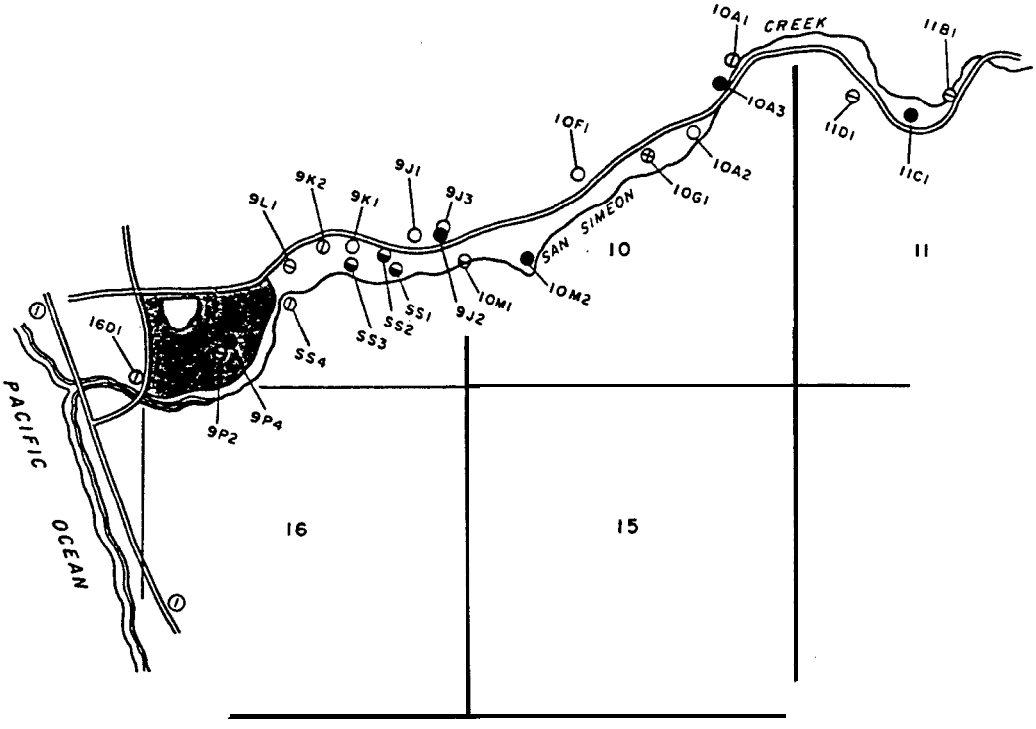
CAMBRIA COMMUNITY SERVICES DISTRICT COMPLAINTS ALLEGING VIOLATION OF PERMIT 17287, APPLICATION 25002 SAN SIMEON CREEK UNDERFLOW

ORDER **WR 88-14**



JULY 1988

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

George *Deukmejian, Governor*

STATE WATER RESOURCES CONTROL BOARD

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287, Issued on Application 25002,	
CAMBRIA COMMUNITY SERVICES DISTRICT, Permittee,	ORDER: WR 88- 14
	SOURCE: San Simeon Creek
	COUNTY: San Luis Obispo
COASTAL RESIDENTS UNITED, INC., JON PEDOTTI, CLYDE WARREN, Complainants.	

. ORDER AMENDING PERMIT

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STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287, Issued on Application 25002, CAMBRIA COMMUNITY SERVICES DISTRICT, Permittee, COASTAL RESIDENTS UNITED, INC., JON PEDOTTI, CLYDE WARREN, Complainants.	ORDER: WR 88- SOURCE: San Simeon Creek COUNTY: San Luis Obispo

ORDER AMENDING PERMIT

BY THE BOARD:

1.0 INTRODUCTION

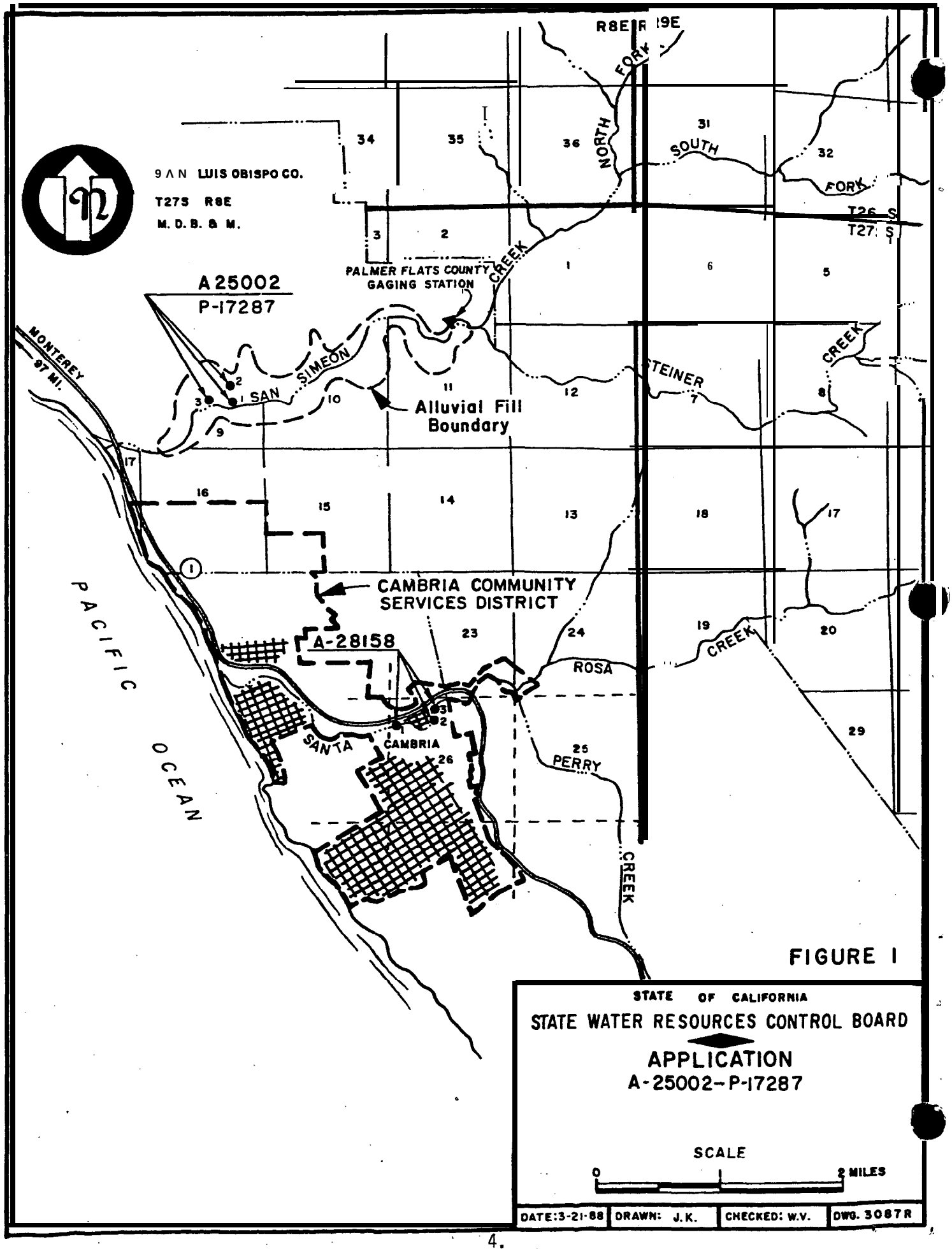
The Cambria Community Services District (District or CCSD) having been issued Permit 17287 for appropriation of water from San Simeon Creek underflow on May 9, 1979; complaints having been filed alleging that the District's diversion of water has caused injury to prior rights and has been in violation of the conditions of the permit; a public hearing having been held on April 23 and 24, 1987 by the Board; permittee and complainants Coastal Residents United, Jon Pedotti and Clyde Warren having appeared and presented evidence; legal briefs and closing statements having been submitted; the evidence in the record having been duly considered; the Board finds as follows:

2.0 BACKGROUND

The Cambria Community Services District provides the water supply and wastewater treatment facilities for the community of Cambria. Historically, the community's water supply was obtained from the underflow of Santa Rosa Creek by means of extraction wells. Although the District asserts a pre-1914 right for use of Santa Rosa Creek underflow, the disputed nature of this claim led to the District filing Application 28158 for diversion from Santa Rosa Creek. A hearing has been held on Application 28158 and a Roard decision is expected in the near future. In recent years, the District has relied primarily upon diversions from the underflow of San Simeon Creek under Permit 17287 which is presently before the Board.

Permit 17287 was issued following approval of Application 25002 in Board Decision 1477 issued on December 15, 1977. The permit authorized diversion of water from the San Simeon Creek underflow subject to specified terms and conditions of the permit. Following issuance of Permit 17287, San Simeon Creek became the Distri ct's primary source of water with Santa Rosa Creek used as a supplemental supply.

San Simeon Creek is a seasonal stream which flows only during the wet season, the length of which varies from year to year. During the dry period, the available water supply is limited to water in channel storage with no evidence of any appreciable recharge until surface flow resumes i'n the area of the Palmer Flats gage. Permit 17287 authorizes direct diversion of 2.5 cubic feet per second from the San Simeon Creek underflow with the maximum amount not to exceed 1,230


R8E
R9E
NORTH FORK
SOUTH FORK
T26 S
T27 S
9 A N LUIS OBISPO CO.
T27S R8E
M. D. B. & M.
A 25002
P-17287
PALMER FLATS COUNTY GAGING STATION
CREEK
SAN SIMEON
STEINER CREEK
Alluvial Fill Boundary
MONTEREY 97 MI.
CAMBRIA COMMUNITY SERVICES DISTRICT
A-28158
ROSA CREEK
SANTA CAMBRIA
PERRY CREEK
PACIFIC OCEAN
FIGURE 1
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
APPLICATION
A-25002-P-17287
SCALE
0
1
2 MILES
DATE:3-21-88
DRAWN: J.K.
CHECKED: W.V.
DWG. 3087R

acre-feet per year and no more than 572 acre-feet to be diverted during the "dry season" of July 1 to November 20. The water is diverted from extraction wells for municipal use within the boundaries of Cambria Community Services District. (Figure 1)

In the 1977 hearing on Application 25002 for diversion from San Simeon Creek underflow, the protestants included Willis Warren and Jon Pedotti who alleged that the use of water by the District would infringe upon the exercise of their riparian rights. The Board concluded that protestants Warren and Pedotti possess riparian rights to the use of underflow of San Simeon Creek on their respective riparian lands, but that their methods of diversion must be reasonable. After stating that the riparians were not entitled to the maintenance of some arbitrary water level in their wells, the Board concluded that the deepening of the riparian extraction wells or the drilling of new ones might be necessary. In particular, the Board recognized that there was a substantial possibility that the relatively shallow wells 9K1 and 10F1 of Warren and 9J1 of Pedotti would go dry during some portion of the year due to District pumping.

In determining the availability of water to the District, the Board utilized the concept of a "Maximum Well Field Drawdown Line" (MWFDL). The line was presented as a representation of the effects which District pumping were expected to have on the availability of water to other water users, assuming that a positive hydraulic gradient was maintained to the ocean. Decision 1477 indicates that the quantity of water equal to the amount of water in channel storage between the

MWFDL and sea level was considered to be available to the upstream water users. This quantity was estimated to average approximately 270 acre-feet, which was sufficient for the then existing riparian uses.

Due to the uncertainty regarding the depth of the San Simeon Creek alluvium at specific well locations (particularly wells 9K1 and10F1), the Board was unable to establish comprehensive mitigation measures for protection of prior rights. Therefore, the Board expressly reserved jurisdiction to amend or revise the terms of the CCSD permit in order to ensure the protection of vested rights and the public interest. (Decision 1477, Condition 14) Decision 1477 recognized that the total demand placed on the San Simeon Creek system, including water needed for prevention of seawater intrusion, riparian use, and the proposed CCSD use, would result in periodic shortfalls in the amount of water available to the District during prolonged dry periods. This concern was alleviated due to the assumption that the District held an adequate right to divert supplemental water from the Santa Rosa Creek underflow.

Commencing in March 1979, the District began diverting San Simeon Creek underflow and no supplemental water was needed from Santa.Rosa Creek until July 1984. During this period, the lowest recorded water level at the District's San Simeon well field was about five feet above mean sea level (MSL) during October 1984. The District concluded that additional water could be extracted from the San Simeon Creek underflow during the dry period by drawing the water level down to sea level and steepening the underflow gradient to increase the yield.

The District recognized that there was a very real possibility that some of the shallower riparian wells would be adversely impacted by drawing the District's production wells down to MSL. The District did not, however, advise either of the upstream riparian diverters, Pedotti or Warren, of this possibility. (T,II,388:5-390:3) The relative locations of the key San Simeon Creek wells involved in this proceeding are shown on Figure 2.

On July 19, 1985, the District ceased pumping from Santa Rosa Creek and relied exclusively on San Simeon Creek underflow. Ry September 3, the water level at the well field had been lowered to just above MSL and the District cut back production from San Simeon Creek and resumed pumping supplemental water from Santa Rosa Creek. The San Simeon well field subsequently recovered to approximately three feet above MSL by the end of the dry period in late November.

