

MAY 05 2003

ENDORSED FILED

YUBA COUNTY SUPERIOR COURT
H. STEPHEN KONISHI
SUPERIOR COURT CLERK

BY TERESE M. JOHNSON
Court Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

BROWNS VALLEY IRRIGATION DISTRICT,)

Case No. CV PT 01-0000224

Petitioner,

JUDGMENT

vs.

**STATE WATER RESOURCES CONTROL
BOARD,**

Respondent,

YUBA COUNTY WATER AGENCY, et al.,

Real Parties in Interest.)

AND CONSOLIDATED ACTIONS.)

The Court hereby refers to, and herein incorporates by reference, its Order After Hearing filed contemporaneously with this Judgment. For the reasons therein stated, IT IS ORDERED, DECREED AND ADJUDGED, that the Petitioners, and each of them, shall have Judgment against Respondent State Water Resources Control Board. Let the Peremptory Writ of Mandate issue commanding Respondent to vacate its approval of Water Rights Decision 1644. Water Rights Decision 1644 is remanded to Respondent State Water Resources Control Board, and the writ will command the Respondent to reconsider its decision in light of the evidence admitted by the Court in said Order After Hearing.

Dated: May 2, 2003

Robert A. Barclay

ROBERT A. BARCLAY
ASSIGNED JUDGE OF THE SUPERIOR COURT

JUDGMENT

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare that I am a citizen of the United States, over the age
3 of eighteen years, and not a party to the within action. I am employed at Yuba County
4 Superior Court and my business address is 215 Fifth Street, Marysville, California.

5 On May 5, 2003, I served the within JUDGMENT on the named parties by placing
6 a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
7 central depository for mail collection for Yuba County, located at 215 Fifth Street, Marysville,
8 California, addressed as follows:

9 PAUL R. MINASIAN
10 MINASIAN SPRUANCE & SEXTON LLP
11 1681 BIRD ST
12 PO BOX 1679
13 OROVILLE CA 95965

14 DANIEL N. FRINK
15 STATE WATER RESOURCES CONTROL BOARD
16 PO BOX 100
17 SACRAMENTO CA 95812-0100

18 WILLIAM JENKINS
19 DEPUTY ATTORNEY GENERAL
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21 SAN FRANCISCO, CA 94102

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26 SACRAMENTO CA 95816-4907

27 WILLIAM CUNNINGHAM
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LAWRENCE DAVID SANDERS
ATTORNEY AT LAW
216 MAIN ST
NEVADA CITY CA 95959

CHARLTON BONHAM
TROUT UNLIMITED
828 SAN PABLO AVE STE 208
ALBANY CA 94706

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2003, at Marysville, California.

H. Stephen Konishi
Clerk of the Superior Court

By: TERESE M. JOHNSON
Terese M. Johnson
Court Clerk

MAY 05 2003

ENDORSED FILED

YUBA COUNTY SUPERIOR COURT
H. STEPHEN KONISHI
SUPERIOR COURT CLERK

BY TERESE M. JOHNSON
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

BROWNS VALLEY IRRIGATION DISTRICT,

Petitioner,

vs.

STATE WATER RESOURCES CONTROL BOARD,

Respondent,

YUBA COUNTY WATER AGENCY, et al.,

Real Parties in Interest.

Case No. CV PT 01-0000224

PEREMPTORY WRIT OF MANDATE

AND CONSOLIDATED ACTIONS.

The Superior Court of the State of California in and for the County of Yuba to Respondent State Water Resources Control Board, Greeting: YOU ARE HEREBY COMMANDED to vacate your approval of Water Rights Decision 1644 pursuant to the terms of the Judgment of this Court entered May 5, 2003. Pursuant to the terms of said Judgment, Water Rights Decision 1644 has been remanded to you, and YOU ARE FURTHER COMMANDED to reconsider said Decision 1644 in light of the judgment of the Court.

YOU ARE FURTHER COMMANDED, that you are to make a return to this Court no later than 66 days after service of the Writ upon you, and you are to therein advise the Court of your compliance with the terms of the Writ, or the reasons why you have failed to do so.

Dated: May 5, 2003

H. STEPHEN KONISHI
Court Executive Officer



By: TERESE M. JOHNSON

Terese M. Johnson
Court Clerk II

PEREMPTORY WRIT OF MANDATE

1 **PROOF OF SERVICE**

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3 of eighteen years, and not a party to the within action. I am employed at Yuba County
4 Superior Court and my business address is 215 Fifth Street, Marysville, California.

