objections; and there was an irregularity in the proceedings by which they were prevented from having a fair hearing. They request the following allotments:

a. 335,700 gpd from May to November for irrigation of the 90 acre parcel;

b. 18,600 gpd from May to November for irrigation of the 5 acre parcel;

c. 2,100 gpd year round for stockwatering on the 90 acre parcel and the 5 acre parcel.

Discussion

Karen Moty and Edwin Klingman were allotted 1000 gpd, first priority, for domestic use for two residences on their 90 acre parcel and 500 gpd, first priority, for domestic use for one residence on their 5 acre parcel. No water was allotted for irrigation use on either parcel because no water was being used on those parcels for irrigation as of the close of the Board's hearing record. The Board determined that Moty and Klingman had unexercised riparian rights for irrigation use for both parcels.

Moty and Klingman argue that the Order is based on an error of law because their riparian rights cannot, as a matter of law, be classified as "unexercised." They argue that the Board "has failed to make the critical legal distinction between 'unexercised' riparian rights (rights that have never been put to reasonable, beneficial use) and temporarily unused riparian rights (rights that have been exercised historically but for which use has temporarily lapsed)" (emphasis in original; petition, p. 7). California case law provides no basis for such a legal distinction. "Unexercised" simply means "not put to use" (Webster's Third New International Dictionary, 1966).

The Board evaluated whether water was being used on riparian parcels at two points during the statutory adjudication process: during the field inspection preceding the filing of proofs of claim and during the objection process (Water Code Sections 2604-2653). The latter process concluded with the close of the Board's record for the hearing on objections (September 20, 1985). Because those rights were challenged during the objection process, the Board made its determination that the riparian rights of Karen Moty and Ed Klingman for irrigation of the 90 acre parcel and the 5 acre parcel were unexercised as of the close of the hearing record on September 20, 1985. The determination that the rights were unexercised was based upon Karen Moty's testimony that the 90 acre parcel was last irrigated in 1979 and the 5 acre parcel was last irrigated in either 1979 or 1981.

Moty and Klingman argue that the Board's authority under Long Valley (In re Waters of Long Valley Creek Stream System, 25 Cal.3d 339, 158 Cal.Rptr. 350, 599 P.2d 656, (1979)) only extends to riparian rights that have never been exercised. Nowhere in the Long Valley case does the court make such a statement. Rather, the court states "while we interpret the Water Code as not authorizing the Board to extinguish altogether a future

riparian right, the Board may make determinations as to the scope, nature and priority of the right that it deems reasonably necessary to the promotion of the state's interest in fostering the most reasonable and beneficial use of its scarce water resources" (Id., 25 Cal.3d at 359, 158 Cal.Rptr. at 362). Further, the court notes that the language of Water Code Sections 2501 and 2769 shows that the Legislature "intended to grant the Board broad authority pursuant to the statutory adjudication procedure to define and otherwise limit the scope of a riparian's future right" (emphasis added; Id., 25 Cal.3d at 348-349, 158 Cal.Rptr. at 355).

The Board clearly has the authority to define riparian rights, both exercised and unexercised, during a statutory adjudication. Because a statutory adjudication is a comprehensive determination of all rights to the use of water in a stream system, the Board must determine what constitutes a reasonable use of water in the stream system. Reasonableness depends on the facts and circumstances of each case including the effects of such use on all the needs of those in the stream system (Id., 25 Cal.3d at 354, 158 Cal.Rptr. 359). Because there is generally not enough water to meet everyone's needs in the San Gregorio Creek Stream

System, the Board determined that it was unreasonable to allocate water based on a future, speculative use. A general intent to use water in the future is not a proper basis for an allocation; accordingly, the Board established the category of unexercised riparian rights, which can be activated upon application to the Board or to the Court pursuant to Paragraphs 27 and 28 of the Order. As an alternative, persons may file an application to appropriate water with the Board. The Board does not extinguish a riparian right by determining that it is unexercised. The Board determined that it was unreasonable to award persons who were not putting water to use with a right equal in priority with persons who were making a reasonable, beneficial use of water. This contributes to the certainty of the water rights which are determined in the Order.

Moty and Klingman argue that the order is not supported by substantial evidence. That is incorrect. Moty testified that neither parcel had been irrigated for a period of years and that neither parcel was being irrigated at the time of the hearing (Transcript, Vol. I, pp. 109, 111-112). She further testified that she had not made any attempt to cultivate the 90 acre parcel (Transcript, Vol. I, p. 112) nor were there any

pumps or irrigation equipment on the 5 acre parcel (Transcript, Vol. I, p. 114). There is substantial evidence to support the conclusion that riparian rights had not been exercised for irrigation for a period of several years. As noted above, Moty testified that the 90 acre parcel was last irrigated in 1979 and the 5 acre parcel was last irrigated in either 1979 or 1981. The value of the lands for agriculture and the historical irrigation use are not relevant.

The Board reviewed the testimony and the evidence submitted by Karen Moty and determined that the facts and circumstances did not support the proposition that riparian rights were being exercised to irrigate either the 90 acre parcel or the 5 acre parcel. Their attempt to introduce new evidence during reconsideration is inappropriate and inconsistent with the statutory adjudication process.

Moty and Klingman argue that the Board eliminated their stockwatering rights. The Report and the Preliminary Order of Determination did not allocate any water for stockwatering on either parcel (Report, pp. II-39, III-63). Moty and Klingman did not file an objection to the Report. Further, Moty testified "we have submitted a claim and we were given an allotment, and I have no

objection to it whatsoever" (Transcript, Vol. I, p. 108). Their attempt to raise an objection as an issue for the first time during the reconsideration process is untimely.