During the 1985 summer season (May through October), 366 acre-feet was pumped from San Simeon underflow or an average of 61 acre-feet per month. On the basis of this yield test, the District concluded that a summerseason average monthly production of 61 acre-feet from San Simeon Creek should be the basis for determining allocation of water and sewer service. (T,II,341:6-345:6; T,II,377:19-378:23)

3.0 COMPLAINTS AGAINST DIVERSIONS UNDER PERMIT 17287

In November and December 1985, complaints were filed by Jon Pedotti, Coastal Residents United (CRU) and Stanley Pearson against the

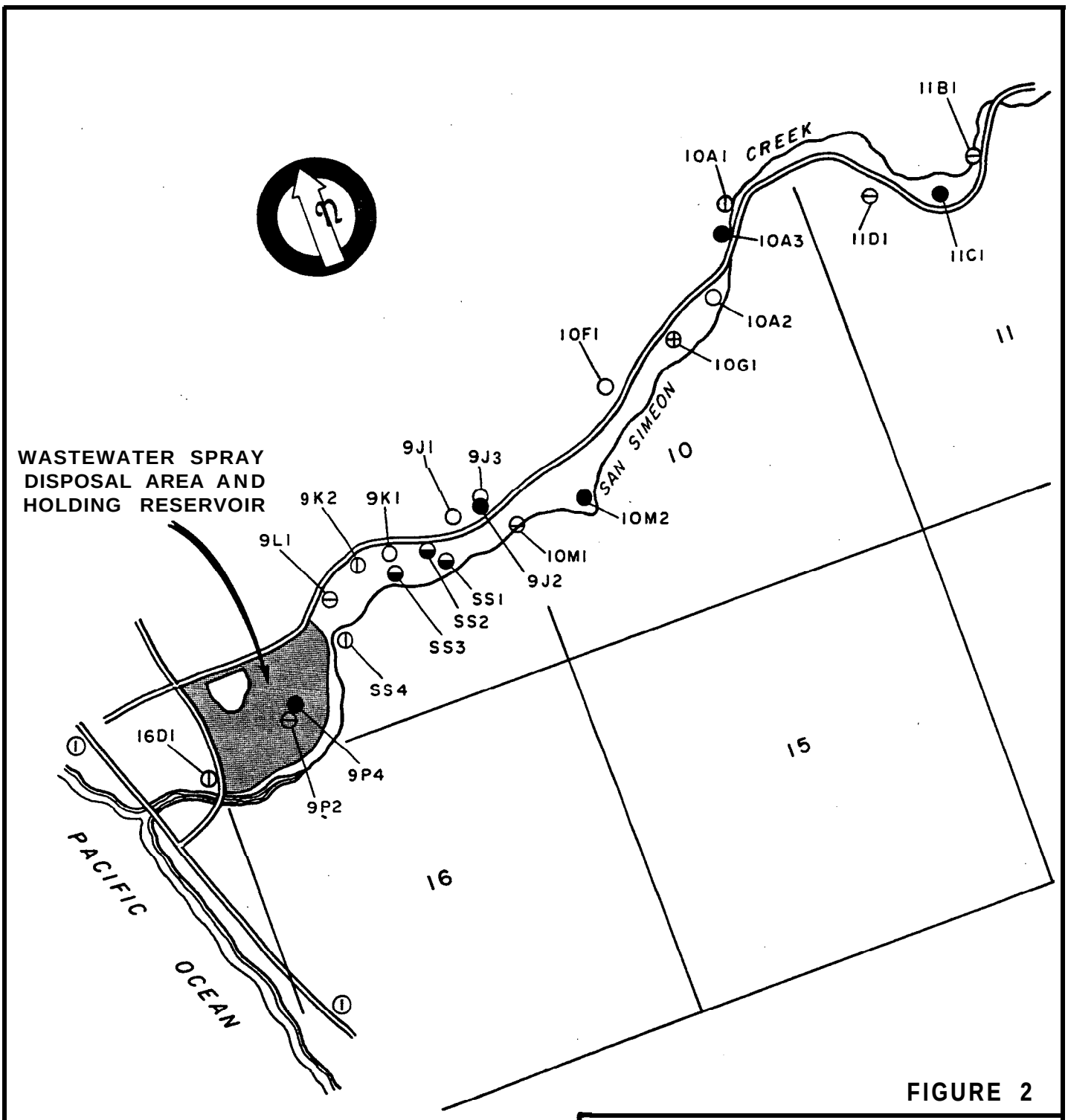


FIGURE 2

LEGEND

- DOMESTIC WELL
- OBSERVATION WELL
- IRRIGATION WELL
- INDUSTRIAL WELL
- UNUSED WELL
- CCSD PRODUCTION WELL

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

A-250.02 P-I 7287

KEY WELL LOCATIONS

SAN SIMEON CREEK VALLEY

SCALE

0 2000 4000 FT.

DATE: 3-23-88	DRAWN: A.G	CHECKED: WV	DWG: 3087A

27044-983 8-82 OSP

District's diversion of San Simeon Creek underflow under Permit 17287. In March 1986, the District submitted an answer to these complaints but was unable to resolve the matter. In March 1987, additional complaints were received from Willis Warren and Susan Keller and from Willis Warren and Clyde Warren against the District's diversion of San Simeon Creek underflow. As a hearing had already been scheduled on the earlier complaints, the District was advised to answer the Warren and Keller complaints as part of the hearing process.

The allegations of the complaints, the evidence presented in support of the complaints, and the District's response to the complaints are summarized below. Due to the number of issues raised and the technical nature of much of the evidence, the summary of evidence set forth in this order is lengthy.

3.1 Pedotti Complaint

3.1.1 Summary of Complaint and Supporting Evidence

Jon Pedotti's complaint alleges that CCSD diversions are causing injury to his vested riparian water rights and that CCSD pumping consistently exceeds the MWFDL. Evidence regarding Pedotti's use of water, problems experienced with his wells and the relief which he requests are discussed below.

Pedotti's primary use of San Simeon Creek underflow is for irrigation of 104 acres. The first full year of irrigation was in 1975 following purchase of the property in 1973. In addition to irrigation,

approximately 40 acre-feet per year is pumped from well 10G1 for washing gravel and for use in the production of concrete. All but about 1 acre foot of this water is returned to the stream system via settling ponds. There is also a nominal use of approximately 3 acre-feet per year for domestic purposes and stockwatering. (T,I,109:21-112:2; T,I,150:21-151:20; T,I,153:16-153:24)

Following the 1976-77 drought, Pedotti switched to dry farming which significantly reduced his use of San Simeon Creek underflow. Commencing in 1982,. he returned to irrigated agriculture planting sugar peas and vegetable crops. Pedotti testified that historically both he and the prior owners of'his land farmed the same acreage with crops (alfalfa, permanent pasture and sugar beets) that required much more water than the crops he has been growing since 1982. (T,I,119:3-19; PEDOTTI, 1)

Table 1 summarizes the diversion of water from San Simeon Creek underflow by Pedotti since 1975 for irrigation purposes and also contains estimates of the irrigation diversions in 1959 and 1968. These latter estimates are based on land use surveys by the California Department of Water Resources and estimates of water requirements for the crops'planted. (T,I,160:1-161:13; PEDOTTI Exhs. 1, 4, 4.13, 8, 9, and10) The period May through October is generally considered as the dry period though this varies from year to year depending on the pattern -and amount of precipitation.

TABLE 1

DIVERSION OF SAN SIMEON CREEK UNDERFLOW
FOR IRRIGATION PURPOSES BY PEDOTTI AND PREDECESSORS

YEAR	MAY THROUGH OCTOBER DIVERSION (acre-feet)	TOTAL ANNUAL DIVERSION (acre-feet)
1959		207
1968		221
1975		210-220
1978	12	13
1979	14	14
1980	8	8
1981	18	18
1982	89	90
1983	148	156
1984	187	213
1985	160	174
1986	166	193

Prior to the 1976-77 drought, neither Pedotti nor his predecessors experienced water shortages at any of the property's wells. In August 1976 and again in July 1977, wells 10A1 and 11B1 became unpumpable although they had standing water. In July 1977, well 10G1 also became unusable for the first time due to low water levels. In late 1977, two new and deeper wells, 10A3 and 11C1, were drilled to replace 10A1 and 11Ba. Following the drought no further water supply problems were encountered until 1984. (T,I,117:25-119:2; T,I,146:26-147:20; PEDOTTI, 2)

Beginning in late spring 1984, Pedotti experienced a lowering of the levels in all his wells and, by fall, well 931 was dry and well 10G1 was undependable. Following recovery during the winter months, virtually all of the Pedotti wells reached new lows in the fall of

1985. Well 9J1 went dry again and wells 10G1 and 11C1 were unpumpable. Pedotti admitted that his pumping of downstream wells has some effect on the performance of well 11C1. On the other hand, no problem was encountered with well 11C1 in 1984 which was the year of his peak irrigation usage. Except for increased pumping costs due to lower water levels, no water supply problems were encountered with the rest of his operational wells 9J2, 933, 10A2, 10A3 and 10M2. (T,I,119:20-120:18; T,I,141:26-142:20; T,II,405:23-406:14; PEDOTTI,1; PEDOTTI,2)

In essence, Pedotti contends that the water level problems he has encountered since 1984 are worse than during the 1976-77 drought and are the direct result of District pumping practices. In support of this contention, Pedotti points out that the flows at the Palmer Flats gage, just upstream from his property, were the lowest of record during water years 1976 and 1977. For 1976 the streamflow was 475 acre-feet and for 1977 it was 636 acre-feet. By contrast, the flow for water year 1984 was 7,363 acre-feet plus an unknown quantity due to several months of no record. Streamflow for 1985 was 6,822 acre-feet. 'Thus, the flow in either 1984 or 1985 was six to seven times the combined flow of 1976-1977, yet water level conditions were better during the drought. (T,I,127:7-127:22; T,I,161:17-163:11; T,1,167:24-168:3; PEDOTTI, 4.1)

Pedotti also submitted hydrographs from wells 9J2, 10G1, 10A3,10A1, and 11C1. (PEDOTTI,4.2-4.6) These hydrographs were developed by CRU and are also are part of CRU's Exhibit 2. The hydrographs indicate

that well levels in 1984 and 1985 were as low, if not lower, than during the drought in 1977. (T,I,164:10-165:24)

Pedotti's position is that the MWFDL, as referenced in Decision 1477, is a line below which the District would, or should, not pump its wells. Based on a study of monthly well levels in the District's production wells SS1, SS2 and SS3, Pedotti concluded that the District exceeded the MWFDL for a period of about three months in 1984, three to four months in 1985 and six to seven months in 1986 through March 16, 1987. The year 1985 showed the most significant departure of District well levels from the MWFDL.

Following the 1977 Board hearing, Pedotti upgraded the pumps on wells 9J2, 10A3, and 11C1 and drilled well 10M2. In an effort to develop a dependable water supply for the gravel plant, Pedotti had a test hole drilled in February 1986 to a depth of 85 feet located about 40 feet away from well 10G1. In the opinion of expert witnesses appearing on behalf of CRU and Warren, the well log from this boring shows bedrock at 85 feet with no water producing zones below about 50 feet. (T,I ,71:21-72:1; T,I,120:19-121:1;T,I,148:22-149:10; T,II ,428:24-430:15; T,II,446:16-447:13; PEOOTTI, 1)

3.1.2 Relief Requested

Pedotti proposed the following alternatives for the protection of riparian rights in lieu of requiring that the District curtail pumping any time that water levels fall to the MWFDL. (T,I,170:11-173:5; T,I,186:24-189:5; PEDOTTI,4,11-14)

1. District diversion of San Simeon Creek underflow should be limited to such times as there is a live stream from the Palmer Flats gage to the ocean or, at least, only when the surface flow at the Palmer Flats gage exceeds two cubic feet per second. During the dry season, the District should divert water first from Santa Rosa Creek with San Simeon Creek as a supplemental supply. For illustrative purposes, Pedotti applied the two cubic feet per second condition to the historic surface flow at Palmer Flats for years 1975 and 1985. In 1975, the District would have had to cease pumping San Simeon underflow from July through December and, in 1985, from June through December.

- or -

2. The District should be required to cease diversion of San Simeon underflow at such time that the static water level in well 9J2 declines to 20 feet above MSL. For illustrative purposes, Pedotti applied this condition to the historic water levels in well 9J2 since April 1979. If this condition had been in effect, the District would have had to cease diversion from San Simeon Creek during the following periods:

Mid November 1980 to mid January 1981

Mid August to mid November 1981

Late June to late November 1984

August through November 1985

August through December 1986

- or -

3. The District should be required to provide Pedotti with the quality and quantity of water that was comparable to his existing water supply. For example, during shortages, the District could deliver water to 932, 10M2, and 10G1. The fact that these wells would not have to be pumped may help wells 10A3 and 11C1.

- or -

4. District to pay landowners not to irrigate during critically dry periods with such payments to be equivalent to amounts they would otherwise have received.

