STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of AVAILABILITY OF RECLAIMED WATER FOR GREENBELT IRRIGATION IN THE SAN GABRIEL VALLEY WATER COMPANY SERVICE AREA IN THE VICINITY OF THE SAN JOSE CREEK RECLAMATION PLANT OF THE LOS ANGELES COUNTY SANITATION DISTRICTS.	ORDER: WR 90-1 SOURCE: Reclaimed Wastewater COUNTY: Los Angeles

ORDER AMENDING AND AFFIRMING AS AMENDED
DECISION 1623

BY THE BOARD:

1. INTRODUCTION

On February 16, 1989 the State Water Resources Control Board (State Board) adopted Decision 1623. The decision found that the use of potable water by the San Gabriel Valley Water Company (Company) was an unreasonable use of water when reclaimed water that satisfies the conditions of Water Code Section 13550 is available from the County Sanitation District Number 2, of Los Angeles County (District). During June of 1989, the Company filed a Petition for Writ of Mandate against the State Board in the Los Angeles Superior Court (San Gabriel Valley Water Company v. State Water Resources Control Board, Case No. C728396).

2. On November 21, 1989 the Superior Court upheld the State Board's findings, conclusions, and decision. Nevertheless, the Superior Court ordered the State Board to delete its views concerning the potential conflict between the service duplication provisions of the Public Utility Code and the reclamation requirements of Water Code Section 13550 as follows:

> "Section 4.2.1 of the Decision shall be modified by physically striking or omitting the last paragraph on page 10 (beginning with the language `Before leaving this issue ...') and all of page 11 (ending with the language `constitutional prohibition against wasteful and unreasonable uses.')"

Also, the Court ordered the State Board to modify the last sentence on page 17 of the decision to read as follows:

> "Consequently, if the Company were to provide potable water for greenbelt irrigation where suitable reclaimed water is determined to be available as provided in Section 13550, that would constitute waste and unreasonable use."

3. Prior to the State Board's adoption of Decision 1623, the Company initiated a separate action against the District in the Los Angeles County Superior Court (San Gabriel Valley Water Company v. County Sanitation Districts of Los Angeles, No. C661402). In its action, the Company seeks to recover alleged service duplication losses claimed to result from the District's provision of reclaimed water within the Company's

potable water service area. Our view that the provision of reclaimed water is not duplicative of potable water service, as discussed within paragraph 4.2.1, is relevant and should be communicated to the Superior Court in the Company's service duplication action.

4. The purpose of this order is to comply with the Peremptory Writ of Mandamus issued by the Superior Court and to direct staff to take appropriate action to file amicus curiae paper in the Company's suit against the District.

ORDER

NOW, THEREFORE, IT IS ORDERED that paragraphs 4.2.1 and 5.0 of Decision 1623 are amended as follows:

1. Paragraph 4.2.1:

The Company contends that, in assessing the costs of reclaimed water supplied by the District, the Board should consider the compensation allegedly due to the Company under the Service Duplication Law (Chapter 8.5 of Division 1 of Part 1 of the California Public Utility Code, commencing with Section 1501).

Section 1503 of the Public Utilities Code provides that if a "political subdivision" extends "water

service ... to any service area, such an act constitutes a taking of the property of the private utility for a public purpose to the extent that the private utility is injured by reason of any of its property employed in providing water service being made inoperative, reduced in value or rendered useless to the private utility for the purpose of providing water service to the service area".

Notwithstanding the Company's contention and the language of Section 1503, we find that it is unnecessary to address this issue because the Company failed to provide any evidence of such costs.

Before leaving the issue, however, we note that Section 1503 requires compensation only if the provision of reclaimed water is "the same type of service" as the provision of potable water. Reclaimed water service differs from potable water service in several important aspects. Reclaimed water cannot be used for domestic water supply. Where reclaimed water is made available to a community, a potable water supply will still be necessary. In addition, for public health reasons, the distribution systems for reclaimed and potable water must be entirely separate and the regulatory

provisions of potable water and reclaimed water are different. Reclaimed water service also differs from potable water service in that Article X, Section 2 of California's Constitution and Water Code Section 13550 establish a strong public policy in favor of using reclaimed water. Under these circumstances we believe it is both possible and desirable to avoid construing Section 13550 in a manner that requires purveyors of reclaimed water to compensate private companies for facilities associated with wasteful and unreasonable use. A judicial decision that reclaimed water service duplicates potable water service could act as a disincentive to wastewater reclamation, and hinder displacement of potable water for greenbelt irrigation in the face of a constitutional prohibition against wasteful and unreasonable uses.

2. Paragraph 5.0:

CONCLUSIONS

The District provides reclaimed water in the vicinity of the San Jose Creek Wastewater Reclamation Plant meeting the conditions in Section 13550 of the Water Code.

* * *

Reclaimed water that satisfies the conditions of Water Code Section 13550 is available for greenbelt

irrigation at any location where the user's total cost for reclaimed water (including the District's price and the costs of delivery) is less than, or comparable to, the cost of potable water from the Company. Consequently, if the Company's provision of were to provide potable water for greenbelt irrigation where suitable reclaimed water is determined to be available as provided in Section 13550, that would constitute waste and unreasonable use. When reclaimed water is available.

3. Decision 1623 is affirmed as amended. The amended decision shall be titled as "Decision 1623 -- amended". As amended, the decision shall be reprinted and distributed to the Superior Court, the parties and other persons interested in this matter.

4. IT IS FURTHER ORDERED that the staff of the Board shall take appropriate action to file amicus curiae papers in San Gabriel Valley Water Company v. County Sanitation Districts of Los Angeles, Los Angeles County Superior Court, No. C661402. The papers shall reflect and support our view

that the provision of reclaimed water is not duplicative of potable water service as indicated in Section 4.2.1 of Decision 1623 as adopted on February 16, 1989.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 18, 1990.

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

Maureen Marché
Administrative Assistant
to The Board