Moty and Klingman argue that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the time of the August 1985 hearing which should be included in the administrative record and be considered by the Board. They state in their petition that they had no indication that the Board was considering reduction or elimination of their riparian irrigation rights. That is incorrect. Two issues which were noticed for the August hearing were:

1. "Should Edward [sic] E. Klingman's second priority allotment of 335,700 gpd for irrigation of 90 acres be reduced or deleted and should his water use be classified as dormant?"
2. "Should Phil Maita be denied water for domestic use and water to irrigate 5 acres?" (Moty and Klingman now own this parcel which is referred to as the 5 acre parcel.)

Moty and Klingman received a copy of the hearing notice (certified mail return receipt card no. 00-16744). They present no valid reason for their inability to produce evidence at the hearing. Further, their

statement that the hearing officer, Mr. Finster, declined to take oral testimony on this matter is misleading. The transcript of the Board's hearing on objections shows that the following dialog took place:

> "Ms. Moty: If you would like, I can give you some background on the history or we could just leave it with what's in the --
>
> "Mr. Finster: Should we note that she filed her statement and that would be adequate? You have given us all a copy and we will mark it as an exhibit.
>
> "Mr. Haupt: L.
>
> "Mr. Finster: Exhibit L consisting of three documents.
>
> "Ms. Vassey: You are the author of this statement?
>
> "Ms. Moty: Right."

(Transcript, Vol. I, p. 109.) Moty then continued her testimony. At no time was she prevented from testifying. It was unnecessary for Moty to repeat what was in her written statement which was entered as evidence in the record.

Moty and Klingman argue that there was irregularity in the proceedings by which petitioners were prevented from having a fair hearing because none of the protestants to petitioners' riparian irrigation rights appeared at the August 1985 hearing. They state "that the Board has apparently relied in part on the

statements made in the protests in reaching its decision with respect to petitioner's riparian irrigation rights" (petition, p. 11). That is incorrect. The Board relied solely on the testimony of Karen Moty in making its determination that the riparian rights for irrigation on the 90 acre parcel and the 5 acre parcel were unexercised.

Finally, Moty and Klingman argue that they reasonably relied to their detriment on statements made to them in 1984 by Jim Haupt who was then an engineer on the Board's staff working on the San Gregorio Creek Adjudication. Moty and Klingman submitted a declaration of James R. Haupt as Appendix No. 6 to the petition in which he declared "I told Ms. Moty that the Staff Findings portion of the Preliminary Report had already been written and her 90 acres of bottom land had been allocated irrigation water in the report." Moty and Klingman do not show how they relied to their detriment on that statement. The effect of that statement was a confirmation of what was to be in the Report. Whatever representation was made by Mr. Haupt was superceded by the issues noticed for the hearing on objections.

3.3 Petition of Cuesta La Honda Guild

Summary of Petition

On May 31, 1989, Cuesta La Honda Guild (Guild) filed a petition for reconsideration on the grounds that the Order is not supported by substantial evidence; relevant evidence is available and can be produced; and there is an error in law. The Guild alleges that it has riparian rights to Woodham Creek and its tributaries, La Honda Creek, and the unnamed stream; and that it has prescriptive rights to the water in Mindego Creek.

Discussion

The Order of Determination allocated water to the Guild based on its appropriative rights:

1. Diversion to storage of 15.4 acre feet per annum (afa) and direct diversion of 0.069 cfs from October 1 - June 1 from Woodham Creek, Mindego Creek, and an unnamed stream for domestic use, fire protection, and recreation (License 10511).
2. Diversion to storage of 30 afa from November 1 - May 31[1] from Mindego Creek and three unnamed streams for domestic use, fire protection, and recreation (Permit 17511).

1 Schedule 6 of the Order of Determination shows that the season of collection is January 1 - December 31. This is a clerical error which will be corrected to show the correct season as stated in Permit 17511 which is November 1 - May 31.

3. Diversion to storage of 10 afa from December 1 - April 30 from an unnamed stream for fire protection and recreation (Permit 19450).

(Order, pp. 156-157.) The Guild's claims of prescriptive rights and riparian rights to divert water from Mindego Creek to lands outside of the Mindego Creek watershed were rejected in the Order (Order, pp. 4-14).

The Guild claims that the Order of Determination is in error because the "discussion of riparian rights fails explicitly to acknowledge that the Guild has riparian rights" to Woodham Creek, its tributaries, La Honda Creek, and the unnamed stream (petition, p. 5). The Report found that:

> "Cuesta has claimed riparian rights for its service area. Lands held in fee simple by the claimant are located on both sides of the Woodham Creek east of La Honda Creek, around Reflection Lake, and both sides Mindego Creek. Cuesta also owns unsold parcels that abut La Honda Creek. These lands are considered to be riparian however no water is used on these lands. Therefore no allotment is made under riparian rights. See Paragraphs 26 and 27, Section III, regarding future use under unexercised riparian right."

(Report, p. II-31). Because there was no objection filed regarding this finding there was no need to address this topic in the Order of Determination. Accordingly, the finding stands. The Guild does not

contest the Board's finding on page 8 of the Order that most of the lands within the Guild's boundaries are not within the Mindego Creek watershed and, therefore, are not riparian to Mindego Creek (petition, p. 3).

The Guild argues that the Order is erroneous because the Board improperly determined that the Guild has no prescriptive rights to the water in Mindego Creek. In its petition, the Guild also claims to have prescriptive rights to all water sources within its boundary; however, no evidence has ever been presented in support of this claim. The Guild has failed to state why such evidence could not have been produced in a timely manner at the hearing on objections (23 CCR 768(c)).

In making its prescriptive rights argument, it appears that the Guild does not understand a fundamental limitation on the exercise of a riparian right. With an exception that does not apply here, in order for all of the lands within a parcel to have riparian status, the parcel must be contiguous to or abut a stream and all of the land within the parcel must be within the watershed of the stream from which water is being used under the riparian right. The Guild has riparian rights to Mindego Creek as noted in the Report;

however, the water from Mindego Creek must be used on land which is within the watershed of Mindego Creek. Since the Guild is using water from Mindego Creek on land outside of the Mindego Creek watershed, it is a riparian owner which is making a nonriparian use of water. This cannot be done under the Guild's riparian rights.