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6 named parties by placing a true copy thereof enclosed in a sealed envelope with postage
7 thereon fully prepaid, in the central depository for mail collection for Yuba County, located at
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COURT CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

BROWNS VALLEY IRRIGATION DISTRICT,)

Case No. CV PT 01-0000224

Petitioner,

ORDER AFTER HEARING

vs.

**STATE WATER RESOURCES CONTROL
BOARD,**

Respondent,

YUBA COUNTY WATER AGENCY, et al.,

Real Parties in Interest.

AND CONSOLIDATED ACTIONS.)

The motion by Petitioner Yuba County Water Agency to admit new evidence, and the Request for Judicial Notice or, in the alternative, the Motion to Add New Evidence by Petitioners South Yuba River Citizens League, et al., came on regularly for hearing on April 21, 2003, in department 1 of this Court, the Honorable Robert A. Barclay, judge assigned, presiding. The parties appeared by counsel as shown upon the minutes.

The Court reviewed the papers filed in support of and in opposition to the motions, and entertained the arguments of counsel at the time of the hearing. On the basis of the same, and good cause appearing to the satisfaction of the Court, the Court makes the following orders:

IT IS ORDERED that the motion by Petitioner Yuba County Water Agency is **granted**. IT IS FURTHER ORDERED that the Request for Judicial Notice by Petitioners South Yuba River Citizens' League, et al., is **denied**, but the alternative motion is **granted**.

Administrative mandate proceedings under Code of Civil Procedure § 1094.5 are

1 equitable proceedings designed to achieve justice where no other remedy is available.
2 *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, at 596. If, as the
3 respective movants contend, empirical experience occurring after the conclusion of the
4 administrative hearings demonstrates the falsity or unreliability of the factual assumptions or
5 projections upon which the administrative decision rested in whole or in part, it seems
6 elementary to the Court that the empirical evidence should be admitted so that justice may be
7 done. It can hardly be disputed that evidence that the assumptions underlying a decision may
8 be incorrect makes that evidence "... crucial to the administrative decision." *Toyota of*
9 *Visalia, Inc. v. New Motor Vehicle Board* (1987) 188 Cal.App.3d 872, at 882. On the other
10 hand, with due deference to the regulatory scheme, the administrative agency should have the
11 first opportunity to decide the case on the basis of all of the evidence. The better practice, and
12 that adopted by this Court, is to remand the action for agency redetermination in light of the
13 new evidence. *Ibid.*

14 Accordingly, IT IS FURTHER ORDERED that, immediately following entry of this Order,
15 Judgment shall issue in favor of the Petitioners, and each of them, and against Respondent
16 State Water Resources Control Board. The Court shall cause a Peremptory Writ of Mandate
17 to issue, and the writ will command the Respondent to vacate its approval of Water Rights
18 Decision 1644, and to reconsider its decision in light of the new evidence.

19 C.C.P. § 1094.5(f) states that the judgment of the Court shall not limit or control in any
20 way the discretion legally vested in the Respondent. By the same token, the Court does not
21 herein purport to limit or control the method by which the Respondent Board receives the
22 evidence that is the subject of the respective motions. This is to say, the Board is ordered to
23 reconsider its decision in light of the fair hearing allegations, but it may either choose to
24 consider the Mainz, Low, and Sawyer depositions, or consider live testimony from those
25 deponents. The Board will consider the fish population evidence offered by Messrs. Mitchell
26 and Bratovich, and the water demand and usage evidence offered by Mr. Aiken, but the Board
27 may either consider their respective declarations, permit live testimony, or otherwise receive
28 the evidence on those issues in any manner permitted by law. The Board will consider the

1 South Yuba River Citizen League's evidence on the electricity supply/usage and revised
2 supply/usage projections, but the Court's ruling is expressly without prejudice to the Board's
3 determination of the admissibility of the specific documents offered by the League. This is to
4 say, the Board shall consider the supply/usage evidence, but may require the evidence be
5 presented by means other than the documents submitted in conjunction with the
6 Request/Motion. Finally, nothing in the order and judgment of the Court shall be interpreted in
7 any way to restrict the ability of the Board to consider any other evidence it deems to be
8 relevant and material to its reconsideration of Decision 1644.

9 Dated: May 2, 2003

10 Robert A. Barclay
11 ROBERT A. BARCLAY
12 ASSIGNED JUDGE OF THE SUPERIOR COURT
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Clerk of the Superior Court

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