3.2 Warren Complaints

3.2.1 Summary of Complaint and Supporting Evidence

The complaints of Willis Warren and Clyde Warren and of Willis Warren and Susan Keller (hereinafter, "Warren") allege that:

1. CCSD diversions caused well 9K1 to go dry in 1984 and to have less than one foot of water remaining in 1985 which could cause the pump to burn out;

2. CCSD diversions caused well 10F1 to go dry in 1984 and 1985, arid caused water levels to drop within two to three feet of the well bottom in 1986 which could cause the pump to burn out;

3. The estimates of water availability set forth in Decision 1477 substantially exceed the actual supply in the San Simeon Creek channel storage.

-Warren diverts from wells 9K1 and 10F1 under riparian right as recognized in Decision 1477. Table 2 presents a description of the Warren wells. Well 9K1 is located essentially within the District's well production field and serves the lower or downstream part of the Warren property, Well 10F1 is approximately 4000 feet upstream from CCSD well SS1 and serves the upper part of the Warren property. (T,I,198:3-10; T,I,200:24-25; T,I,204:20-205:1; CCSD,9; STAFF,1)

TABLE 2

SUMMARY OF WARREN RIPARIAN EXTRACTION WELLS
ON SAN SIMEON CREEK

WELL NO.	DEPTH	CURRENT USE	AMOUNT
9K1	32.5'	Domestic, Stock & Drip Irrigation of 2 Acres of Trees	5 afa
10F1	33'	Domestic & Stock	2 afa

As of the date of the hearing, wells 9K1 and 10F1 were used primarily to provide water for 150 head of cattle and for domestic use at six residences. Warren's primary source of irrigation water is a well which is located in the District's wastewater disposal area. This well, which is leased from the District, pumps a combination of percolated effluent and underflow from San Simeon and Van Gorden Creeks and is used to irrigate 63 acres in both the San Simeon and Van Gorden Creek watersheds. Warren's lease with the District expires in 1989 and if not renewed, this irrigation requirement of approximately 65 acre-feet per annum would have to be met from well 9K1. Warren plans to plant an additional two acres of Christmas trees which could

only be irrigated from well 9K1 or the leased well, and seven acres of vegetable crops which would have to rely on well 10F1 for irrigation. (T,I,198:3-199:12; T,I,200:17-200:20; T,II,219:8-220:25; T,II,227:12-228:17; T,II,411:16-412:14)

In Decision 1477, the Board concluded that Warren possessed a riparian right to the use of waters from the underflow of San Simeon Creek on property within the watershed of San Simeon Creek but not on property within the watershed of Van Gorden Creek. Though the matter of Warren's riparian status was not considered to be an issue in this proceeding, there was extensive testimony and cross-examination which apparently sought to confirm or question the riparian status of both well 9K1 and some of the water uses therefrom. The Board finds that the evidence presented provides no basis for reconsideration of the Board's prior conclusions regarding the riparian status of well 9K1 and associated uses. Any use of San Simeon Creek underflow on the Warren property in the Van Gorden Creek watershed, however, must be under an appropriative water right. Warren's reply brief, submitted after the hearing, acknowledges that most of the residences served by well 9K1 are in the Van Gorden Creek watershed. Warren has since filed Application 28966, which includes water for domestic use at these residences.

In support of the allegations regarding CCSD impacts on wells 9K1 and 10F1, Warren contends that prior to 1984 he had never experienced any water shortages in either well, not even during the 1976-77 drought. In June 1984, well 9K1 went dry for the first time and the rapid

decline in the water level resulted in the pump burning up. The District paid for a new pump and allowed the Warrens to connect to the District's system. In January 1985, Warren resumed use of well 9K1, but, by July, it was dry again and the District again provided the Warrens with a substitute supply. Warren contends, however, that the District will make no long-term commitment to provide a dependable water supply for riparian uses served from well 9K1. (T&200:21-201:23; T,I,202:4-204:1; T,I,208:6-18; T,II,228:18-231:4; WARREN,1,5)

In October 1984, well 10F1 also went dry for the first time forcing Warren to haul water for domestic and stockwatering needs. The same situation occurred again in October 1985. In November 1986, water levels were within two feet of the bottom of the well which left a small margin of safety against pump burn out. Clyde Warren testified that cessation of pumping at well 10F1 used to cause the water level to improve quickly, but this no longer happens. In 1984, the first rain caused well 10F1 to recover enough so that it could be placed back in operation. However, in 1985 the well did not recover even after the first two rains. Warren contends that this has never happened and is clearly a change for the worse from historical conditions on San Simeon Creek. (T,I,206:6-207:19; T,II,233:1-10; WARREN,1,8-10)

Warren agreed with prior testimony that the evidence (CCSD,15) showed that District diversions in 1984 and 1985 caused severe effects equivalent to that of a drought year. Warren also contends that District pumping has a drawdown effect on all upstream wells as

evidenced by the longitudinal hydrogeologic sections of San Simeon Creek. According to Warren, these sections show that District pumping has moved the base level or sea level, which controls the upstream elevation of the water table, back into the aquifer to District wells SS1 and SS2 which is the point of maximum drawdown. This has the effect of increasing the hydraulic gradient upstream of the District's well production field. Warren concludes that the result of moving the base level to the well production field is a complete and quicker draining of the upper aquifer. (T,II,418:10-422:10; T,II,426:16-427:18; CCSD,10-11-12)

Warren's second allegation disputes the findings of Decision 1477 regarding the amount of water available, during the dry season, from the underflow and channel storage of San Simeon Creek. Warren contends that District diversions should be based on a safe yield which would allow for at least two years of sustained drought rather than assuming that channel storage will be replenished each year from the wet season runoff. This argument is based on the limited size of the San Simeon basin, the low water levels experienced during the 1976-77 drought with no District pumping and the fact that the District is apparently intending to draw the underflow to MSL during the dry season with'no allowance for carry over storage.

For purposes of estimating a safe yield, Warren used the District's San Simeon monthly production totals for 1984 during which well levels were sustained at approximately the MWFDC. Production in June was 65.4 acre-feet with a continuing decline to 30.7 acre-feet in

October. Under the assumption that the dry season would have continued for six more months, Warren extrapolated that monthly production would have declined to about 20 acre-feet. tie thus concluded that given two years sustained drought, the dry period safe yield for the District would be a maximum of about 25 acre-feet per month, not the 61 acre-feet which the District averaged in its yield test program.

After well 9K1 went dry in July 1985, Warren had three test borings drilled, one 15 feet toward the creek from well 9K1, one 20 feet south of well 10F1, and the other at a new site above well 10F1. The boring near well 9K1 hit hardpan at 37 feet and the drilling rig was unable to penetrate more than an additional 5 feet. The boring near well 10F1 showed the possibility of deepening the well by about 10 feet. The boring at the new site above well 10F1 was drilled to a depth of 85 feet where drilling was terminated as, according to Warren, non-water bearing material was being encountered. Warren contends that the driller's log for this boring shows the water bearing formation ending at no deeper than 46 feet. Nevertheless, Warren is of the opinion that this location should be a better source of water than well 10F1 and has applied to the Coastal Commission for a permit to drill a well at this site. (T,I,201:23-201:26; T,I,204:5-10; T,I,205:4-13; T,II,224:13-227:11; T,II,233:11-235:24; T,II,239:5-18)

3.2.2 Relief Requested

Warren's opening brief and reply brief filed after the hearing proposed several alternatives for protecting his riparian rights

against infringement by CCSD or for compensating him for any losses which occur as the result of such infringement. These alternatives are summarized as follows:

1. The Board should protect the use of water from the riparian's wells by limiting CCSD diversions from San Simeon underflow to 30 acre-feet per month during the dry period coupled with adherence to the MWFDL; or

2. The Board should require CCSD to compensate riparian property owners for damages it has caused; or

3. The Board should require CCSD to arrange for a full and adequate alternate water supply for riparian uses.

Warren also requested that the Board retain jurisdiction in the matter of Permit 17287.

3.3 Complaints of Coastal Residents United (CRU) and Stanley Pearson

3.3.1 Summary of Complaint and Supporting Evidence

The identical complaints of Coastal Residents United and Stanley Pearson allege the following:

1. CCSD has knowingly and consistently pumped production well levels to near sea level resulting in dynamic cones of depression drawing water six to ten feet below sea level.

2. CCSD has knowingly and deliberately pumped production well levels consistently below the maximum drawdown line specified in Decision 1477.

3. CCSD has misappropriated upper riparian landowner's water in violation of their vested rights.

4. CCSD has failed entirely or in part to implement required and claimed conservation measures regarding low-flow toilets, pressure reducing devices, water dams, and public information regarding conservation measures and drought resistant plants.

5. CCSD has violated paragraph 15 "Standard Provisions and Reporting Requirements" of its permit on numerous occasions in waste discharge control as mandated by the California Water Quality Control Board (Central Coast Region). These violations include, but are not limited to: (a) at least 15 times in 1984 when large amounts of solids were discharged to the holding ponds and then to the spray field, and (b) continuing excessive waste water levels of sodium, sulfate, chloride, and total filterable residue (TFR) in discharge.

By letter of March 6, 1987, Stanley Pearson advised that he would not appear at the hearing but that the testimony of CRU would reflect his position. The main thrust of CRU's evidentiary presentation was that District pumping is causing a reverse gradient from the wastewater disposal area to the production well field and caking a progressive annual decline in the available channel storage at the end of the wet season. (T,I,47:4-26)

With regard to the first two allegations concerning excessive pumping from District production wells, CRU appears to rely on a series of

hydrographs (water level measurements) from well 16D1 upstream to well SS1 covering the period from December 29, 1978 to March 16, 1987. (CRU,9) Commencing in 1982, the District started to measure well levels after a two hour shut down, i.e., on the basis of static levels. CRU contends that the difference between static and dynamic levels is at least 5 feet with the result that the district is drawing the dynamic, i.e., pumping level, to below sea level during the latter part of the dry season in its production wells SS1, SS2, and SS3. Thus, it is CRU's position that the District has pumped production well levels consistently below the MWFDC in Decision 1477 and further, that the water level measurements of the District since 1982 are an improper representation of the water levels in the production well field associated with District pumping. It is CRU's contention that the MWFDL is a part of Decision 1477 and as such is a part of Permit 17287 even though it is not included as a term of the permit. (T,I,37:8-42:13; T,I,94:3-21)

CRU's third allegation, regarding District infringement on riparian rights, concerns an issue which the riparian water users have standing to raise and have in fact raised. Absent a showing of facts establishing CRU's standing to raise issues on behalf of the riparian water users, the Board will not address the particular arguments raised by CRU on this issue. To the extent that evidence presented by CRU regarding hydrology and water use in the San Simeon Creek basin is relevant to any issue before the Board, however, such evidence will be considered. In this regard, the Board notes that CRU submitted a series of hydrographs from wells 932, 10G1, 10A3, 10A1 and 11C1 which

are located upstream of the District's wells. (CRU,2) For the most part, these hydrographs show that only in the summer of 1984 and 1985 did the water level in these wells decline to the August 1977 drought levels.

On a related matter CRU contends that Figure 2 of CRU Exhibit 5 shows that after the District commenced pumping in 1979 there has been a significant statistical regression with time on the water level in well 9L1. The major conclusion which CRU suggests is that the hydrologic balance of the lower basin has been significantly impacted by District extraction at less than 45 percent of the permitted dry season withdrawal of 572 acre-feet. CRU further argues that its evidence shows that the channel's capacity to recharge is being exceeded by the District's increasing winter pumping rate and that the maximum water level achieved within the wet season has progressively declined to a greater degree each year. In support of this argument, CRU submitted into evidence statistical analyses (CRU,2; CRU,3) but offered no supporting testimony.

CRU presented no evidence in support of its allegation regarding a lack of water conservation efforts by the District. Therefore, the alleged lack of conservation efforts is not considered to be an issue. (T,II,362:6-24) In any event, since about 1980, the Board has been requiring the preparation and implementation of water conservation and management programs as a condition of new or amended permits for municipal water suppliers (Standard Permit Term 29).

With regard to CRU's allegations regarding violation of water quality requirements, the Board takes official notice of the fact that following a hearing on May 8, 1987, the Regional Board adopted Order 87-62 approving re-issuance of the District's NPDES permit. On May 28, 1987 CRU filed a petition with the State Board appealing Order 87-62 on the grounds that the Regional Board, among other matters, declined to act to require maintenance of District production well levels sufficiently above sea level to preclude backflow of effluent from the downstream wastewater disposal area into the production well field. This matter was brought before the State Board for a determination following an evaluation by the Division of Water Quality. Board Order WQ 88-6 entered on June 16, 1988, addressed the issue of the reverse gradient from the effluent spray area and remanded the matter to the Regional Board for appropriate action. Therefore, there is no need for further consideration of the issue of reverse gradient from the wastewater disposal area as a part of this proceeding.