The Guild cites Pabst v. Finmand, 190 Cal. 124, 211 P. 11, (1922) in support of its argument that it has perfected a prescriptive right to water from Mindego Creek. The Guild is riparian to Mindego Creek but it is making a nonriparian use of the water of Mindego Creek. The court in Pabst states that "it must be clearly shown that either actual notice of the adverse claim of such owner has been brought home to the other party, or that the circumstances are such, as, for instance, the use of all of the water of the creek, that such party must be presumed to have known of the claim" (Id., 211 P. at 13). The Guild has not identified any downstream owners that it claims to have prescripted, has not shown any owner had actual or constructive notice, nor has it shown how much has allegedly been prescripted against any owner. According to Pabst, unnamed lower riparian owners without notice are entitled to assume that the Guild,

as an upstream riparian owner, is only taking its correlative share (Id., 211 P. at 13). Accordingly, in the absence of notice, the downstream riparian owners had no opportunity to enjoin the Guild. Neither the facts nor Pabst support the Guild's contention.

The Guild's unauthorized diversion of water in violation of its permits and license is the subject of a Cease and Desist Order of the Board. The alleged violation of its permits and license does not prove a prescriptive right.

Finally, the Guild argues that "the Board does not have the authority to determine all water rights in a stream system, and the manner in which it is attempting to exercise this power is inherently unfair and constitutes taking of property " (emphasis in original; petition, p. 10). The Guild is in error. Water Code Section 2501 states "The board may determine, in the proceedings provided for in this chapter, all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right." (Emphasis added.) The Board has determined that

> "To the extent that prescriptive rights are perfected and such rights do not initiate a new right (Water Code Section 1200, et seq.), then such rights should be included

> within the phrase 'other basis of right' in Water Code Section 2501. However, to the extent a new right is created (e.g., use based upon the prescription of a riparian right for use on a non-riparian parcel) then the person attempting to perfect the prescriptive claim must comply with Division 2 of the Water Code."

(Order, p. 10.)

The Guild states that "Riparian and prescriptive rights cannot be taken away from the Guild by a unilateral, capricious governmental action" (petition, p. 10). The Board has not taken away any rights of the Guild; the Guild was unable to demonstrate that it had any prescriptive right or that it had appropriative rights to use the water from Mindego Creek in the manner that it has been using that water. The Board cannot take away a right which does not exist; therefore, the Guild's claim that the Board's action constitutes a taking of property cannot be sustained.

3.4 Petition of William Baskin

Summary of Petition

On May 31, 1989, William Baskin filed a petition for reconsideration on the grounds that there was an irregularity in the proceedings by which he was prevented from having a fair hearing; the Order is not supported by substantial evidence; and there is relevant evidence which, in the exercise of reasonable

diligence, could not have been produced at the hearing on objections. He requests that the improved property be allotted 500 gpd, first priority, and that the existence of riparian rights for the second piece of property be acknowledged by the Board.

Discussion

William Baskin was not allotted any water in the Order. The Board found that Baskin did not have a valid water right to the water from the spring located on the property of Rudolph W. Driscoll. The Board also determined that the spring on the Driscoll property did not have hydraulic continuity with La Honda Creek. Although Baskin claimed to have prescriptive rights to the spring water, no evidence was introduced at the Board's hearing to support that contention; consequently, that claim was denied.

Baskin argues that the declarations of George Shawback, Bill Cunha, and Fred Cunha were received after the date of acceptance of testimony in this matter which constitutes an error in the record of this proceeding by which he has been prevented from having a fair hearing. These declarations were received after the date of acceptance of testimony and were relied upon by the Board to show that the spring did not have

hydraulic continuity with La Honda Creek. The Board improperly relied on these declarations; therefore, it is proper to order reconsideration on the issue of hydraulic continuity of the spring located on the Driscoll property with La Honda Creek.

Baskin also argues that he owns two parcels, an improved parcel and an unimproved parcel, that both parcels are riparian to San Gregorio Creek, and that water rights should be apportioned for each parcel. The original owners of both parcels were Emil and Mary Balocco.

The Balocco's filed Proof of Claim No. 53 on April 7, 1981 in which they claimed water by riparian right from a spring and from La Honda Creek for domestic use and irrigation of a garden on the property described as Assessor's Parcel Number 078-180-020. The Board conducted a field inspection of the property on October 21, 1980 and there was no evidence at that time that the Board should have considered two parcels. However, since the second parcel is undeveloped, no water would have been allotted to it. Paragraph 37 of the Order may apply to this parcel if it is found to be riparian. Paragraphs 27 and 28 of the Order provide mechanisms for activating dormant riparian claims.

Baskin states that he was never sent a "certified mail claim ... regarding his riparian claim" as described on page 3 of the Order. On page 3 of the Order the Board states that it sent a copy of the Report and a notice regarding inspection of the Board's records and information on the filing of objections by certified mail to each claimant and to each person not filing a proof of claim whose water rights are determined in the Report. The Report and notice were mailed to Barbara J. Renas (the sister of Baskin) who was the legal owner of the property at that time (certified mail return receipt card no. 00-15351). However, it is clear that Baskin received constructive notice, if not actual notice, of the Report and notice because he filed an objection. Under these circumstances, reconsideration of this issue is unmerited.

Baskin argues that substantial evidence exists of his prescriptive use of the Driscoll spring. Baskin and Barbara Jean Renas filed an objection to the Report in which they alleged that they had a prescriptive right to the water from the Driscoll spring. No evidence was introduced at the Board's hearing to support this contention. Raising this issue on reconsideration

is untimely and inappropriate. Baskin does not show why this evidence could not have been produced at the hearing on objections.

