



North County Watch

Looking Out Today For Tomorrow

MEMO TO: Paso Robles Groundwater Basin Blue Ribbon Committee

FROM: Susan Harvey, President
North County Watch

DATE: May 17, 2013

RE: Water Code Section 106

North County Watch is a 501 c3 non-profit Public Benefit corporation. We are an all-volunteer organization committed to sustainable development in and around north San Luis Obispo County.

We would like to addresses issues around a discussion at the BRC meeting on May 16th, regarding the accuracy of our *a priori* statement regarding the superior rights of rural residential users. Thank you for raising the issue and this opportunity to elucidate our position.

Water Code Section 106

Water Code Section 106 provides “It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.”

Court Support for Section 106

California courts have consistently supported the policy codified in Section 106. In *City of Beaumont v. Beaumont Irrigation District* (1965)ⁱ, the court held that Section 106 is a policy that governs administrative agencies’ water allocation decisions, stating that application of “section 106 of the Water Code...is binding upon every California agency,” including irrigation districts which were parties to the case.

Meridian v. San Francisco (1939)ⁱⁱ stated “It should be the first concern of the court in any case pending before it and of the department in the exercise of its powers under the act to recognize and protect the interests of those who have prior and paramount right to the use the waters and streams. The highest use in accordance with the law is for domestic purposes, and next highest use is for irrigation.”

The California Supreme Court in *National Audubon Society v. Superior Court* (1983)ⁱⁱⁱ stated “[a]lthough the primary function of [Water Code Sections 106 and 106.5], particularly section 106, is to establish priorities between competing appropriators, these enactments also declare principles of California water policy applicable to any allocation of water resources.”

Central & West Water Basin Replenishment District v. So. California Water Co. (2003)^{iv} held that court-supervised mass adjudications of water rights are subject to and governed by Section 106, and it therefore rejected a proposal for water banking by some of the adjudicated parties because the proposal did not comply with the policy in Section 106 of prioritizing domestic use.

California Common Law Supports Section 106

California Common Law codifies the longstanding principle that in allocating California’s limited water supplies in time and places of scarcity, water needs for domestic purposes must take priority over water needs for commercial profit, including agriculture.

Alta Land & Water Co. v. Hancock (1890)^v “the rights...to the use of water for the supply of the natural wants of man and beast” must take precedence over “the rights...to use the water for purposes of irrigation.”

Smith v. Carter (1897)^{vi} “both parties [to the water rights dispute] were entitled to have their natural wants supplied, that is, to use so much of water as was necessary for strictly domestic purposes and to furnish drink for man and beast, before any could be used for irrigation purposes” and that “[a]fter their natural wants were supplied each party was entitled to reasonable use of the remaining water for irrigation”.

Drake v. Tucker (1919)^{vii} the trial court “properly decided that it would be an unreasonable use of the water under all the facts and circumstances for the plaintiff to use it for irrigation before the domestic uses of the defendant had been satisfied.”

Cowell v. Armstrong (1930)^{viii} “Natural uses are those arising out of the necessities of life...such as household use, drinking, [and] watering domestic animals...[and] unquestionably the term ‘domestic purposes’ would extend to culinary purposes and the purposes of cleaning, washing, the feeding and supplying of an ordinary quantity of cattle, and so on.”

Prather v. Hoberg (1944)^{ix} “Without question the authorities approve the use of water for domestic purposes as first entitled to preference. That use includes consumption for the sustenance of human beings, for household conveniences, and for the care for livestock.”

Deetz v. Carter (1965)^x “[p]riority conferred on domestic users by Water Code section 106 is a statutory extension of a traditional preference accorded to ‘natural’ over ‘artificial’ uses.”

Reasonable and Beneficial

In “The Reasonable Use Doctrine and Agricultural Water Use Efficiency: A Report to the State Water Resources Control Board and the Delta Stewardship Council” authored by Delta Watermaster Craig M. Wilson, Mr. Wilson lays the foundation for the “reasonable use” doctrine based on the California Constitution Section Article 10 Sec. 2, California Statutes Water Code §§100, 275, 1059, 1051, 1825, 10608, 10801, 85023, and several court cases.

Mr. Wilson, comments that the Reasonable Use Doctrine has been broadly implemented: “The State Water Board and the courts have used the doctrine to find unreasonable water uses in a variety of settings: ...7) The storage and diversion of water that jeopardize compliance with water quality standards, the public trust, and other in situ beneficial uses; 8) Excessive use of groundwater by overlying landowners in an overdrafted basin.”