3.3.2 Relief Requested

CRU recommended that the Maximum Well Field Drawdown Cine should be enforced as a limitation on District pumping with measurements based on dynamic pumping levels rather than the two-hour shut-in measurement. (T,I,47:18-48:8) CRU also contends that dry season diversions by CCSD must be less than 250 acre-feet in order to comply with conditions of Permit 17287. (T,I,36:18-37:4; T,I,76:4-76:9)

4.0 PERMITTEE'S RESPONSE TO COMPLAINTS

In response to the complaints of Pedotti, Warren, and CRU, the District maintains that it has not unreasonably interfered with the riparian rights of Pedotti or Warren, that it is operating within the terms and conditions of Permit 17287 and that the MWFOC is not a restriction upon its diversion and use of water. The District further maintains that additional water is available to the riparians during the dry period provided they improve their method of diversion and that to do so is a reasonable burden as it will minimize the amount Of underflow which flows to the ocean unused.

The MWFOL originally was developed by CCSD for the 1977 water right hearing on Application 25002. The District contends that the primary purpose of this line was to show the maximum drawdown, or lowest levels in upstream wells, that District pumping could create. The downstream end of the line was determined to be the intersection of MSL and the assumed center of the District's well production field. This was based on the presumed limitation that CCSD pumping would not lower the static water levels in the production field below MSL. The upstream end of the line was the lowest water level of record (August 1977) in well 10F1. Thus, the MWFDL was developed on the assumption that the effects of CCSD pumping would not extend beyond well 10F1. Inasmuch as the MWFDL was a hypothetical representation based on the effects of CCSD pumping only,'the District contends that the diversions of Pedotti and Warren can cause water levels to drop below the MWFDL. The District also argues that the drawdown caused by CCSO pumping decreases with distance from the production wells and that as

one moves upstream, water levels are more influenced by streamflow conditions, length of the dry period and the pumping of irrigation wells.

The District did not respond directly to CRU's contention that CCSD pumping is causing a progressive annual decline in the maximum level of wet season recharge in the underflow of San Simeon Creek. Rather, the District presented a series of hydrographs showing water level measurements from approximately 1977 through early 1987 in wells between well 16D1 upstream to well 11B1. (CCSD,15) The District maintains that the water levels in these 17 wells show recovery to the stream channel virtually every year and also show a constancy, on the long term, for winter/spring measurements with the possible exception of well 10A1. (T,II,249:4-265:21)

The District takes issue with CRU's contention that measuring wells under static conditions is an improper representation of water levels in the channel alluvium with a resultant bias of the hydraulic gradient. The District argues that the pumping or dynamic level in a well will be lower than the water level in the alluvium adjacent to the well due to well efficiency or well losses, the more efficient a well, the less the difference. Therefore, the District's evaluation of hydraulic gradients in the channel alluvium is based upon static measurements. The District concurs with CRU and Warren, however, that CCSD pumping steepens the hydraulic gradient provided that other upstream wells are not being pumped, The District also agrees that if the gradient is steepened, there will be an increase in the amount of

underflow moving toward the well production field from upstream locations. (T,II,269:9-270:17;T,II,291:23-293:17;T,II,329:21-330:24)

With regard to the amount of water available during the dry period, the District contends that the operating results from 1985 and 1986 confirm the original estimates of roughly 540 acre-feet above the MWFDL. The District also maintains that there is an additional 300 to 350 acre-feet below the line but above MSL. (T,II,285:13-287:9)

The District concludes that it has not unreasonably interfered with the rights of Pedotti and Warren; that the practical limit for CCSD pumping is MSL, because to maintain a higher level at its well field for the benefit of Pedotti and Warren, would result in waste to the ocean; and that all water reaching CCSD wells must have first been available to upstream diverters. (T,II,276 11-23; T,II,344:26-345:6; T,II,348:9-350:7)

With the apparent exception of well 9K1, it is the District's opinion that some of the water level and well production problems experienced by Pedotti and Warren could be better addressed if they were approached "more scientifically". The District recommends that the relocation of problems wells be based on either geophysical studies or the recommendations of a geologist and that the drilling of test holes include methods to determine water production. (T,II,280:5-19; T,II,311:7-17; T,II,328:11-19)

The District offered the following suggestions of what has or can be done to resolve problems at specific wells which have experienced problems.

1. Warren Well 9K1: This well -is essentially withinthe CCSD well field. Since it first went dry in the summer of 1984, the District has been providing a substitute water supply at Warren's request. The District recognizes that the pumping of its production wells has adversely impacted this relatively shallow well and is apparently agreeable to providing an alternate water Supply for well 9K1 when needed, The District is considering entering into a written agreement with Warren to this effect but is concerned that some of the alternate supply will be used on non-riparian land. (T,II,350:8-354:26; T,II,378:24-381:25)

2. Pedotti Well 9J1: The District recognizes that the pumping of its production wells has also adversely impacted this very shallow well and will cause it to be out of water on a frequent basis. The District points out, however, that Pedotti has water available to him from other nearby wells (952 and 953) and, thus, the District does not consider the impact of CCSD pumping on well 9J1 to be unreasonable. (T,II,357:16-358:7)

3. Warren Well 10F1: The District recognizes that District pumping, under full yield, at least'contributed to the problems experienced with this relatively shallow well since 1984. Due to its distance upstream from the CCSD well field, however, it is the District's position that the pumping of other wells also

influences water levels in well 10F1. The District maintains that it is Warren's responsibility to either deepen or drill a new replacement well. If a dependable water supply still cannot be achieved, then the District represented that it would "work with" Warren. (T,II,355:1-356:1; T,II,356:20-357:15; T,II,381:26-382:9)

4. Pedotti Well 10G1: The District claims that Pedotti never advised them that there was an unsolvable problem with well 10G1 and that none of the water level records indicated that the well was dry or going close to dry. However, well 10G1 apparently becomes unpumpable when there is about 23 feet or less of water in the well. The District recommends that the turbine pump be replaced with a submersible pump so the pump intake could be lowered, or, as an alternative, that Pedotti drill a new well. The District suggested that there are probably other more geologically favorable places to drill a new well in that area but the District offered no evidence in this regard. (T,I,125:11-126:3; T,II,266:7-268:1; T,II,358:8-359:1)

5. Pedotti Well 11C1: The District also claims that Pedotti never advised them of problems with well 11C1. Nevertheless, the problem with this well appears similar to that of well 10G1. In this case, well 11C1 was unpumpable in the fall of 1985 even though there was 40 feet to 45 feet of water in the well. The District presented no evidence regarding suggested improvements to well 11C1. (T,I,106:11-107:1; T,I,141:1-14; T,II,359:2-360:5; CRU,2)

5.0 ANA!_YSIS OF ISSUES RAISED BY COMPLAINTS

The key issue is the extent to which CCSD diversions of San Simeon Creek underflow, under Permit 17287, have caused injury to the riparian rights of Pedotti and Warren. Related issues include the significance of the MWFDL; the amount of water available during the dry period; use of static vs. dynamic water levels; the extent to which CCSD diversions are causing a progressive annual decline in channel storage at the end of the wet season; and the extent to which CCSD diversions are causing a reverse gradient from the waste water disposal area to the production well field. For reasons discussed in Section 3.3.1, the issue of reverse gradient will not be addressed in this proceeding.

Based on the hearing record, as summarized in Sections 3.0 through 4.0, it is apparent that District diversions from the underflow of San Simeon Creek have steepened the hydraulic gradient of the underflow and reduced the amount of water available to Pedotti and Warren at their existing wells during the dry period. Furthermore, the evidence shows that CCSD diversions have caused, or at least contributed to, the drying up of wells 9J1,9K1, and 10F1 in the summer or fall of 1984 and 1985. As discussed below, the evidence also shows that CCSD diversions have contributed to the pumping problems at wells 10G1 and 11C1.

The District's brief argues that the Board-should apply the general principle that an upstream user has no basis of complaining about uses made downstream. The principle cited by the District applies in most

cases of surface flow diversions where diversion of water downstream ordinarily has no effect upon availability of water to upstream users. In instances where it appears the downstream diversions could affect exercise of prior rights upstream, however, the Board considers whether the downstream project will in fact infringe upon the exercise of prior rights. One such example would be a downstream diversion or storage dam which submerges an upstream diversion works and thereby interferes with exercise of the prior right upstream. In this instance, there is ample evidence that District diversions have impacted the availability of water to Pedotti and Warren and the Board must consider whether these adverse impacts constitute an infringement upon the reasonable exercise of their senior rights.

In Decision 1477, the Board recognized that at least some of the adverse effects described above would probably happen. The Board also found that Pedotti and Warren were required to utilize reasonable methods of diversion and that the riparians may be required to incur the expense of deepening their wells or drilling new ones. In the event wells could not be deepened or relocated, the Board reserved jurisdiction to consider appropriate action. The reasonableness of Pedotti's and Warren's methods of diversion and their efforts at improving the same, as well as the related issues raised by the complaints, are addressed in the following sections.

5.1 Maximum Well Field Drawdown Line, Water Levels, and Water Level Gradients

CRU and Pedotti contend that the MWFDL is a limitation on District diversions and that the District consistently has pumped production

well levels below this line. The District maintains that the MWFDL is not a restriction on diversions under its permit and that the purpose of the line was to illustrate the maximum expected drawdown in upstream wells attributable to CCSD pumping, only.

The Board concludes that the record supports the District's position. As noted in Section 3.3.1, the MWFDL was not included as a limitation on District diversions in Permit 17287. It was discussed in Decision 1477 primarily for purposes of illustrating the resulting upstream water level at maximum well field drawdown by the District and for purposes of estimating the amount of water in channel storage which would be available only to upstream diverters. Furthermore, the Board recognized that the cone of depression, or dynamic level, surrounding each production well of the District would be deeper than the MWFDL. This line was not referenced or otherwise included in the Order part of Decision 1477, and it is the Order which 'sets forth the terms and conditions applicable to the District's water right permit. (STAFF,5,Finding 14; STAFF, 5, Order)

Inasmuch as this theoretical line was developed based on District pumping only, it is logical to conclude that diversions by Pedotti and Warren can cause upstream water levels to drop below the line. Therefore, the MWFDL is an inappropriate criterion for placing any limits on CCSD diversions.

In addition, as the District points out, the MWFDL was projected from the assumed center of the well field before any of the production wells had been drilled. Based on locations where the production wells

were ultimately drilled, the intersection of the actual MWFDL and MSL is about 1,000 feet easterly, or upstream, of where it was originally drawn. (CCSD,17, 1977 Hearing) The impact of "moving" the downstream end of the line to production wells SS1 and SS2 is to cause water levels in upstream wells to be lower than projected based on the original MWFDL location. The theoretical effect of this additional lowering of the upstream water levels, due to CCSD pumping, is estimated at approximately seven feet at well 9J3 decreasing to an additional lowering of approximately two feet at well 10A3, based on scaling from CCSD Exhibit 17 from the 1977 hearing. (STAFF,4) It is important to note, however, that the MWFDL is only a geometric approximation of the effect of CCSD pumping on upstream water levels.

Both CRU and Warren claim that CCSD pumping has a draining effect on the upper basin and Warren further contends that moving the base level of the MWFDL to the well production field causes a quicker and complete draining of the upper aquifer. However, the evidence shows that despite increased pumping by the District, at no time have wells 10M2, 10A2 or 10A3 gone dry or become unpumpable. Moving the base of the MWFDL to the CCSD production field does cause a steepening of the hydraulic gradient and thus an increase in underflow from the upper basin. This increase, however, appears to be insignificant. Assuming a hydraulic conductivity in the range of 10^{2} to 10^{-7} feet per day and porosity in the range of 20 percent to 55 percent, the increase in flow rate would range from 0.115 to 4×10^{-10} feet per day. Thus, over a 6-month period, this gradient increase, due to CCSD pumping, would cause the point at which the alluvium dries out to retreat downstream up to an additional 20 feet to 25 feet.

With respect to the issue of static vs. dynamic conditions for measurement of water levels in the channel alluvium, the Board finds that there is no evidence in the record to support the position that measurement of water levels under dynamic conditions is more representative of the water levels in the channel alluvium than measurements under static conditions. As the District points out, the pumping level in a well will be lower than the water level in the surrounding alluvium due to the effect of well pumping. Furthermore, once pumping ceases, the water level in the well and the cone of depression in the adjacent alluvium will recover to the regional, or static, water level elevation in the vicinity of the well, unless influenced by the pumping of another nearby well. Based on the longitudinal hydrogeologic sections (CCSD,10-11-12), it appears that the measurements of wells SS1, SS2, and SS3 represent water levels under neither static nor pumping level conditions but rather somewhere in between. These CCSD production wells, for the most part, are pumped continuously, either individually or in combination.

In summary, the Board concludes that static water levels provide a more representative indication of water levels in the alluvium and that, as a general matter, the District well field may be pumped down to MSL. District pumping must also comply, however, with any conditions the State Board or Regional Board may impose relative to the issue of regulating a reverse gradient as necessary for water quality purposes. District pumping is subject to further restrictions as necessary to prevent injury to the reasonable exercise of Pedotti's and Warren's riparian rights as discussed in Section 5.5 below.