Baskin argues that substantial evidence exists that the claimed spring is in hydraulic continuity with La Honda Creek. As noted above, reconsideration should be ordered for this issue.

3.5 Petition of the City and County of San Francisco

Summary of Petition

On May 31, 1989, the City and County of San Francisco (City) filed a petition for reconsideration. The City alleges that the Board failed to use the proper standards for review of its prescriptive rights claim and requests that the Board find that the City has acquired prescriptive rights for the Log Cabin Ranch Juvenile Facility. Alternatively, the City requests that the Board defer the finality of an adverse ruling on the prescriptive claim pending final processing of the City's Application 28538.

Discussion

The Board did not allocate any water to the City for use at the Log Cabin Ranch Juvenile facility because there was no demonstrated basis of right for such a use. The City's claim of prescriptive rights was denied.

The City argues that the prescriptive rights analysis in the Order was incomplete and that "the legal criteria to gain prescriptive rights is that there must be an indication to the lower owners that the upper owners were exercising something beyond their riparian rights" (emphasis in original; petition, p. 4). Pabst, supra, requires that actual notice of the adverse claim be given by the upper riparian owner who is attempting to prescript downstream riparians or that the circumstances are such that a party must be presumed to have known of the adverse claim (211 P. at 13). At the hearing on objections, the City did not demonstrate that there was either actual notice or that the circumstances were such that any downstream riparian must be presumed to have known of the City's adverse claim. Further, the City never identified the downstream users that it claims to have prescripted nor has it ever shown how much was allegedly prescripted

against each owner. The Board's standard for review of prescriptive rights was proper and the City's claim cannot be sustained.

The Board is currently processing Application 28538 of the City. The City argues that "the possibility exists that the Board could find we are not entitled to prescriptive rights as it did in its order because our diversion is not 'adverse' to the interest of any downstream water user and then deny us an appropriation in our pending Application 28538 based on a finding that our use would be adverse to downstream water users" (petition, p. 2).

The City is confusing the proof that is required in different proceedings. In order for the Board to be able to sustain a finding of prescription, the City must prove that its use of water is hostile and adverse to the downstream user's water right, in addition to proving the other elements of a prescriptive right. The City did not meet its burden. Consequently, the claim was denied. In order for the Board to be able to issue a permit for Application 28538, the City must prove that unappropriated water is available from Mindego Creek such that the City could divert 0.46 cfs. Such a diversion would always be junior to riparian and

paramount appropriative rights. The implementation of the Order will not be delayed as a result of the processing of the Application. The processing of an application to appropriate water is a separate process from the statutory adjudication process.

3.6 Petition of Gerda Isenberg

Summary of Petition

On May 31, 1989, Gerda Isenberg filed a petition for reconsideration. She requests that her allotment for irrigation from point of diversion number 53 be increased to reflect her discontinued use of her allotment from point of diversion number 52 and her increased use of water due to the expansion of her nursery business. She also requests a year round irrigation allotment rather than the April 1 to November 1 season authorized in the Order. Finally, she requests that the clerical error on page 145 of the Order be corrected to read 1,900 gpd instead of 1,800 gpd.

Discussion

The Order allots water to Gerda Isenberg as follows:

1. 7,500 gpd, second priority, for irrigation of three greenhouses and an orchard on two acres of her land from point of diversion no. 52.

2. 500 gpd, first priority, for domestic use and 1,900[2] gpd second priority, for irrigation of one half acre from point of diversion no. 53.

Isenberg requests modification of her water rights due to changed circumstances and an inadequate irrigation season.

The request to extend the irrigation season to year round irrigation is not timely. The irrigation season in the Order is unchanged from what is in the Report. Isenberg had an opportunity to file an objection to the Report regarding this subject but failed to do so. In her petition she admits that she received a copy of the Report and that she failed to read it. To allow her to raise an untimely objection on reconsideration would be inappropriate and inconsistent with the statutory adjudication process.

Isenberg requests that her allotment from point of diversion no. 53 be increased to reflect the fact that she presently obtains all of her water from that source. She argues that the net effect on persons downstream on Woodruff Creek is the same because what is no longer being used from diversion 52 is now being used from diversion 53. Isenberg also requests that

2 Schedule 3 of the Order shows 1,800 gpd. This is a clerical error which will be corrected to show the correct allotment of 1,900 gpd.

her allotment from diversion 53 be increased because she has expanded her nursery and therefore needs more water. Both requests are an untimely attempt to initiate a new claim. To allow her to initiate a new claim on reconsideration would be inconsistent with the statutory adjudication process and unfair to other claimants whose rights were quantified at an earlier date. Paragraphs 27 and 28 of the Order allow persons to apply to the Court or to the Board in order to activate unexercised riparian rights or to increase an allotment under riparian right and Paragraph 14 of the Order allows persons to apply to the Board for an appropriative right. An application to appropriate water can be filed at any time.

3.7 Petition of the Trustees of Peter Folger Trust and Peter M. Folger

Summary of Petition

On May 31, 1989, the Trustees of Peter Folger Trust and Peter M. Folger filed a petition for reconsideration alleging that the Order of Determination is an abuse of discretion, is not supported by substantial evidence, and is contrary to law. They request that allocations of water be made for irrigation, stockwatering, and domestic use for the 1,000 acre San Gregorio Ranch owned by the Peter Folger Trust and for the 190 acre Ocean Shore Ranch owned by Peter M. Folger. They also

request that any determination of the flow necessary for fishery purposes be deferred until the Department of Fish and Game undertakes and completes a study on the need for, the value of, and the amounts of instream flows for fish and subjects such a study to a hearing process.

Discussion

The Order found that the riparian rights of both the Estate of Peter Folger and Peter M. Folger were unexercised; therefore, no water was allotted to either party on the basis of riparian right.

