

October 12, 2018

**BY U.S. MAIL AND E-MAIL**

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Eileen Sobeck  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**Re: Salinas Valley Water Coalition v. Monterey County Water Resources Agency  
(Monterey County Superior Court Case No. 17CV000157)**

Dear Ms. Sobeck:

As you are aware, this firm represents the Nacimiento Regional Water Management Advisory Committee ("NRWMAC"). Please let this letter serve as NRWMAC's request that NRWMAC be allowed to participate in the proceedings currently on court ordered reference to the State Water Resources Control Board ("Board") by the above-referenced action (the "Action"), despite the trial court denying NRWMAC's motion to intervene without prejudice in the Action until the Board issues its Phase I report.

As we advised in our previous letter dated August 1, 2018, NRWMAC is comprised of property owners who own property directly along the waterfront of Lake Nacimiento (the "Lake" or "Nacimiento") and therefore have direct and substantial interests in the outcome of the Action. Specifically, our client is particularly concerned that the Board's Phase I report will fail to consider its members' rights and thus provide an incomplete analysis of the rights of water users in the Salinas Valley Basin. Given that the court denied NRWMAC's motion to intervene without prejudice, thus contemplating that NRWMAC will be allowed to join the action after the Board's report is issued, NRWMAC respectfully requests the opportunity to present evidence in support of its position to the Board so that the Board has all pertinent facts when issuing its report.

Specifically, Water Code § 1257 states:

In acting upon applications to appropriate water, the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, **recreational**, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such

appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.

(Emphasis Added.)

Additionally, Cal. Const., article X, section 2 states:

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

In *Environmental Defense Fund, supra*, 26 Cal.3d at 198-199, the court held that environmental advocates may rely on Cal. Const., article X, section 2, to claim that a proposed upstream point of diversion for water to the East Bay Municipal Utility District was unreasonable because of its adverse effects on water quality, fish and wildlife, and recreational uses in the lower American River.

In another case, *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, the California Supreme Court ruled that Los Angeles's long-standing rights to appropriate water from the streams that supply Mono Lake are subject to the public trust. Just as the doctrine of reasonable use serves as an inherent limitation on the exercise of all water rights, the court declared that the public trust doctrine "imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs." (*Id.* at 447.) Included, in the public trust doctrine is the protection of recreational uses. (*Id.* at 435.)

It also cannot be overstated or ignored that the Monterey County Flood Control & Water Conservation District ("District"), the Monterey County Water Resources Agency's predecessor in interest, acquired land around the Lake expressly for recreational purposes. (See, *Monterey Cty. Flood Control & Water Conservation Dist. v. Hughes* (1962) 201 Cal.App.2d 197.) In *Hughes*, an eminent domain action, the Court determined that a public agency properly exercised its eminent domain powers in condemning land to be used for recreational purposes. Specifically, the District sought to condemn lands for the Nacimiento reservoir for, among other things, recreational uses. The Court determined this was a proper use of eminent domain powers and the District (currently the Agency) was permitted to use its powers for such a purpose. In doing so, the Court stated:

In *City of Elsinore v. Temescal Water Co.*, 36 Cal.App.2d 116 [97 P.2d 274], the court recognized recreational uses as being consistent with section 3 of article XIV of the state Constitution. In that case an injunction was issued to prevent the diversion of water that was flowing into Lake Elsinore where the primary uses

made of the water were for recreation. It also appeared that there were several businesses in the City of Elsinore which were related materially to the recreational uses of the lake. In affirming the issuance of the injunction, the court said, at page 129: "... the argument that the use of water for the purpose of maintaining the level in Lake Elsinore constitutes waste and unreasonable use thereof is without merit. Neither the maintenance of health-giving recreational opportunities, nor the existence and continuance of large business interests devoted to and built up for the purpose of making those opportunities available to large numbers of its citizens, can be held to be against the public policy of this state."

In view of the fact that recreational uses are clearly related and incidental to the maintenance and operation of a dam and reservoir for flood control and water conservation purposes, and also recognizing the strong public interest in such recreational uses as shown by legislative declarations and approval, we believe that under the act the power of eminent domain would include the taking of property for such related and incidental uses.

*(Id. at 204-205.)*

Here, NWRMAC's substantial interests in ensuring any appropriations of water from Nacimientto also consider recreational uses must be represented in the Board's report. One of the central issues in this case concerns how much water is to be released from Nacimientto which will have a direct effect on the amount of water available for recreational uses, particularly during peak recreational months (i.e., summer). There exists a substantial likelihood that the outcome of this case, based in part on the findings of the Board, could result in a situation where the Lake would be well below the minimum threshold required for recreational use. In particular, we believe that the Agency violated the permits issued by the Board for Nacimientto by releasing too much water after July 2018. We seek the opportunity to elaborate this conclusion as part of the current proceedings because it demonstrates that the Salinas Valley Water Coalition has no right to increased flow.

Accordingly, NWRMAC respectfully requests the opportunity to present evidence in support of its position to the Board and, in particular, in connection with Issue 3d currently before the Board which states, "[t]o what extent, if any, must water use in other subareas of the Salinas Valley Groundwater Basin be considered in concluding whether riparian and overlying rights in the Upper Valley and Forebay subareas were injured by the Agency's reservoir operations in 2014 and 2015." NRWMAC contends that the water rights and uses of all interested parties in the Salinas Valley Basin, such as NRWMAC, must be carefully considered before issuing a report in this Action. To that end, NRWMAC must be allowed to participate in

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the current proceedings so that the Board has all pertinent and relevant information necessary in making an informed and accurate determination of the issues.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'E. Kang', with a stylized, cursive flourish extending to the right.

Edward B. Kang