



January 2022 NEWSLETTER

NRWMAC vs Monterey County

2021 represented NRWMAC's third year of litigation against Monterey County and the agencies which manage, *or mismanage*, Lake Nacimiento. In 2022, the effort continues, and NRWMAC will not give up or give in until our constituents' recreation rights are honored and the water in the lake is properly managed.

During 2021, NRWMAC's court action involved pleading, discovery, and pretrial motions:

- In February, Monterey County's (Defendant) demurrer objection was heard and sustained in part and overruled in part.
- On March 29, 2021, NRWMAC filed a Second Amended Complaint and added new parties to the inverse condemnation cause of action as well as addressed the issues raised in Defendants previous demurrer as to the remaining causes of action.
- Defendants demurred to the Second Amended Complaint. The Court sustained the demurrer for the Inverse Condemnation cause of action without leave to amend but overruled the remainder of the demurrer.
- Defendants filed an answer in October, after which discovery commenced with both sides propounding Requests for Production, Form Interrogatories and Special Interrogatories.
- In November, Defendants moved the court to refer the cause of action for permit violation to the California State Water Resources Control Board (Water Board), and to stay the remaining causes of action pending resolution of the permit violation by the Water Board. (The violation-of-permit cause of action alleges that the Monterey County Water Resource Agency, which operates Lake Nacimiento Reservoir under a permit issued by the Water Board, exceeded

its permitted release of water by as much as 9,000-acre feet in 2019.)

- In December, after hearing arguments from both sides, the Court ordered the violation of permit be brought before the Water Board and concurrently ordered the remainder of the case to be stayed – temporarily suspending it while the Water Board decides whether Defendants violated their permit. The court will lift the stay and the litigation will resume once the Water Board rules on its portion of the case.

It is impossible to predict 1) how the Water Board will rule on the cause of action referred to it (for Monterey County's violation-of-permit); or 2) how long the Water Board will take to decide the issue. Relying on the experience of its attorneys, NRWMAC believes that it may take as long as 18 to 24 months for the Water Board to reach a decision. During that time, NRWMAC will remain receptive to any overtures the Defendants may make in terms of resuming settlement talks between the two sides, providing they proceed in good faith.

While the referral to the state water board will possibly add between 18 to 24 months to the court process, NRWMAC believes that this is a VERY good thing, and places the determination of the violation-of-permit in front of the proper people to handle it – The Water Board!

We have weathered the storm in court so far, we've made good headway in pursuing our case, and we believe we are at the tipping point of success. Through your continued donations and help we can make this success a reality.



The Shandon-San Juan Water District's Application

During the litigation between NRW MAC and Monterey County, NRW MAC attorneys learned that MCWRA released on average as much as 5000-acre feet per year beyond its permitted withdrawals for a period of ten years. When confronted with these facts, and to avoid the appearance of having exceeded its storage and release limits, MCWRA claimed that this water did not fall under its water rights permit, and in fact was not stored in the reservoir at all but instead “passed through” it. Thus, this water was not subject to reporting. Monterey county declared in their required annual water release report to the Water Board that up to 14,000-acre feet per year was “natural bypass,” and as such, did not count against their permitted maximum release of 180,000 acre feet per year, even though it still flows into Monterey County through the Salinas River.

A Water Board representative confirmed to NRW MAC's attorneys that this “pass-through” water was available for appropriation, as California law allows surface water to be diverted at one point and used beneficially (“appropriated”) at a separate point.

The cost of the application for this water appropriation being prohibitive for NRW MAC during our litigation, the Shandon-San Juan Water District (Water District) in San Luis Obispo County was alerted to this opportunity and they quickly filed an application to appropriate the pass-through water to augment groundwater supplies in the Paso Robles Area subbasin. The Water District's stated plan is to deliver the water to the subbasin through the existing Nacimiento Water Project Pipeline and to do so in such way as to enhance recreational goals.

The Shandon-San Juan Water District application stated:

“Applicant intends to store up to 12,000-acre feet of available surplus water in the Lake for diversion at a time when such water is accruing in the Lake, and to subsequently convey the stored water through the Pipeline when capacity is available. Availability of Pipeline capacity **typically coincides with the conclusion of the Lake's recreation season, about mid-September.** Applicant proposes that, no sooner than September 15th of each year, it be authorized to convey the stored water through the Pipeline to the Pipeline's turnout in the Subbasin...” (Emphasis added.)

The entire Shandon-San Juan District permit application can be viewed at:
http://nrwmac.org/wp-content/uploads/2021/05/Shandon-San-Juan-Water_District-Application-to-Appropriate-Water-Nacimiento.pdf

This water allocation is a win-win situation for everyone. The Paso Robles area subbasin will receive unclaimed water it desperately needs – that no one even knew existed (except maybe MCWRA) – AND it will also keep this water behind the dam until the conclusion of recreation season!

However, the San Luis Obispo County Supervisors have decided they are “unhappy” with this application for water allotment, citing “they were not consulted before the filing of the application”, and have attempted to block this permit! Not only are the supervisors NOT HELPING our lake recreation, Paso Robles economy, and land owners... but NOW they are BLOCKING a VERY BENEFICIAL effort to help KEEP water in the lake at peak recreational times!

We need anyone willing to participate to call and / or write to the San Luis Obispo County supervisors and let them know how OUTRAGED you are about this!