The Trustees of the Peter Folger Trust argue that "the Board should not have subordinated the request for a riparian allocation for irrigation of 15 acres of the Folger Trust property, because the evidence showed the past use of water from San Gregorio Creek, and a present intention to use the water by the riparian owner" (petition, p. 2). There was undisputed evidence that no water had been used on the property for irrigation under riparian right since 1980 (Transcript, Vol. III, pp. 366, 371-372). A general intent to use the water in the future is speculative, creates uncertainty with respect to other person's rights, and

rewards persons who have not diligently put water to reasonable, beneficial use. Therefore, no water is allotted in such circumstances and the riparian rights are classified as unexercised.

The Board does examine the facts and circumstances regarding intermittent non-use and evaluates each case on its own merits. Here, the stated reason for non-use of water under riparian right was that the property was tied up in the processing of the Estate of Peter Folger. As noted earlier, the executor of an estate has a duty to preserve and protect the assets of an estate. The right to use water is a usufruct of the San Gregorio Ranch which is an asset of the Estate of Peter Folger. With the knowledge that the adjudication proceedings were in progress, the executor of the Estate of Peter Folger was under a duty to exercise the riparian right if that was in the best interest of the Estate, provided that the water was used beneficially. The Estate of Peter Folger was given notice of the Board's adjudication proceedings. Based on the facts and circumstances of this case, the Board concluded that it was reasonable to characterize the riparian rights for the San Gregorio Ranch as unexercised. Paragraphs 27 and 28 of the Order provide mechanisms for activating unexercised riparian rights.

Regarding the six acres near the ranch house on San Gregorio Ranch, the Trustees argue that it was "an abuse of discretion and an error in law for the Board to determine that prior non-use was a sufficient basis to downgrade this riparian entitlement to the 'unexercised riparian right category', and such ruling is not supported by substantial evidence" (petition, p. 4). The representative of the Estate testified that the six acres had never been irrigated and referred to the right as an "unused riparian right" (Transcript, Vol. III, p. 372). The Board determined that it was unreasonable to allocate water for prospective uses; therefore, the Order did not provide any such allocations. The Board clearly has the authority to create and define a class of unexercised riparian rights (Long Valley, supra, 158 Cal.Rptr. at 352, 362) and it was not an abuse of discretion nor was it an error in law to classify the riparian rights attaching to this parcel as unexercised. The testimony of the representative of the Estate constituted substantial evidence of non-use.

The Trustees argue that the requests for irrigation allotments were "modest and reasonable" (petition, p. 4). Specific criteria were used to determine

whether an allotment was proper. The criteria for obtaining an allotment are:

1. There must be a valid right to the use of water (riparian, appropriative, pre-1914 right).
2. There must be a reasonable, beneficial use of water being made on the parcel.
3. A standard allocation based on purpose of use will be made if the conditions of points one and two above are met (i.e.: 500 gpd per residence for domestic use, 3,736 gpd per acre irrigated for irrigation use).

Just because a request is "modest and reasonable" is no reason to approve it. Unless the request meets the basic criteria described above it would be unreasonable for the Board to approve the request which would violate Article X, Section 2 of the California Constitution.

Finally, the Trustees argue that "if the Board's Order determined that the Folger Trust Property was severed from San Gregorio Creek, it was an erroneous determination" (petition, p. 5). Although the Estate of Peter Folger raised the issue in its objection, The Trustees have not shown any reason why the Estate failed to introduce any evidence on this issue during

the hearing. It is untimely to introduce evidence on this issue for the first time on reconsideration.

On page 5 of the petition, the Trustees state:

> "The Report at page II-73 also suggests that the watershed divide boundaries of the three Creeks bordering this Folger property are an internal riparian boundary limitation upon the use of water from the three streams. Such a limitation can be asserted only by a downstream landowner who is above the confluence and who is injured by the transfer over the sub-watershed boundary; otherwise such a limitation must be ignored."

The Trustees cite Rancho Santa Margarita v. Vail, 11 Cal.2d 501, 81 P.2d 533 (1938), for this assertion. However, that case does not support such an assertion. The quote which the Trustees cite refers to a discussion of "the correct definition of a watershed as to a riparian owner downstream from where two converging streams join" (emphasis added; Id., 81 P.2d at 547). In Rancho Santa Margarita, the court goes on to state that two cases, Holmes v. Nay, 186 Cal. 231, 199 P. 325 (1921) and Anaheim Union Water Co. v. Fuller, 150 Cal. 327, 88 P. 978 (1907), "when considered together, establish the law applicable to the rights of riparians on converging streams" (Id., 81 P.2d at 547). In Anaheim, the court states: "[l]and which is not within the watershed of the river is not riparian thereto, and is not entitled, as riparian

land, to the use or benefit of the water from the river, although it may be part of an entire tract which does extend to the river" (88 P. at 980). The court went on to state:

> "Where two streams unite, we think the correct rule to be applied in regard to the riparian rights therein, is that each is to be considered as a separate stream, with regard to lands abutting thereon above the junction, and that land lying within the watershed of one stream above that point is not to be considered as riparian to the other stream. The fact that the streams are of different size, or that both lie in one general watershed, or drainage basin, should not affect the rule...".

(Emphasis added, Id., 88 P. at 980.) This case does not support the Folger's objection. Further, the confluence of Harrington Creek with San Gregorio Creek and the confluence of Bogess Creek with San Gregorio Creek are downstream of and outside of the boundaries of the Folger property.

Use of water outside of the watershed which is the source of the water is a nonriparian use of water and the ownership of the land outside of the watershed is not determinative of riparian status. Riparian owners who wish to make a nonriparian use of water (i.e.: use the water outside of the watershed) must obtain an appropriative right to do so (Water Code Section 1200, et seq.).

