

October 22, 1991

REPORT TO THE COMMITTEE
ON PUBLIC FACILITIES AND RECREATION

CITY WATER RIGHTS IN SAN PASQUAL VALLEY - PUBLIC FACILITIES AND
RECREATION COMMITTEE MEETING OF OCTOBER 23, ITEM NO. 2

The Public Facilities and Recreation Committee requested this office to report to it with regard to the City's rights to the water which flows into the San Pasqual Valley. Attached for reference is a memorandum prepared by a legal intern in this office which provides a succinct statement of the law regarding riparian rights generally. You will note that the owner of land through which or under which water flows is, in the absence of agreements to the contrary or extraordinary circumstances, entitled to use water which flows across or under his or her land for the benefit of the surface land.

The City proposes to proceed with a course of action which would result in water being "injected" into the San Pasqual Valley water basin at a rate of approximately 12,000 acre feet per year. The City would subsequently remove an equal amount of water for treatment and utilization during the drier months. The water to be removed may be used within the San Pasqual Valley basin or may be transported outside the Valley.

This office is informed that the capacity of the San Pasqual Valley water basin is approximately 70,000 to 95,000 acre feet. We are further informed that the City's proposal to inject and remove approximately 12,000 acre feet will not adversely affect the availability of water for the existing wells in the Valley.

Specific Rights of the City in the San Pasqual Water

In 1953 the City completed the construction of Sutherland Dam, which resulted in a diminished flow of water into the San Pasqual Valley. The owners of farmlands within the San Pasqual Valley sued the City and obtained a judgement against the City as a result of the City's reducing the natural flow of water into the Valley.

The City thereupon purchased the land and/or the water rights from all of the affected property owners. The City subsequently purchased additional lands within the San Pasqual Valley to allow for the City to flood the land up to the 395-foot contour upon the construction of the then planned "Super Hodges" Dam. While the "Super Hodges" Dam was never constructed, the City has retained ownership of the San Pasqual lands and owns the water rights to such lands in the San Pasqual Valley.

The City has leased the majority of its land in the Valley to various agricultural enterprises. The agricultural leases contain the following (or a similar) provision:

Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.05, Easements and Reservations, hereof, CITY shall have the right throughout said term, to divert, impound, store, and transport by means of dams, reservoirs, or by pumping any or all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert by percolating through any of said leased premises. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased premises all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the leased premises. LESSEE agrees, that upon termination of this agreement, it will leave any wells developed or used on the lease premises during the term of this lease in good order and condition and that the casing shall be left in place.

While the above provision allows the City substantial rights regarding use of San Pasqual water, it is clear that the City should not proceed with any activities which would remove the water from the Valley to the extent that the remaining water basin would be unable to support reasonable irrigation activities on the various agricultural leaseholds. The City's plan, as described above, would not adversely affect the available water supply.

The only other existing contractual arrangement relating to San Pasqual Valley is the City's agreement with the Santa Fe and San Dieguito Irrigation Districts relating to water from Lake Hodges.

The 1969 agreement, which extends to the year 2019, basically gives the two irrigation districts certain limited rights to purchase a total of 7,500 acre feet per year from available water in Lake Hodges. The agreement guarantees a minimum availability of a total of 20,000 acre feet for each ten years of the agreement.

Since the above described "injection" proposal would not affect the water flowing into Lake Hodges, the project as proposed would not create any legal problems with regard to the agreement with the Santa Fe and San Dieguito Irrigation Districts.

In summary, the City has purchased the land and water rights in the San Pasqual Valley basin and may use and control the water in the basin subject only to rights to reasonable water amounts granted to the various agricultural lessees and subject to any rights the Santa Fe and San Dieguito Irrigation Districts may claim in the event the City substantially reduces the flow of water into Lake Hodges. The City

Manager's proposal to inject water into the basin during the rainy season and remove an equal amount of water during the dry season, is within the City's rights and will not violate any existing contractual or legal relationships.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachment
RC-91-48