5.2 Length of Dry Period Restrictions on Permit 17287

There is no disagreement among the parties to this proceeding that the length of the dry period, or period of no streamflow, is critical to the availability of water from the underflow of San Simeon Creek. In Decision 1477, the Board assumed an average dry period of July 1 to November 20 for purposes of limiting CCSD diversions to the estimated available supply in channel storage. This assumed dry period was based on only about five years of flow records which are all that were available in 1977. The Board recognized, however, that the dry season in dry years may be longer and may occur during a different period.

Pedotti and the District agree that the Decision 1477 dry period of 143 days is too short considering the additional flow records from the Palmer Flats gage since the 1977 hearing. For its own operational purposes and calculations of available supply, the District uses May through October as the dry period or summer season. (T,I,165:25-166:19; T,II,302:17-303:5; T,II,344:6-15; STAFF,5)

Based on a review of the flow records at the Palmer Flats gage from October 1970 through September 1986, the Board concludes that the average dry period, for these 16 years of record, is approximately 170 days per year. This includes a reasonable estimate as to flow conditions for those months with partial or no records. The length of the dry period does vary from year to year but generally falls within the May/June to October/November months. Figure 3 is a bar chart of the mean monthly flow at Palmer Flats for the 1970-86 period of record. For the most part, this record indicates that the mean

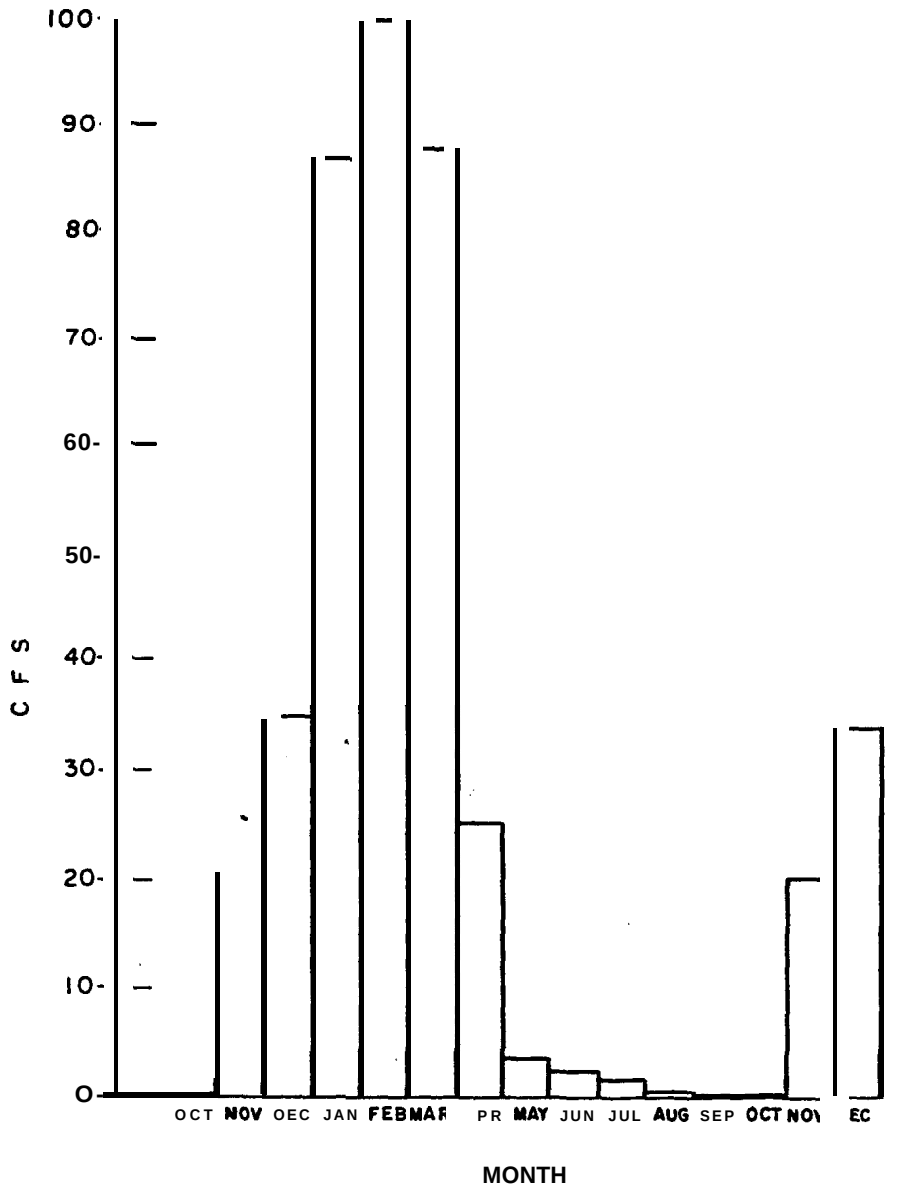


FIGURE 3

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

A-25002 P-I 7287
Mean Monthly Flow at Palmer Flats Gage
San Simeon Creek
Oct. 1970 - Sept. 1986

DATE: 4-23-88	DRAWN: A.G.	CHECKED: WV	DWG: 3087 A

27044-983 8-82 OSP

monthly flow from May through August is influenced primarily by wet to very wet years. (CCSD,8)

The present dry period diversion limitation in Permit 17287 is from July 1-November 20. The Board concludes that the dry period diversion limitation should be revised to begin at such time as there is a cessation of surface flow at Palmer Flats any time after January 1 of each year. The dry period diversion limitation should extend through October 31. Inasmuch as there is a physical limit as to the amount of water available to CCSD during the dry period, as discussed in Section 5.3, there is no need to impose a similar restriction should the dry period extend beyond October 31.

5.3 Availability and Use of Channel Storage

In Decision 1477, the Board found that the total San Simeon Creek supply available during the dry period is, on the average about 906 acre-feet as follows:

56	acre-feet Natural Underflow
576	acre-feet Storage Above MWFDL
274	acre-feet Channel Storage Between MWFDL and MSL
906	acre-feet total

The determination was based on very limited geological and hydrological data. The only new evidence available on the subsurface geology and hydrogeology of San Simeon Creek consists of water level

measurements since 1978, the District's yield test in 1985, the staff field inspection report of August 1987 and additional well logs. These logs have limited geological descriptions, virtually no hydrogeologic descriptions and no step drawdown testing. (STAFF,13; STAFF,14; PEDOTTI,11)

Figure 4 represents a longitudinal section of San Simeon Creek. The base of the alluvium has been extrapolated from available well log information: For the most part, the underlying bedrock configuration appears to follow surface topography. The two water levels represent the average wet season and end of the dry season. (CCSD,13; CRU,2; CRU,3) As can be seen from Figure 4, the typical water level during the latter part of the dry season roughly parallels the underlying bedrock contours. The staff field inspection of August 1987 (STAFF,14) verified the steepening of the water table slope northeast of well 10F1. It appears that the corresponding slope of the water table extends northeasterly as the lower basin is pumped.

Evidence from available well logs indicates that the channel alluvium is not homogeneous. Consequently, calculation of the quantity of water available from channel storage is not possible without a comprehensive hydrologic study. The differing slope of the water levels between the upper and lower reaches of the alluvium further, complicates approximations of water availability. (STAFF,13; PEDOTTI,1) In summary; the underflow characteristics of San Simeon Creek, including alluvial depth, lateral boundaries, flow parameters and the extent and effect of heterogeneities are still not well defined.

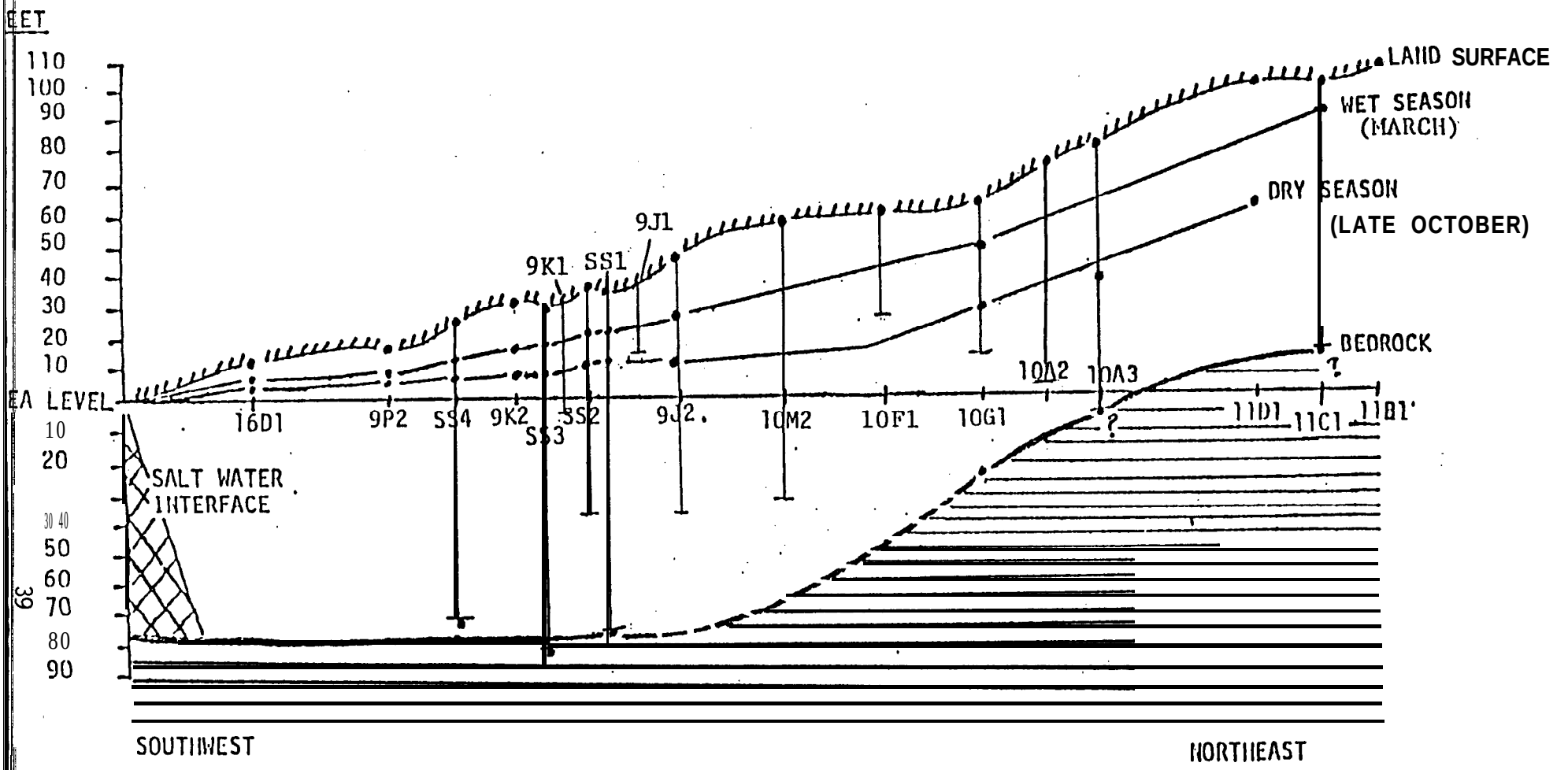


FIGURE 4

STATE OF CALIFORNIA
STATEWATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

A-25002 P-17287
Longitudinal Section of
San Simeon Creek

Table 3 provides an annual tabulation of the combined May-October diversions from San Simeon Creek underflow by CCSD for municipal purposes and by Pedotti for irrigation. The nominal domestic and stockwatering diversions of Pedotti and Warren and the non-consumptive use at the gravel plant are not included. There are no other diversions of any significance in the San Simeon Creek watershed upstream of the CCSD well field. Warren's primary source of irrigation water is a well in the wastewater disposal area. (T,I,139:12-25; T,I,168:4-6; T,II,236:20-237:7; CCSD,5; CCSD,8; PEDOTTI,4.13)