Peter Folger argues that the classification of the riparian rights to the Ocean Shore Ranch was not supported by the evidence, was an abuse of discretion, and is contrary to law (petition, p. 8). He states "the record clearly showed, without contradiction, that the riparian owner had an intention and desire to commence the use of a modest amount of water for irrigation under his riparian rights on his property, and was proposing to do so, but his project was awaiting action of the Board itself under the associated storage Application 24628, which the Board has not yet taken action on" (petition, p. 8). The record clearly showed that no water had been used under the riparian right on the parcel (Transcript, Vol. III. p. 379). Application No. 24628 is not based on nor related to Folger's riparian rights. The record shows that use of water under the riparian right is not economically feasible because the riparian land lies uphill from Woodruff Creek (Transcript, Vol. III, p. 379). The record also shows that Folger had no intention of using water under riparian right for this parcel if Application No. 24628 was not approved (Transcript, Vol. III, p. 379). Processing of an application to appropriate water is a separate procedure from a statutory adjudication and only permits and licences are included in the adjudication.

The Board's classification of the riparian rights to this parcel as unexercised was proper.

Folger argues that "riparian allocations were awarded to other 'unexercised riparian rights' based upon their desire and intention to use the water" and that there is "no discernible distinction between these riparian claimants and the owners of the Folger properties" (petition, pp. 8-9). Folger's statements are misleading. The record shows that the Bradleys and Mr. Gottwald were given riparian allotments based on detrimental reliance because, during the hearing, Board staff and the hearing officer told these parties to exercise their rights (Transcript, Vol. I, pp. 31, 35). The Folgers' were not given any such advice during the hearing. Therefore, they cannot make use of the detrimental reliance theory. Since no use of water had been made on the Folger parcels, the riparian rights were properly classified as unexercised.

Folger and the Trustees argue that the Board made an error in assuming that Long Valley, supra, "gave the Board unfettered authority in its adjudication proceedings to subordinate all riparian rights not being exercised during the adjudication proceedings, even though, as is the case with the Folger interests,

a particular riparian is making only a relatively modest request, is prepared to commence his use of water, and to accept both a quantification of, and time limit on, his commencement of such exercise" (petition, p. 10). It is the Folgers' interpretation of Long Valley which is in error, not the Board's. In Long Valley the court stated:

> "For the future guidance of the Board, however, we undertake to identify the limitations on unexercised riparian claims that are constitutionally permissible and thus authorized by the statute in light of our analysis herein. As previously discussed, when the Board determines all rights to the use of the water in a stream system, an important interest of the state is the promotion of clarity and certainty in the definition of those rights; such clarity and certainty foster more beneficial and efficient uses of state waters as called for by the mandate of article X, section 2. Thus the Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Moreover, to the extent that an unexercised riparian right may also create uncertainty with respect to permits of appropriation that the Board may grant after the statutory adjudication procedure is final, and may thereby continue to conflict with the public interest in reasonable and beneficial use of state waters, the Board may also determine that the future riparian right shall have a lower pricrity that any uses of water it authorizes before the riparian in fact attempts to exercise his right. In other words, while we interpret the Water Code as not authorizing the Board to extinguish altogether a future riparian right, the Board may make determinations as to the scope, nature and priority of the right

> that it deems reasonably necessary to the promotion of the state's interest in fostering the most reasonable and beneficial use of its scarce water resources."

(Emphasis added; Id., 25 Cal.3d at 358-359, 158 Cal.Rptr. at 362.) In order to promote the state's interest in fostering the most reasonable and beneficial use of the scarce water resources of the San Gregorio Creek Stream System, the Board determined that unexercised riparian rights shall receive priorities in order of the date of application for activation and that these priorities shall be subordinate to all valid pre-existing uses of water (Order, Paragraph 13.e). Such determination was clearly within the Board's authority. The argument of the Trustees and Folger is without merit.

Folger requests that the Board make a "limited allowance for future domestic uses for the Folger riparian lands" (petition, pp. 13-15). As noted previously, no allocations are made for prospective uses. The Order provides several mechanisms for obtaining an allocation of water in the future (Paragraphs 14, 27, 28, 42).

The Trustees and Folger argue that "the Board erred in giving automatic priority to the specified instream flows over riparians who seek to commence use of water in the future" (petition, p. 15). The Order includes a rebuttable presumption that specified bypass flows will apply to the activation of any future rights; it is not an "automatic priority" (Order, Paragraph 24). Each person proposing to activate future rights has an opportunity to show that their proposed diversion will not adversely affect fisheries, wildlife, and other instream and public trust uses. If the showing is made, the minimum bypass flows do not apply to their proposed project. The protection of instream uses is a beneficial use of water (23 CCR 666). There is nothing inherently unreasonable about requiring that future uses be subject to minimum bypass flows to protect public trust resources and this is a proper exercise of the Board's discretion.

The analysis of the public trust doctrine made by the Trustees and Folger is incorrect. Interests which are protected by the public trust doctrine include navigation, commerce, and fisheries (National Audubon Society v. Los Angeles Department of Water and Power, 33 Cal.3d 419, 435; 189 Cal.Rptr. 346, 356; 658 P.2d 709 (1983)). Diversions from non-navigable waterways

which affect public trust uses in navigable waterways are subject to the doctrine (Id., 33 Cal. 3d at 437, 189 Cal.Rptr. at 357). Finally, statutory adjudication proceedings under Water Code Section 2500, et seq., are subject to the doctrine (Id., 33 Cal.3d at 450, 189 Cal.Rptr. at 367).

Anadromous fish spawn and live their early life stages in fresh water but live mainly in the ocean which is a navigable body of water. Steelhead are anadromous fish which are found in the San Gregorio Creek Stream System and which are protected by the public trust doctrine. The Board and the court are required to avoid or minimize harm to the anadromous fishery that may result from diversions from the stream system. The Board weighed all competing interests and determined that it was reasonable to require that future diversions be subject to the rebuttable presumption established in Paragraph 24 of the Order.