What You Can Do

We've reached the moment when it's vitally important for your support. We are now headed back in to court, with the next audience being in Sacramento with the State Water Board, maintaining the battle with Monterey. It's very costly to fund our hardworking legal team. Now more than ever, we need you to support NRWMAC's efforts on your behalf. We urgently need an influx of dollar donations at this time.

Generous people like you are the **ONLY** source of funding to support NRWMAC efforts to correct and hold Monterey accountable for water mismanagement at Lake Nacimiento. **We urgently need you to keep supporting our efforts at this time with your dollar donations for NRWMAC's legal expenses.**

Even if you have previously donated, we are asking for your continued help, please donate any amount that you can. Clicking a link below will take you directly to donation sites.

GoFundMe:



www.gofundme.com/lake-nacimiento-save-the-dragon

or

Private Donation:

(via PayPal)



<http://nrwmac.org/donate#Private-Donation>

If you prefer to write a check, please make it out to NRWMAC and mail to: NRWMAC, PO BOX 398, Paso Robles, CA 93447.

And, we need you to pass this newsletter along to everyone you can think of who can help us to inform anyone and everyone who is concerned about Lake Nacimiento and our legal battle to

Save the Dragon!

NRWMAC needs volunteers to help get the word out, help procure time and dollar donations, sign up to help at fundraisers and events, and help inform people at information stations.

For more information about how you can get involved, please go to:

www.nrwmac.org/get-involved

Who to Call/Contact

We need the right people to know about Monterey's mismanagement of Lake Nacimiento, and our fight to correct the problems they are causing to recreation and property rights.

We encourage you to write, call, or email your elected local, state, and federal officials as well as the local press. Tell them about what is happening to our recreational water, and how the lake quality and property rights have been affected under Monterey's mismanagement. The more people we reach out to, the better our chances of succeeding in our legal pursuits and in making the changes needed at Lake Nacimiento.

NRWMAC's "Who to Call" contact list is on our website. It has contact information for your San Luis Obispo and Monterey County supervisors, California state representatives, the California State Water Boards and more. Go to:

www.nrwmac.org/who-ya-gonna-call

Thank You for Supporting NRWMAC!

Changes at NRWMAC

It is with great sadness that we have to report that Don Bullard has stepped down as President of NRWMAC. Don's tireless work, leadership and knowledge has been instrumental in helping NRWMAC's direction and focus, and he will be deeply missed.



Taking on the role of Interim President is NRW MAC Vice President Chuck Larson. Chuck's long term commitment to NRW MAC, skill as a facilitator, and understanding of current affairs at Lake Nacimiento, provide NRW MAC with a strong transition to the new president.

NRW MAC is also privileged to have Steve Blois step up to sit on the Monterey County ResOps board. Steve has been a NRW MAC board member for a number of years and he also currently serves on the board of a large water district as well as the board of a very large California water agency. Steve's experience and skill with water agency's and board processes has been a great asset to NRW MAC and we look forward to having him interact with ResOps.

Please see Steve's introduction letter to ResOps to understand more about why we are so excited to have him in this position.

[Steve Blois ResOps Introductory Letter PDF](http://nrwmac.org/wp-content/uploads/2022/01/Steve_Blois_ResOps_Introduction_12-21-21.pdf)
http://nrwmac.org/wp-content/uploads/2022/01/Steve_Blois_ResOps_Introduction_12-21-21.pdf

California Water Rights

Let's be clear about water rights. Water in California is protected for the use and benefit of all its citizens. **California's waters cannot be owned by individuals, groups, businesses, or governmental agencies.** Permits, licenses, and registrations give individuals and others the right to beneficially use reasonable amounts of water.

Monterey was provided a grant in 1958, based on their application to develop a first-class recreation area at Lake Nacimiento, thereby making a long-term commitment to promote and develop recreational facilities at Lake Nacimiento.

Monterey was again licensed in 1964, with the statement of purpose: "Recreational use at Lake

Nacimiento Reservoir within San Luis Obispo County and irrigation, domestic, municipal, industrial and recreational uses within an area of Monterey County."

In 1996, Monterey was once again granted a permit subject to prior rights that *authorized specific purposes* for using the water for irrigation, industrial, municipal, **recreation**, and domestic use.

There are **no percentages of water** listed in those grant rights. There is **no single group** that owns the water. In fact, there are five groups with interest rights that share the water in Lake Nacimiento and **ALL FIVE** are entitled to the water!

The Recreation Component

The Monterey County Flood Control and Water Conservation District (the "District"), built Lake Nacimiento in the mid-1950s, for recreation, flood control, and water conservation. The District first had to condemn and take private properties in and around the reservoir site by eminent domain.

In part, this Act gave the District the power to condemn "lands deemed by the supervisors of the district to be **necessary or convenient for the installation, construction, use and maintenance of recreational areas or facilities including picnic grounds, play grounds, camp grounds, home sites, boats and fishing, bathing or other facilities for use by the public...**" Therefore, the provision of recreation at the reservoir was **key** to allowing the construction to commence. (*Boldface supplied by NRW MAC for emphasis.*)

To put it simply, Monterey claimed and based recreational support at Lake Nacimiento as an *equal right* to take land. They must continue to support recreation or they can face invalidating their right to that land.