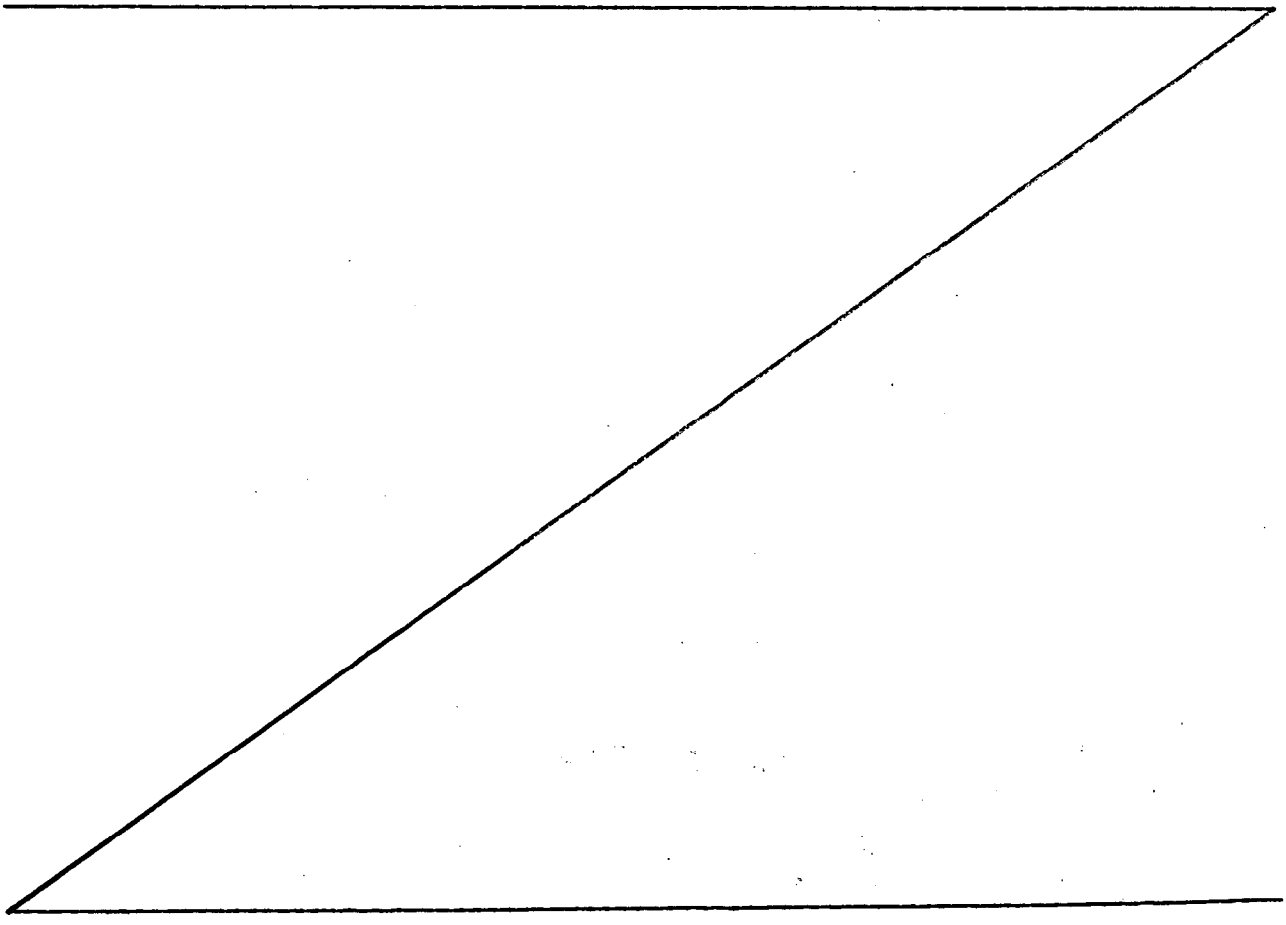


TABLE 3

SAN SIMEON CREEK
RECORDED FLOWS AND DRY PERIOD DIVERSIONS

YEAR	FLOW AT PALMER FLATS IN ACRE-FEET (Water Year)	DAYS OF NO FLOW AT PALMER FLATS (Calendar Year)	MAY - OCTOBER DIVERSIONS IN ACRE-FEET PEDOTTI I G.	CCSD MUNICIPAL	TOTAL
1971	16,341	174			
1972	6,782	195			
1973	32,719	111			
1974	25,524	148			
1975	13,115	160			
1976	475	316			
1977	636	309			
1978	40,052	60E			
1979	11,511+	159	14	263	277
1980	22,084+	160	8	271	279
1982	6,469	172	18	309	327
1982	24,160	107	89	305	394
1983	39,348+	35E	148	340	488
1984	7,363+	250E	187	302	489
1985	6,822	165	160	366	526
1986	26,542		166	369	535
Mean For 1971-86	17,500+	170±			

E = Estimated

As can be seen from Table 3, the total dry period diversions from San Simeon Creek channel storage have almost doubled between 1979 and 1986 and have approached the amount of water which was estimated to be above the MWFDL. The District contends that this confirms the 1977 estimates and that there still remains at least 300 acre-feet'below the MWFDL which is only available to the upstream riparians. (T,II,285:13-286:8; T,II,297:21-298:10; T,II,327:17-24)

When the District first contemplated the yield test, their intent was, not only to draw the water table to MSL in the well field, but also to then stabilize extraction at 60 acre-feet per month. This was not possible, however, due to the diversion of water under upstream riparian rights. Furthermore, the only circumstances identified by the District under which it would be possible for the District to withdraw the permitted dry season amount of 572 acre-feet would be for Pedotti to return to dry farming. (T,II,298:11-15; CCSD,5; PEDOTTI,7)

Warren's contention that the amount of water found to be available in Decision 1477 is substantially more than the actual supply is based on the premise that there should be carry-over storage for at least a two-year sustained drought similar to 1976-77. During the 1976 and 1977 drought years, the total flow at Palmer Flats averaged about 3 percent of the 16-year mean. To reduce CCSD's dry season appropriation to Warren's estimated safe yield would result in less than full utilization of the available water supply in all but the driest years. Unlike surface storage, which can be retained behind a dam, there is no control over the natural flow of channel storage past the CCSD well field. In essence, the issue regarding the quantity of water available to CCSD during th.e dry season concerns the amount available to CCSD in a normal year. Primary responsibility for allocation and management of that supply lies with' the District.

Nevertheless, Warren's point is well taken and it seems only prudent that CCSD would have an emergency plan to'cope with a drought year or successive drought years. However, there is no evidence in the record

that such a plan has been prepared. In addition, CCSD has not even estimated the amount of water which would be available at its San Simeon Creek well field in the event of a sustained drought similar to 1976-77. (T,II,323:21-325:13; T,II,326:18-24)

CRU's evidence that the maximum water level achieved within the wet season has progressively declined to a greater degree each year due to CCSD's pumping is based primarily on a regression analysis of four wells, 953, 10A1, 10A2, and 11C1. (CRU,3) No substantiating testimony was offered regarding this analysis. The period selected was from 1978 through 1985. As can be seen from Table 3, 1978 was a year of relatively high runoff at Palmer Flats and 1985 was a year of relatively low runoff. CRU Exhibit 3 was not updated to include 1986 which was also a year of relatively high runoff. The singular measurement used by CRU as the high level in a well for a given year appears to be based on monthly measurements by CCSD. There is no indication that these measurements represent the maximum water level for a particular year, even for well 10A1 which has a continuous recorder. Due to these limitations, CRU Exhibit 3 does not appear to present the type of data, or length of record, necessary for a definitive conclusion that the level of recharge of San Simeon alluvium is progressively declining. CRU also entered into evidence another regression analysis (CRU,2) based on water levels during the month of May. Again, there was no testimony presented by CRU regarding this analysis and it appears that there is either missing data or an incomplete explanation.

Evidence from the District's yield test in 1985 and data regarding similar extractions in 1986, coupled with information on upstream diversions by Pedotti, provide the most reliable evidence as to the maximum amount of water available to CCSD during the dry period. It would be logical to conclude, therefore, that the dry period diversion limitation in Permit 17287 should be reduced from 572 acre-feet to a maximum of 370 acre-feet. This latter amount is, by CCSD's own calculations, the maximum amount ordinarily available to the District during the dry period due to upstream diversions under claim of riparian right. (T,II,344:2-345:6) There is no evidence in the record that these upstream diversions will decrease in the future. They may, in fact, increase. Therefore, even if Pedotti and Warren temporarily return to dry farming or otherwise reduce their diversions, the additional water made available to CCSD could not be considered as a reliable quantity for allocation of water service. It is possible, however, that either by agreement or eminent domain proceedings, the District could cause a reduction in riparian water diversions, thereby increasing the water available for municipal use.

Based on the evidence of existing conditions, the Board concludes that the dry period diversion limitation should be reduced to 370 acre-feet. The Board should reserve jurisdiction, however, to increase this quantity up to 572 acre-feet in the event that at some future time, the District can demonstrate that through agreement with other water users or otherwise it has taken appropriate action to make additional water available for diversion by the District.

There is no reasonably conclusive evidence in this proceeding to alter the Board's prior finding regarding the amount of dry period channel storage remaining between the MWFDL and MSL. In Decision 1477, the Board estimated this amount to be 274 acre-feet. The District maintains that this amount exceeds 300 acre-feet but offered no supporting evidence. Both figures may be optimistic as the available evidence (STAFF,13; PEDOTTI,11) indicates that the alluvium is not a homogenous water bearing zone as assumed in Decision 1477. Rather there are heterogeneities throughout the San Simeon alluvium which may have a significant bearing on the amount of water available upstream of the CCSD well field.

The importance of these non-water bearing zones is twofold. First, they reduce the amount of water available for diversion through extraction wells. The second significant effect is that non-water bearing zones increase the difficulty and expense of deepening or relocating a well. Due to the inter-fingering of sands, silts and clays as well as probable boulders, it is probable that a number of test borings including water production tests, would be necessary to determine the best hydrogeologic site for a new well within a' reasonable distance from the place of use.

In view of the limited and variable quantity of water available from San Simeon Creek and inasmuch as CCSD is proposing to use its full dry period yield from San Simeon Creek for purposes of allocating water service, the Board concludes that CCSD should be required to submit, or prepare and submit, a drought emergency plan. This plan should

include an estimate of the amount of water which would be available to CCSD from San Simeon Creek and other sources under runoff conditions similar to 1976-77.

5.4 Legal Principles Applicable to Conflicts Between Holders of Junior and Senior Water Rights

Article X, Section 2 of the California Constitution sets forth the fundamental principles governing water use in California as follows:

> "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. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable methodofdiversion of water.... This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained." (Emphasis added.)

First and foremost among the principles established by Article X, Section 2 is that the limited supplies of water available in California require that beneficial uses be maximized. Thus, the right to use water does not extend to unreasonable use, unreasonable method of use and unreasonable method of diversion. In Decision 1477, the Board referred to the reasonable use and reasonable method of diversion requirements as the basis for concluding that the riparian water users on San Simeon Creek were not entitled to have the water level in their wells maintained at a particular arbitrary depth.

Decision 1477 also cited People ex rel. State Water Resources Control Board v. Forni (1976) 54 Cal.App.3d 743, 126 Cal.Rptr. 851 as authority for the proposition that the riparian water users on San Simeon Creek may have to suffer some inconvenience and bear some expense even to the point of deepening their wells or installing new wells. Due to the insufficient information available a% the time of Decision 1477, the Board was unable to determine precisely what adverse effects to the riparians' use of water would occur and what remedial measures would be necessary. Therefore, the Board expressly reserved "jurisdiction to amend, revise, supplement or delete terms and conditions in the permit and specifically to add terms and conditions which include suitable operational water supply criteria for the protection of vested rights and the public interest." (STAFF, 5, Condition 14.)

Based upon the information now available after several years of CCSD diversions, the nature and extent of the adverse impact to riparian water users is more fully known. In examining how the Roard should exercise its reserved jurisdiction in a manner consistent with the Protection of prior rights and the constitutional provisions regarding reasonable use and reasonable method of diversion, it is instructive to review prior judicial decisions dealing with reasonable use and with the "physical solution doctrine".

With respect to the reasonable use requirement, California courts have recognized in numerous instances that a determination of what is

"reasonable" is a question of fact to be determined according to the circumstances of each particular case. (Joslin v. Marin Mun. Water Dist. (1967) 67 Cal.2d 132, 139; 60 Cal.Rptr. 377; People ex rel. State Water Resources Control Board v. Forni (1976) 54 Cal.App.3d 743; 126 Cal.Rptr. 851.) As the court noted in the Forni decision, riparian water users "may properly be required to endure some inconvenience or to incur reasonable expenses" in order to comply with the constitutional standard of reasonable use, reasonable method of use and reasonable method of diversion (54 Cal.App.3d at 751).

In this instance, there is no evidence indicating that the riparians' use or method of use of water from San Simeon Creek is unreasonable. The District's legal brief questions whether the use of water from well 10G1 for gravel production should be protected based on language from Joslin v. Marin Mun. Water Dist., supra, stating that the mere amassing of sand and gravel is not a reasonable use of water. Other than the fact that both situations involve sand and gravel, however, the uses of water from well 10G1 and in Joslin have nothing in common. In Joslin, the riparian claimed a right to the unimpaired flow of the stream in order to deposit sand and gravel on his property for later excavation.

In the present case, the riparian seeks only to use a small portion of the underflow of the stream for washing sand and gravel, and for the manufacture of concrete.' Based on the record before the Board, this industrial use of water appears entirely reasonable. Further, as Pedotti points out, the vast majority of the water used in the gravel

production operation is returned to the stream system. In the absence of any evidence indicating an unreasonable use or method of use, the Board's examination of the reasonableness with respect to exercise of riparian rights will be limited to examining the methods of diversion utilized by the riparians.

Although a water user may be required to incur reasonable expenses to establish a reasonable method of diversion, he "cannot be compelled to divert according to the most scientific methods" available. (Erickson v. Queen Valley Ranch Company (1971) 22 Cal.App.3d 578, 584, 99 Cal.Rptr. 446.) In a dispute between a junior and a senior water right holder there are reasonable limits to the extent of improvements or the expenditures which the holder of the senior right may be required to make in order to make water available for the junior right. (Peabody v. Vallejo (1935) 2 Cal.2d 351, 40 P.2d 486, 496.) What may be required will vary with the facts of each case, but simply because a particular improvement is or may be possible does not mean that the holder of a senior right must undertake it at his expense.