The Trustees and Folger mis-state the applicable law regarding unexercised rights. On page 18 of their petition, they state that "[t]he riparian's right to activate his use at any time has been embedded in the law of California since Lux v. Haggin [citation omitted], and is declared in Article X, Section 2 of

the State Constitution." As noted in the discussion above, the Board has the authority to establish the scope, nature, and priority of unexercised riparian rights pursuant to the Long Valley decision (25 Cal.3d at 358-359, 158 Cal.Rptr. at 362). This authority does not conflict with the California Constitution (Id., 25 Cal.3d. at 351-353, 158 Cal.Rptr. at 357-358). Further, the Board's decision to not give allotments for prospective, speculative uses is reasonable and contributes to the certainty of the allotments defined in the Order. Their argument is without merit.

The Trustees and Folger argue that "the Board should order that the matter be reopened for further evidence from the Department of Fish and Game on the need for, the value of, and the amounts of instream flows for fishery, or alternatively, defer the adoption of any such instream flow criteria until such a study is completed and subjected to the hearing process" (petition, p. 19). The Board does not have the authority to order the Department of Fish and Game (DFG) to conduct such a study. The Board's files show that DFG was asked to cooperate with the Board in developing bypass flows and declined to do so because of the lack of resources available within DFG. The Board did not "simply pass over" obtaining a report or

recommendation from DFG (petition, p. 21) when DFG indicated that it would not furnish more information on San Gregorio Creek Stream System. Based on the expertise of the Board's staff in fisheries, one field reconnaissance of the stream system, hydrologic data on San Gregorio Creek, DFG file data on the stream system, and scientific literature on small coastal streams in California, the Board's staff made its own determination of minimum bypass flows. Although the Trustees and Folger claim that the Board's time and financial constraints "are not valid reasons for not obtaining adequate and reliable data to determine what bypass flows are reasonably required" (petition, p. 21), basing the bypass flows on existing data is appropriate. The Trustees and Folger had an opportunity to provide relevant data on bypass flows to the Board prior to and during the hearing on objections. The objections of the Estate of Peter Folger and Peter M. Folger questioned the bypass flows but did not provide any reliable data to substantiate their allegations. Their representative who testified at the hearing was not qualified as an expert in fisheries (Transcript, Vol. III., pp. 342, 381-384). Under these circumstances, the Board's action was appropriate.

The Trustees and Folger argue that the Board erred in not allocating water for stockwatering under their riparian rights. Since they did not object to the absence of a stockwatering allotment in the Report, such an allotment was not included in the Order. This objection is untimely. It is inappropriate to use the reconsideration process to raise an objection as an issue for the first time.

Finally, the Trustees and Folger argue that "the Board should have notified all non-exercising riparians at the outset that commencement of use was necessary to preservation of their riparian right" (petition, p. 23). The Board is not obligated to give advice regarding the best course of action for individual claimants. The Board also does not want to create a "gold rush" for water when an adjudication proceeding begins; that creates wasteful and unreasonable uses of water. After its investigation of the stream system, the Board decided that it was reasonable to create a class of unexercised riparian rights which would have a lower priority than all valid existing uses of water. The Board also decided that it was unreasonable to allot water for prospective uses. All parties were given sufficient notice of the adjudication proceedings

and the consequences of the adjudication. The argument of the Trustees and Folger lacks merit.

3.8 Petition of Elliot Roberts, Norman and Beverly Oaks

Summary of Petition

On May 30, 1989, Elliot Roberts, Norman Oaks and Beverly Oaks filed a petition for reconsideration. They allege that there is an error in law in that the petitioners were not aware of the possible exclusion of the spring located on the property of Norman and Beverly Oaks which is described in Permit No. 19663 from the jurisdiction of the Board, were not represented by counsel, and were not aware of the need for counsel. The petitioners request that the Board determine that the spring which supplies their water is not within the Board's jurisdiction.

Discussion

On January 24, 1985, Elliot Roberts filed Application to Appropriate Water No. 28377 in order to continue to directly divert 9,060 gpd from the unnamed spring on the property of Norman and Beverly Oaks for domestic use at two residences including irrigation of one acre of lawn and garden. Roberts stated in Paragraph 2(b) of Application No. 29377 that there was no hydraulic continuity downstream of the unnamed spring from March

through November and this representation was also repeated in the Board's Notice of Applications to Appropriate Water. All statements made in the application were made under penalty of perjury. Because of Roberts' statement that there was no hydraulic continuity March through November, the Board inferred that there was hydraulic continuity during the remainder of the year and assumed jurisdiction. Roberts did not challenge the assumption of jurisdiction and Permit No. 19663 was issued on October 15, 1985.

All property owners within the San Gregorio Creek Stream System were sent a certified letter dated August 8, 1980 which clarified that the "'stream system' includes all streams and springs whose waters contribute to San Gregorio Creek by way of the natural channels of La Honda Creek, Alpine Creek, Mindego Creek and several other streams." The files show that Roberts received this letter (certified mail return receipt card no. 901052). If the parties had a question regarding whether the spring was jurisdictional they should have raised it as an objection. Both Roberts and the Oaks' filed objections to the Report but neither party objected to the spring

being included in the statutory adjudication. It is untimely to raise this issue on reconsideration.

Roberts and the Oaks' argue that they were prevented from having a fair hearing and that the Board made an error in law because they (Roberts and the Oaks') were not represented by counsel and were ignorant of the Board's authority. At no time did the Board prevent either party from obtaining counsel or recommend that they not obtain counsel. Whether to retain counsel for the adjudication is a personal matter left to the parties to decide. Roberts and the Oaks' were informed of the definition of a "stream system". The Board's correspondence contained the names and telephone numbers of staff members assigned to the adjudication so that persons could contact staff regarding any questions or problems. This argument is unmeritorious.