Rights of the Rural Residential Overliers to the Basin

Our purpose for raising the issue is to inform the committee of the primary right of domestic user and to reinforce the importance of the standing of the rural residential user. The court cases arose out of adjudicative situations and while some members of the committee and others might argue that enforcement of Section 106 is only the purview of the courts, that is, strictly speaking, that all overlayers have equal rights, it is in the best interest of the rural residential overlayers to make it clear that the courts have repeatedly recognized the superior right of water uses for residential purposes over irrigated agriculture.

The question in point during the meeting and clarified by Chair Werner was “What issues do we want to see addressed in the investigation of basin management districts?” It is our position that the rights of rural residential users must be secured within the structure of any management district before the district is formed. Thus far, we have not seen discussion or attention given to these rights that are codified in Section 106. We have been attending committee meetings for over 6 months, and it is not an exaggeration to say that focus has been primarily the needs of irrigated agriculture.

California Water District Not Equitable to Rural Residential Overliers

We are even more concerned about the rights of the rural residential overlayer when there appears to be a well orchestrated push to form a California Water District. Water Code Section 35003^{xi} [Water Code §§ 34000-35003 codify a California Water District] states that voting rights are based on one vote for each dollar of assessed valuation. North County Watch continues to raise the issue of the rights of the rural residential user because we have not heard anything that would give comfort to the thousands of rural residential users as to how their rights and concerns might be addressed in a California Water District.

Conclusion

North County Watch appreciates that this discussion of management districts is nascent and we fully support the efforts to establish a management structure. We clearly stated this position in

our letter of March 18, 2013 on the failure of the county to manage the basin. We would be remiss if we waited until a district is formed to see if it protects the rights of rural residential users. We all have the goal of avoiding adjudication. Thus, the time to remind the committee and others of the priority rights of the rural residential user, per Section 106, is now, so that we get some acknowledgement and protection of those rights. Furthermore, North County Watch believes that domestic use includes a level of reasonable use commensurate with social and cultural norms of our community.

CC: Mr. Paavo Ogren, Director of Public Works
Ms. Courtney Howard, P.E., Water Resources Engineer
SLO County Board of Supervisors

ⁱ *City of Beaumont v. Beaumont Irrigation District* (1965), 63 Cal.2d 291, 381, 46 Cal.Rptr. 465, 469

ⁱⁱ *Meridian v. San Francisco* (1939), 13 Cal.2d 424, 450, 90 P.2d 537, 550

ⁱⁱⁱ *National Audubon Society v. Superior Court* (1983), 33 Cal3d 419, 448, n.30, 189 Cal.Rptr. 346,366 n.30

^{iv} *Central & West Water Basin Replenishment District v. So. California Water Co.* (2003), 109 Cal.App.4th 891, 912-13, 135 Cal.Rptr.2d 486

^v *Alta Land & Water Co. v. Hancock* (1890), 85 Cal.219, 230

^{vi} *Smith v. Carter* (1897), 116 Cal. 587, 592

^{vii} *Drake v. Tucker* (1919), 43 Cal.App 53, 58

^{viii} *Cowell v. Armstrong* (1930), 210 Cal. 218, 225

^{ix} *Prather v. Hoberg* (1944), 24 Cal.2d 549, 5562, 150 P.2d 405, 412

^x *Deetz v. Carter* (1965), 232, Cal.App2d 851, 854-55, 43 Cal.Rptr. 321, 323

^{xi} 35003. Each voter shall have one vote for each dollar's worth of land to which he or she holds title. The last equalized assessment book of the district is conclusive evidence of ownership and of the value of the land so owned except that in the event that an assessment for a district shall not have been made and levied for the year in which the election is held, the last assessment roll of each affected county shall be used in lieu of the assessment book of the district as evidence of ownership. However, the board may determine by resolution that the assessment book or assessment roll of each affected county shall be corrected to reflect, in the case of transfers of land, those persons who as of the 45th day prior to the election appear as owners on the records of the county. If an equalized assessment book of the district does not exist, then each voter shall be entitled to cast one vote for each acre owned by the voter within the district, provided that if the voter owns less than one acre then the voter shall be entitled to one vote and any fraction shall be rounded to the nearest full acre.