Nevertheless, the provisions of Article X, Section 2 require that the beneficial use of California's water resources be maximized. Therefore, in instances where satisfaction of senior rights leaves insufficient water available to meet the reasonable needs of junior diverters, the courts have strongly favored the use of "physical solutions" where possible in order to make sufficient water available to meet all identified needs. The subject of imposing a physical solution upon conflicting water users was addressed by the California Supreme Court in Peabody v. Vallejo, supra, as follows:

> "[I]f a physical solution be ascertainable, the court has the power to make and should make reasonable regulations for the use of the water by the respective parties, provided they be adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction, and in this connection the court has the power to and should reserve unto itself the right to change and modify its orders and decree as occasion may demand, either on its own motion or on motion pf any party. (40 P.2d at 449.)

Commenting in a later case on the use of a physical solution where none has been agreed to by the parties, the California Supreme Court stated the following:

> "Other suggestions as to possible physical solutions were made during trial. The trial court apparently took the view that none of them could be enforced by it unless the interested parties both agreed thereto. This is not the law. Since the adoption of the 1928 constitutional amendment, it is not only within the power but it is also the duty of the trial court to admit evidence relating to possible physical solutions, and if none is satisfactory to it to suggest on its own motion such physical solution. (Tulare Irr. Dist. v. Lindsay Strathmore Irr. Dist., supra, p. 574.) The court oossesses the power to enforce such solution regardless of whether the parties agree." (City of Lodi v. East Bay Municipal Utility District (1936) 7 Cal.2d 316, 60 P.2d 439, 450.)

The Court went on to say in the Lodi decision that any substantial cost of implementing a physical solution should be borne by the holder of the junior right. (Id., 7 Cal.2d at 341, 60 P.2d at 450.)

Although the discussion of a physical solution in the above decisions occurred in the context of a lawsuit before a court, the same principles apply when the party or parties alleging injury file their

complaint with the Board. Issuance of a permit to CCSD was done with the express reservation of jurisdiction to amend the terms of the permit and to "add suitable operational water supply criteria for the protection of vested rights and the public interest." (Decision 1477, Condition 14.) This type of detailed and express reservation of jurisdiction indicates that even at the time of approving Application 25002, the Board envisioned that additional restrictions., or some type of physical solution might be necessary in order to satisfy prior rights while still allowing diversion of water for municipal needs.

With respect to the conflict between the use of water by CCSD and the upstream'riparian water users in the present case, the lega principles discussed above can be summarized as follows. First, the competing demands for the limited water supply available in the San Simeon Basin demonstrate the necessity of the constitutional mandate to maximize beneficial use of water. Second, in order to maximize the beneficial us-e of water, all water users are required to make a reasonable use of any water diverted using a reasonable method of use and a reasonable method of diversion. Third, establishing a reasonable method of use or reasonable method of diversion may entail some inconvenience or expense, on the part of all water users, but it does not necessarily require diversion by the most scientific method available. Fourth, if the competing needs for water under CCSD's junior appropriative right and the senior rights of the upstream riparians can be met only through imposition of a physical solution, then the Board should consider imposition of such a solution. Fifth

and finally, if any substantial expense is necessary in order to implement a physical solution to make water available for diversion by the District while protecting the reasonable use of water under senior riparian rights, the District should be responsible for such expense. The District's permit was issued subject to vested rights. Consequently, diversion and use of water by the District is not allowed at any time such diversion will interfere with the reasonable exercise of riparian rights.

5.5 Reasonableness and Protection of Diversions Under Senior Riahts

Table 4 presents a summary of problems encountered at Pedotti's and Warren's extraction wells since CCSD commenced diversions from its San Simeon Creek well field in March 1979. There is no evidence in the record that District pumping has adversely impacted wells 932, 9J3, 10A2, 10A3, and 10M2 except for lowering the water levels in these relatively deep wells. The capacity of these wells to sustain the current level of extractions by Pedotti has not been adversely affected. (PEDOTTI,1) The increased pumping costs resulting from lower water levels falls within the scope of the type of reasonable expenses which riparian or appropriative water right holders may be forced to bear in order to comply with the constitutional mandate to maximize beneficial uses and to employ a reasonable method of diversion.

With respect to the riparian extraction wells which have been adversely affected since CCSD commenced diversions, the issue is whether the wells provide a reasonable method of diversion for water

use under the senior riparian rights. In all instances where a particular riparian extraction well constitutes a reasonable method Of diversion under the existing circumstances, then the diversion and use of that water should be protected against infringement by diversion of water under CCSD's appropriative water right. A summary of the problems encountered with the riparian wells, attempted improvements or remedies for those problems and the District's response was provided in Sections 3.0 through 4.0 above. The Board's evaluation of the identified problems and appropriate remedial measures is set forth in Sections 5.5.1 through 5.6 below.

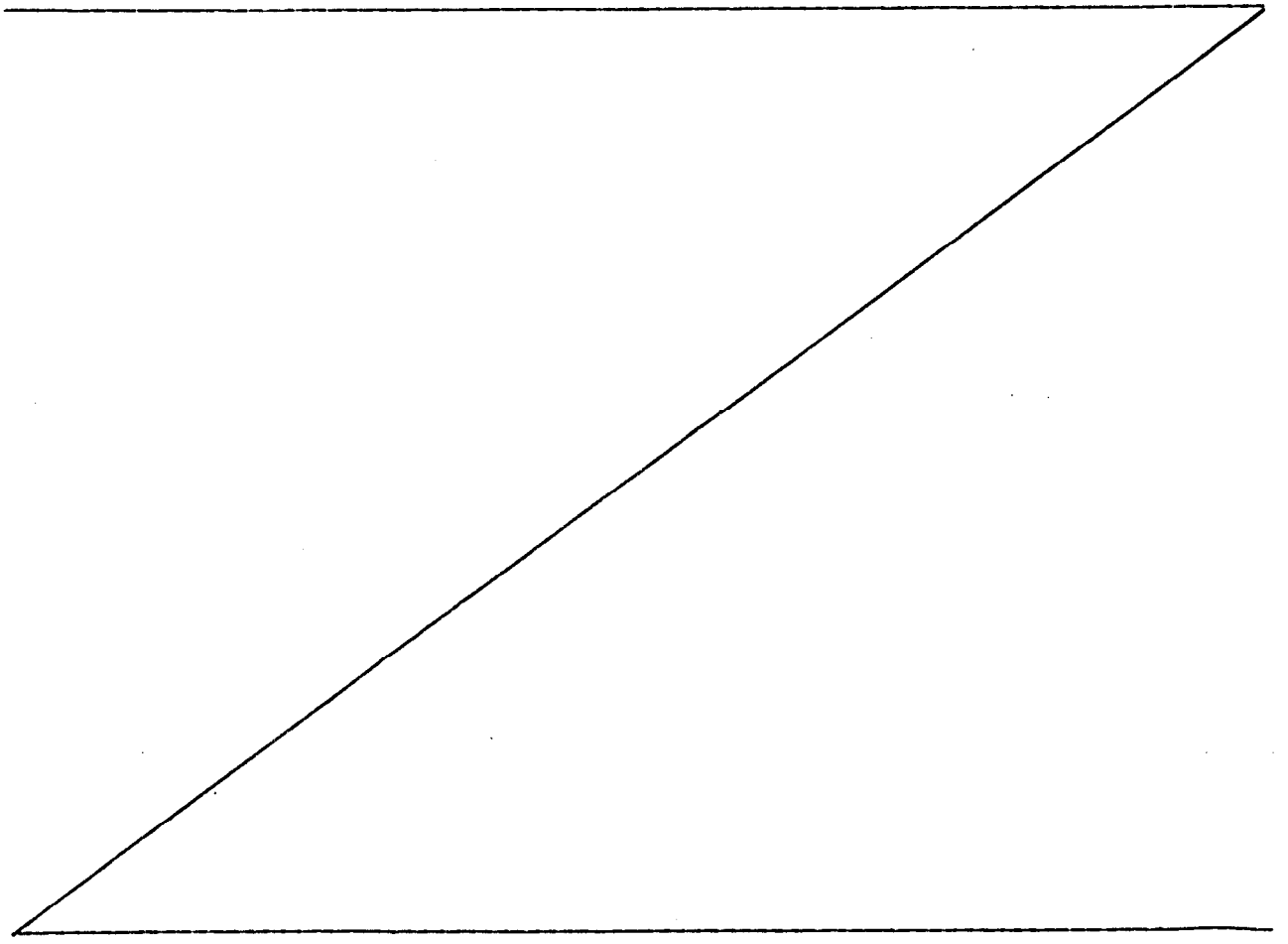


TABLE 4

RIPARIAN PRODUCTION WELLS

WELL NO.	DEPTH	OWNER	PROBLEMS EXPERIENCED SINCE 1979			APPROXIMATE DISTANCE UPSTREAM FROM CCSD WELL SS1
			NONE	DRY	UNDEPENDABLE	
9K1	32'	Warren		Summer 1984 & 85		(within CCSO well field)
9J1	23'	Pedotti		Fall 1984 & 85		600'
9J2	87'	Pedotti	X			1,000'
9J3	73'	Pedotti	X			1,000'
10M2	80'	Pedotti	X			2,300'
10F1	33'	Warren		Fall 1984 & 85		4,000'
10G1	52'	Pedotti			Fall 1984 & 85	4,700'
10A2	70'	Pedotti	X			5,500'
10A3	80'	Pedotti	X			6,300'
11C1	87'	Pedotti			Fall 1985	10,200'

5.5.1 Well 9K1

This relatively shallow well went dry in 1984 and 1985. It is located essentially within the CCSD well field and it is probably within the coneof depression of District wells SS2 and SS3. Warren claims that a test boring in July 1985 near well 9K1 showed that deepening this well would be infeasible due to the presence of "hardpan" from a depth of 37 feet to about 42 feet where the drilling was stopped. NO description of this "hardpan" is provided in the well log. It could

be simply a relatively hard layer or, due to the short distance from the canyon wall, the test boring may have hit bedrock. Well 9K1 is located on a 20-foot square parcel of land with a connecting easement to Warren's property. In view of the small size of the parcel of property and its location within the CCSD well field, the prospects for relocating the well are very limited.

The District recognized that its diversions from San Simeon Creek have adversely impacted well 9K1 and the District has been providing Warren with an alternate water supply as needed. The Board concludes that the District should be responsible for continuing to provide an alternate supply of water for Warren's valid riparian use, including any future increases in use, at such times that CCSD diversions render well 9K1 unusable. The real issue between the District and Warren appears to be the extent of Warren's valid riparian uses. As noted in Section 3.2.1, Warren is not entitled to the use of water from San Simeon Creek in the Van Gorden Creek watershed under claim of riparian right. Disagreement over the extent of Warren's riparian right is a matter for resolution through the courts, if necessary. (T&197:18-198:2; T,I,199:13-200:15; T,I,201:23-26; STAFF,13)

5.5.2 Well 9J1

Well 9J1 is the shallowest of the ten riparian production wells and it is operated by a windmill. When it went dry in late 1984 and late 1985, Pedotti switched to nearby well 9J3 for his domestic and stockwatering needs. This caused no apparent problems except for an increase in pumping costs since the windmill could not be used.

Although CCSD pumping has adversely impacted well 9J1, the Roard concludes that, under the circumstances described, this impact is not unreasonable and that no remedial action is required. (T,I ,124:23-125:3; PEDOTTI,1)

5.5.3 Well 10F1

Well 10F1 is a relatively shallow well located some 4,000 feet upstream of the CCSD well field. It'went dry in late 1984 and late 1985. The District's position is that it is only "partially" responsible for drying up well 10F1, due to its distance from the District well field and the influence of other riparian wells. In the absence of District pumping, however, it is apparent that well 10F1 would not have gone dry. Nevertheless, with a depth of only 33 feet, the Roard concludes that under the circumstances existing on San Simeon Creek, well 10F1 does not provide a reasonable method of diversion entitled to protection against the lowering of the water level by CCSD.

In an attempt to deveiop a new well which would provide a more efficient method of diversion, Warren has had two test borings drilled above and near well 10F1. Roth test borings indicate a water bearing formation to depths of at least 46 to 50 feet., The well logs contain insufficient detail to provide an accurate description of subsurface conditions and no water production tests were performed. (STAFF,13) Therefore, it is unknown if a well of adequate capacity can be drilled in this area to replace well 10F1. As discussed in Section 3.2 above, however, Warren has applied for a permit from the Coastal Commission

to drill a well at this site. If the new well does not provide an adequate supply of water to meet Warren's reasonable riparian needs in the area which it is designed to service, the Board concludes that CCSD should be required to provide Warren with an alternative supply. The District may provide such a supply at its option through installation of a new well, improvements to well 10F1 or the replacement well if feasible, or delivery of water via pipeline from District wells.