Finally, Roberts and the Oaks' argue that the Order "may not be supported by substantial evidence in that it was assumed by the Board and by petitioners that the water of said spring were within the jurisdiction of the Board" (petition, p. 2). Permit No. 19663 was included in Schedule 6 of the Order because all post-1914 appropriative water rights within the San Gregorio Creek Stream System have been included in the

adjudication pursuant to Water Code Section 2501. The amount of water authorized under Permit No. 19663 for irrigation of one acre of lawn and garden was reduced from 8,060 gpd to 3,700 gpd in order to be consistent with the standard irrigation allotment of 3,736 gpd per acre. No evidence was submitted at the hearing regarding the spring or the permit. The Board relied on the statements made by Roberts under penalty of perjury in Application No. 28377.

4.0 CONCLUSIONS

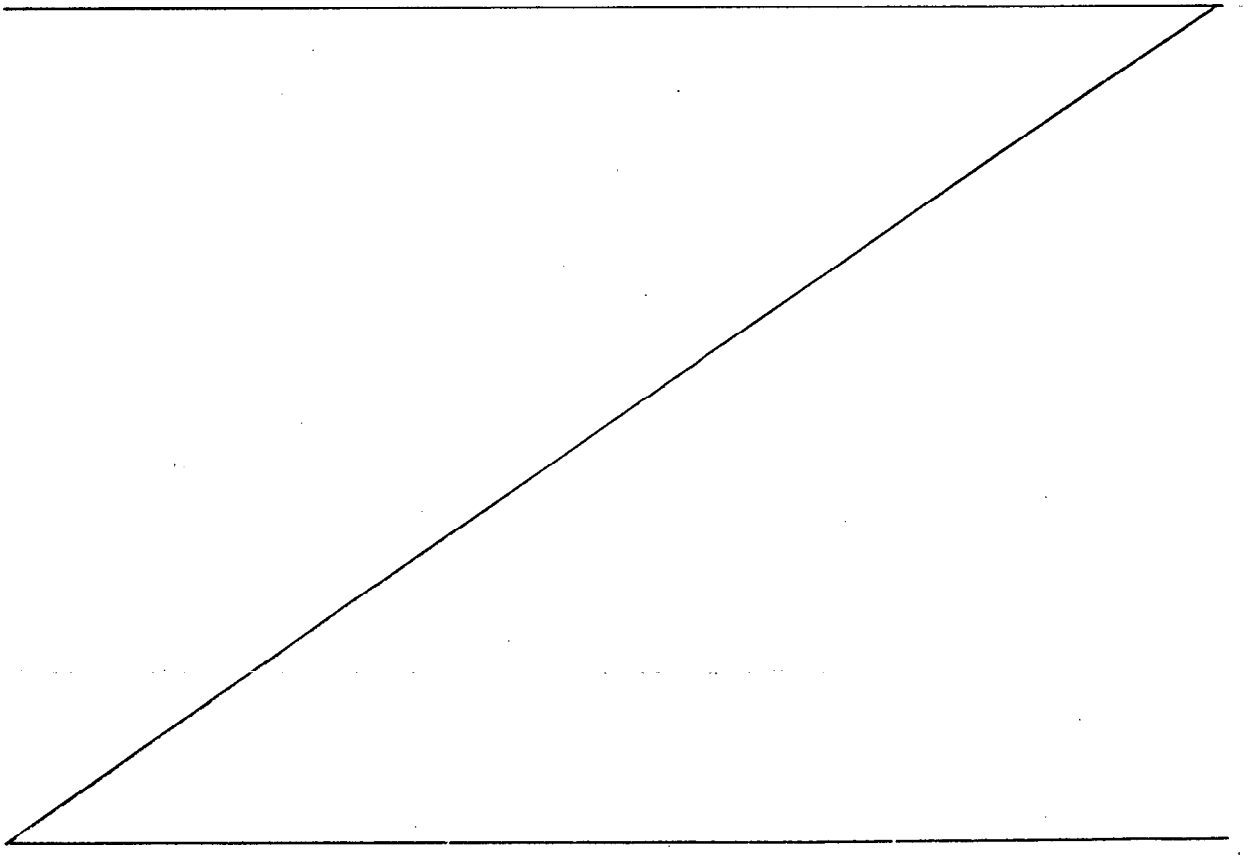
The petition of William Baskin qualifies for reconsideration under 23 CCR 768(a) because the Board relied upon declarations which were received after the date of acceptance of evidence to show that the spring on the Driscoll property did not have hydraulic continuity with La Honda Creek. Reconsideration should be ordered only for the issue of whether this spring has hydraulic continuity with La Honda Creek.

The petitions of Helen Carey; Karen Moty and Edwin Klingman; Cuesta La Honda Guild; the City and County of San Francisco, Gerda Isenberg; the Trustees of Peter Folger Trust and Peter M. Folger; and Elliot Roberts, Norman and Beverly Oaks do not qualify for reconsideration under either circumstance described in

Resolution No. 89-29 nor do they qualify under any cause stated in 23 CCR 768. Therefore, those petitions should be denied.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the petition for reconsideration of William Baskin is approved only as it relates to the issue of whether the spring on the Driscoll property has hydraulic continuity with La Honda Creek and it is denied as it relates to any other issue. The petitions for reconsideration of Helen Carey; Karen Moty and Edwin Klingman; Cuesta La Honda Guild; the City and County of San Francisco; Gerda Isenberg; the



Trustees of Peter Folger Trust and Peter M. Folger; and Elliot Roberts, Norman and Beverly Oaks are denied.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 20, 1989.

AYE:	W. Don Maughan Darlene E. Ruiz Edwin H. Finster Eliseo M. Samaniego Danny Walsh
NO:	None
ABSENT:	None
ABSTAIN:	None

Maureen Marche'
Administrative Assistant
to the Board