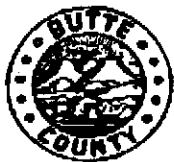


**OFFICE OF COUNTY COUNSEL
COUNTY OF BUTTE**

25 COUNTY CENTER DRIVE
OROVILLE, CALIFORNIA 95965-3380
PHONE (530) 538-7621
FAX (530) 538-6891
countycounsel@buttecounty.net



BRUCE S. ALPERT
COUNTY COUNSEL

ASSISTANT COUNTY COUNSEL
DAVID M. McCLAIN

CHIEF DEPUTY COUNTY COUNSEL
ROBERT W. MACKENZIE

DEPUTY COUNTY COUNSEL
FELIX WANNENMACHER
ELIZABETH McGIE
ROGER S. WILSON

December 30, 2002

State Water Resources Control Board
c/o Paul Murphey, Associate Engineering Geologist
P.O. Box 100
Sacramento, CA 95812-0100
Sent via Facsimile: (916) 341-5400

Re: SWRCB Draft Decision: North Gualala Water Company

Dear Board Members:

Please accept these written comments concerning the above referenced draft decision. I have previously written you on behalf of the Board of Supervisors of the County of Butte, in an effort to persuade you not to expand your regulation of groundwater beyond the type of subterranean streams generally described in Los Angeles v. Pomeroy (1899) 124 Cal 597.

The above referenced decision appears to expand your Board's jurisdiction beyond those types of waters referred to in Pomeroy, to what the draft decision refers to as an "underground lake" (draft decision, P. 16), based on Los Angeles v. Hunter (1909) 56 Cal 603. The draft decision incorrectly uses Hunter, as the court's decision in Hunter was not based on whether the groundwater in the San Fernando Valley was percolating, or instead was part of the flow of a subterranean stream.

The decision in Hunter was based on the fact that the City of Los Angeles held a pueblo water right to all of the waters in the San Fernando Valley basin. City of Los Angeles v. City of Glendale (1943) 23 Cal.2d 68 at P.73. Thus, the unfortunate discussion in Hunter upon which the draft decision relies (which, by the way, describes percolating groundwater as, "...vagrant, wandering drops moving by gravity in any and every direction along the line of least resistance..."; Hunter at P. 607-608) is merely dicta – unnecessary surplusage of absolutely no precedential value. For this reason, all reference to Hunter should be stricken from the draft decision:

Expanding SWRCB's jurisdiction beyond the confines of Pomeroy to "underground lakes," which the draft opinion appears to do, is without precedent and incorrect, as a matter of law. Such an expansion would do every bit as much violence to established water rights law as adopting Professor Sax's recommendations would have. As I have explained in a previous letter to you, such an expansion would constitute an unwarranted embarkation down a very slippery slope, at the risk of effectively "transforming" large portions of groundwater basins into surface water, which would turn established water rights law on its head.

State Water Resources Control Board
December 30, 2002
Page 2

As I have also previously mentioned, aside from being lawful, local regulation of groundwater resources by counties is appropriate, particularly where voters have chosen it by initiative, as they have in Butte County. The Board of Supervisors of the County of Butte again request that SWRCB, as a matter of policy, restrict its jurisdiction over groundwater to the type of subterranean streams generally described in Los Angeles v. Pomeroy (1899) 124 Cal 597.

Thank you for your consideration of this letter. If you have any questions, please feel free to call me at (530) 538-7621 or correspond with me at the above address.

Very truly yours,

Bruce S. Alpert,
Butte County Counsel

By 
Robert W. MacKenzie
Chief Deputy County Counsel

enclosure

cc: Board of Supervisors
Paul McIntosh, Chief Administrative Officer
Ed Craddock, Water & Resource Conservation Director
Roger Masuda, Esq.
BBWUA
NCWA
ACWA

(g:\rob\SWRCB4)