5.5.4 Well 10G1

Well 10G1 is equipped with a 400 gallon per minute turbine pump with a fixed level intake. When the static water level drops below 28 to 29 feet from the top of the well casing, the pump pulls air. The evidence as summarized in Sections 3.0 to 4.0 above, makes it apparent that water in well 10G1 would not have fallen below this level in 1984 and 1985 in the absence of CCSD diversions.

There was no evidence presented to establish that use of a submersible pump as recommended by the District would be more effective than a turbine pump in a well of this depth, assuming that the pump intake level is the same. Lowering the level of the intake of the existing pump, however, would allow pumping water which may be present at lower depths in the well. Also, well 10G1 is at least 29 years, old (PEDOTTI,2) and, depending on subsurface conditions, wells over about 20 years old are likely to have a major portion of the perforated casing clogged by incrustants. Considering that perforated casings do

not have a high percentage of open area when first installed, after time they must be cleaned to remain functional. While lowering the pump intake and cleaning the well perforations may help, it is uncertain as to whether such measures would compensate for the impact caused by CCSD pumping. The Board finds that lowering the pump intake and cleaning the well perforations do not amount to an unreasonable burden to be borne by a riparian water user in the circumstances of this case. Since well 10G1 appears to bottom in bedrock, deepening the well would not improve its operation.

The log from the test boring, which was drilled about 40 feet from well 10G1 shows a high water table at 16 feet. This is followed by sand to a depth of 54 feet, then sands interspersed with clay to a depth of 65 feet with sandy clay below 65 feet. Therefore, it appears that water bearing material is present at least to a depth of 54 feet and possibly to a depth of 65 feet. Since no water production tests were performed, the water transmitting properties of a well in this location are not known. (T,II,332:14-15; PEDOTTI,11)

If lowering the pump intake and cleaning the well perforations do not improve the production from well 10G1 to sufficiently meet the reasonable riparian demand for water, the Board concludes that CCSD should be required to provide Pedotti with an alternative supply of water through installation of a new well or delivery of water to the riparian place of use from District wells. The costs of any such measures should be borne by CCSD under the physicalsolution doctrine.

5.5.5 Well 11C1

Well 11C1 is 87 feet deep and appears to have bottomed in bedrock. The problem encountered with well 11C1 was similar to that of well 10G1. In the case of well 11C1, the static water level reached an all time low in October 1985 resulting in the well being unable to deliver water at the required rate of 400 gallons per minute for the first time.

4s the District points out, the influence of CCSD pumping on upstream water levels decreases with the distance from the CCSD well field. Pedotti also acknowledged that the pumping of his other wells affects the water level in well 11C1. The fact remains, however, that this well and practically all of the other wells on San Simeon Creek, reached their lowest water levels of record during the same period that CCSD conducted its yield test in 1985. Furthermore, the dry period in 'I.985 was about average for the period of record whereas in 1984, when no production problems were experienced with well 11C1, the dry period is estimated to be the longest since the 1976-77 drought. Therefore, based on the available evidence, the Board concludes that diversion of water by CCSD under Permit 17287 affects water levels in wells located upstream at least as far as well 11C1.

Though this well is 87 feet deep, the well log (STAFF,13) indicates that the only water producing zone appears to be a 20-foot vertical section between the 40-foot and SD-foot depths. This is the only

information in the record regarding the hydrogeology in this area of San Simeon Creek; The well log indicates that well 11C1 cannot be deepened and it is questionable if there is any water bearing material of adequate volume below a depth of approximately 60 feet in this reach of the stream. Thus, this lo-year old well appears to provide a reasonable method of diversion.'

In order to protect the senior right of Pedotti, the Roard concludes that CCSD should be required to provide an alternative supply of water to the area served by well 11C1, anytime that there is insufficient water available to meet reasonable riparian needs. The District, at its option, may provide such a supply through installation of a new well, improvements to well 11C1 or delivery of water to the riparian place of use from District wells. The costs of any such measures should be borne by CCSD under the physical solution doctrine.

5.6 Other Restrictions Proposed By Complainants

As discussed in Sections 3.1 through 3.3, the complainants offered a number of alternative conditions that could be imposed on CCSD for the protection of riparian rights. Both CRU and Warren requested that the MWFDL be enforced as a limitation on District diversions and CRU further requested that water levels be measured on a dynamic rather than static basis. Warren also requested that CCSD diversions be limited to 30 acre-feet per month. For reasons discussed in Sections 5.1 and 5.3, the Board concludes that these limitations are unwarranted.

In addition, Pedotti requested that CCSD be required to cease diversions when the static water level in well 9J2 declines to 20 feet above MSL. No particular reason or justification was provided for selecting the 20-foot level. In Decision 1477, the Roard rejected a similar condition on the basis that it lacked evidence relative to reasonableness. The Board also rejects including such a condition at the present time since it would preclude the use of waters in storage in the alluvium beneath the specified depth.

As an alternative to the above, Pedotti requested that CCSD diversions be limited to such times as there is a live stream from Palmer Flats to the ocean or when there is at least a flow of 2 cubic feet per second at Palmer Flats. For all practical purposes, either of these conditions would limit CCSD diversions to the wet period of the year. No evidence or justification was provided for these conditions, which are much more restrictive than the maintenance of the water level in well 9J2 at 20 feet above MSL.

6.0 SUMMARY

As explained in Section 5.1, the Board concludes that the reference to the Maximum Well Field Drawdown Line in Decision 1477 was not intended to establish a separate restriction on diversions by CCSD, and that said line would be an inappropriate criterion for limiting the diversion of water by CCSD. Measurements of well water levels on a static basis is more representative of regional water levels in the San Simeon Creek alluvium than is measurement on a dynamic basis. CCSD may pump water levels in its well field to as low as mean sea

level based on well measurements following a two-hour shutdown period provided that: (1) the District complies with all requirements that this Board or the Regional Water Quality Control Board may impose for water quality purposes; (2) the District does not infringe upon the reasonable exercise of prior rights; and (3) the District complies with all other terms and conditions of its permit.

Based on the available information regarding San Simeon Creek streamflow and water use, the Board concludes that the dry period specified for diversion limitations set forth in Permit 17287 should be amended to begin on the first day of no flow at Palmer Flats each year and should extend through October 31 of each year (as compared to the existing period of July l-November 20). (See Section 5.2.) In addition, based on the evidence concerning water use and availability discussed in Section 5.3, the dry period diversion limitation in Permit 17287 should be reduced from 572 acre-feet to 370 acre-feet under present conditions.

The diversion of water from San Simeon Creek by CCSD has adversely affected the availability of water to the upstream riparian users. Of the ten riparian extraction wells shown in Table 5, five experienced water production problems during the District's yield test in 1985. Of these five wells, four were also dry or unpumpable at times during the summer or fall of 1984. The legal principles applicable to resolution of conflicts between use'of water by CCSD and the riparian users are summarized in Section 5.4. Based on the evidence presented

and the applicable legal principles, the Board's conclusions regarding each of the five wells which have experienced problems are summarized below.

Well 9K1: The District recognizes that its diversion from San Simeon Creek under full yield has adversely impacted well 9K1 and has been providing Warren with an alternate supply when insufficient water is available from well 9K1. This practice should be required as a condition of Permit 17287 provided that the water is used on land riparian to San Simeon Creek.

Well 9J1: Pedotti has a nearby well to provide water when well 9J1 goes dry. The Board concludes that no remedial action should be required by the District for impacts on this very shallow well.

Well 10F1: Under the circumstances existing on San Simeon Creek, the board does not believe that well 10F1 provides a reasonable method of diversion entitled to protection against the lowering of the water level by CCSD. Warren has taken preliminary steps to replace this relatively shallow well. If, and at such times as, the replacement well proves insufficient to meet Warren's reasonable riparian requirements in the area served by well 10F1, the District should be required to provide a substitute supply of water through installation of a new well, improvements to well 10F1 or its replacement or delivery of water to the r'iparian place of use from District wells.

Wel 1 10G1: The constitutional mandate to employ a reasonable method of diversion entitled to protection against infringement by a

junior appropriator would, in this instance, require cleaning the well perforations and lowering the level of the pump intake. If such improvements are not sufficient to meet Pedotti's reasonable riparian requirements in the area served by well 10G1, the District should be required to provide a substitute supply of water through installation of a new well or delivery of water to the riparian place of use from District wells.

Well 11C1: The evidence in the record shows that well 11C1 is a reasonable method of diversion which has been adversely affected by District pumping. CCSD should be required to provide an alternative supply of water to the area served by well 11C1 anytime that there is insufficient water available to meet reasonable riparian needs. The District, at its option, may provide such a supply through installation of a new well, improvements to well 11C1 or deliver,y of water to the riparian place of use from District wells.

In instances in which the District elects to supply water to the riparian place of use from the District well field, the riparian diverter should be responsible for paying the estimated costs which would have been incurred to pump water from the affected well. In the absence of an agreement between the Parties, relative to pumping costs, such costs should be based oh an average amount per acre-foot for pumping water from the affected well over the prior three years during the month in question. Furthermore, the District should be responsible for the installation and maintenance of the water conveyance facilities needed to deliver water to the riparian place of use.

The complainants proposed a number of conditions for the regulation Of CCSD diversions in order to protect senior rights. For the reasons specified in Section 5.6, the Board concludes that none of these conditions should be included as terms of the CCSD permit except for requiring the District to provide an alternate supply of water to the riparian place of use under circumstances previously discussed. With respect to the amendments or additions to the conditions of Permit 17287 discussed in this order, such revisions can be done pursuant to the Board's reservation of jurisdiction as stated in the permit.

Permit 17287 was issued subject to prior rights. CCSD cannot divert water under the permit if such diversion interferes with the reasonable exercise of prior rights. In order to maximize the beneficial use of water, provision 2 of the order which follows specifies physical solutions through which reasonable riparian water usage can be protected while allowing diversion under CCSD's junior appropriative right. As a practical matter, maximization of beneficial uses also will require the cooperation of all affected parties, and the Board urges such parties to act accordingly.

ORDER

NOW, THEREFORE, IT IS ORDERED that the terms and conditions of Permit 17287 be amended as specified below:

1. Condition 5 shall be amended to read as follows:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit.

2. Condition 21 shall be added to Permit 17287 as follows:

This permit is specifically subject to the diversion of water by Jon Pedotti, Willis Warren, Susan Keller, and Clyde Warren and their successors in interest under valid claim of riparian right in accordance with the following conditions:

a. At such time as permittee is diverting water authorized under this permit and the water level in well 9K1 reaches a depth which renders the well unusable, permittee shall deliver water from its point of diversion to the riparian place of use served by well 9K1 in amounts

necessary to meet the reasonable riparian needs of Warren and his successors in interest.

b. At such time as permittee is diverting water authorized under this permit and the water level in any replacement well for well 10F1 reaches 'a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 10F1 in amounts necessary to meet the reasonable riparian needs of Warren and his successors in interest:

(1) Make improvements to well 10F1 or its replacement well;

(2) Install a new well;

(3) Deliver water from permittee's point of diversion to the riparian place of use served by well 10F1.

c. At such time as permittee is diverting water authorized under this permit and the water level in well 10G1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 10G1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

(1) Install a new well;

(2) Deliver water from permittee's point of diversion to the riparian place of use served by well 10G1.

This requirement shall only apply in the event that the owner of well 10G1 has cleaned the well perforations, using an acid wash and has lowered the level of the pump intake to as near the bottom of the well as feasible.

d. At such time as permittee is diverting water authorized under this permit and the water level in well 11C1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 11C1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

(1) Make improvements to well 11C1;

(2) Install a new well;

(3) Deliver water from its point of diversion to the riparian place of use served by well 11C1.

In the event that permittee opts to deliver water to the riparian place of use of any of the above wells, the riparian diverter shall be liable for the estimated costs which the riparian would have incurred to pump water from the affected well. In the absence of an agreement between the parties relative to pumping costs, the costs shall be based on an average amount per acre-foot for pumping water from the affected well during the month in question over the prior three years. Permittee shall pay the cost of installing and maintaining any water conveyance facilities needed to deliver water to the riparian place of use.

3. Condition 22 shall be added to Permit 17287 as follows:

Permittee shall prepare and submit, by January 1, 1989, a drought emergency plan including an estimate of the amount of water available to permittee from San Simeon Creek as well as other sources under runoff conditions similar to 1976-77.

4. Condition 23 shall be added to Permit 17287 as follows:

Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Resources Control Board for approval by January 1,. 1989, or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period.

All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein.

IT IS FURTHER ORDERED that, in order to provide the Roard adequate information for evaluation of water use from San Simeon Creek, Willis Warren, Clyde Warren, Susan Keller and Jon Pedotti, and their successors in interest shall file complete and accurate Statements of Water Diversion and Use on a timely basis with the Division of Water Rights. Willis Warren, Clyde Warren, Susan Keller, Jon Pedotti, Cambria Community Services District, and their successors in

interest, also shall file appropriate well logs on a timely basis with the Department of Water Resources, and shall make such well logs and related information available to the Division of Water Rights upon request.

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 21, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Danny Walsh

NO: None

ABSENT: Eliseo M. Samaniego

ABSTAIN: None

Maureen Marche
Administrative Assistant to the Board