James Feenan

From:	Max Yeh <maxwyeh@gmail.com>
Sent:	Friday, March 1, 2024 7:17 PM
To:	pbscommissions
Subject:	Corrected Comment on U_2023-0004
Attachments:	Comment to Planning Commission.corrected.docx

Dear Commissioners,

Please substitute the attached corrected version of my comment for the one previously submitted. I apologize for this mix-up.

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Max

To: Mendocino County Planning Commission
From: Max Yeh
10800 Cummings Lane
Mendocino, CA
maxwyeh@gmail.com
Date: February 28, 2024
Re: Case U_2023-0004
Mendocino Unified School District
Coastal Development Use Permit
Public Comment

I. Introduction

Since the Commission's action on case number U_2023-0004 will be the County's final decision on the Mendocino School District's project to provide Mendocino village with emergency water supplies from groundwater over which the County has strict jurisdiction, the Commission should pay special attention to exercise and to preserve that authority.

Water and water rights are the most important aspect of this project. Yet, lamentably, the Staff Report minimizes its importance by listing the drilling of up to 10 new wells always at the end of a long list describing the project (as in the Summary, p. PC-1) and in treating the issue of groundwater sufficiency entirely within the parameters laid down by the applicants. Pp. PC-11 through PC-13. The project is treated as if it were a simple expansion of MUSD's earlier approved project to renovate its aging system causing serious omissions. But this project proposes to increase by multiple times the extraction of groundwater. The Commission must ask itself if this taking is harmful to the general good,

- whether it is harmful for California's water policy going into climate change,
- whether it is harmful for the County which has authority for this water because the overlying land is **outside** MCCSD's (the benefactor's) jurisdiction and **within** the County's water agency district,
- whether it is harmful to the neighboring residents, whose groundwater and water rights are presumably protected by the County,
- whether it is harmful for the residents of Mendocino village, within MCCSD's boundaries, in the long run,
- whether it is harmful to the ecological environment of the area,
- that is, whether it is harmful **if** this taking depletes the groundwater and is therefore not sustainable.

The Commission must consider sustainability because CA Water Code §113 (2022) mandates all water projects to be sustainable. See Appendix I below, my op-ed on this project relative to issues of sustainable water policy and management.

Unfortunately, neither the Staff Report nor the submitted project description, the Final Subsequent Mitigated Negative Declaration (Attachment B), addresses this question. In fact, the FSMND itself suggests that the extraction is not sustainable, even if it does not immediately harm neighboring wells (though that impact is yet to be tested). Also unfortunate is the failure to include in documentation provided the public the serious public written comments over the issue of water during the CEQA process. The upshot is that the Commission and the public are not provided with the evidence needed to judge the project's impact.

II. Sustainability

To begin, how much water will be taken out of the ground, year after year? No one knows. We do not even know how many new wells will be drilled. The description says "up to 10 new wells." Besides the vagueness of "up to" even the "10" is ambiguous. One well has already been drilled (#6) [Background, p. PC-1], and the well location map (Final Subsequent Mitigated Negative Declaration, Attachment B, Fig. 4) shows 9 other wells, but the text keeps talking about 10 new wells in addition to #6. So, is it 10 or 11 new wells that will be pumping water?

How much is needed? No one knows, since the use is for emergencies, but using water trucking data from recent droughts, the FSMND suggests up to 5 AFY (p. 1-10). If that water were in fact available in the ground, one well (pumping at 5 gallons per minute) would suffice. The fact that the well-field has to have 10 or 11 such wells (with a capacity of 48 AFY) shows that the hydrologists know that the project is scraping the bottom of the barrel. The 5 AF of water must be pumped during the short period of emergency (not slowly over the year); thus the oversized rate capacity of the well-field allows for large extractions for a short time span. Yet, once installed, nothing prevents the pumping of "up to" 48 AF per year.

But then how often are these emergencies, which seem, ambiguously, to include not only water emergencies but also fire emergencies? Again, the Commission is not informed. The FSMND says during official state or federally declared drought. Yet, it adds (p. 1-9) whenever MCCSD declares a need and hauled water is used. And, when is that? Does that include almost every summer when the village needs hauled water? Does MCCSD have the authority to circumvent state water law by means of a self-declared emergency? Five of my contiguous neighbors are within MCCSD. When they are in "emergency," am I not also? When groundwater is so scarce that MCCSD is in "emergency," is not the groundwater at the project site, which is only a few steps from MCCSD, not also scarce? And, when is a fire emergency? Has the Commission been given the information to

answer such questions? Approval would mean an *ad hoc* control of rights to 48 AFY of scarce groundwater, and no one even knows who will have that control: MUSD, MCCSD, or the myriad of state, federal, local, and volunteer fire departments.

Water quantity and water need are further made indeterminate by the FSMND's statement (p. 1-3) that MCCSD's grant describes its need in terms of supplying 50 gallons per day for 855 residents and 2500 tourists. This not only greatly ups the amount needed, but it implies that emergency water will be available for commercial concerns. That implication flies in the face of Section 106 of the California Water Code: "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." Section 106 has been upheld by the court to apply to all public agencies in the state -- MUSD, MCCSD, and this Commission. Yet, the project places the commercial interests of restaurants and hostelries **within** MCCSD **above** the domestic uses **outside** its district, which are presumably protected by the County. In Mexico, from where we get our idea of public water, they say that we can live without gold but without water we die: *Sin oro se vive, sin agua se muere.*

III. Sufficiency

Not only does the Commission not know how much water will be withdrawn from the aquifer, but the application provides no study of how much water is available in the

ground. I use the concept of *availability,* as distinct from *adequacy of supply,* to mean sufficient to prevent resource depletion (sustainabilty) rather than enough water for the extraction rate. The Hydrogeological Report appended to the FSMND (Appendix A) is not a hydrological study of sufficiency nor a study of the project's hydrological impacts. It is an expanded pumping test of well #6 (an earlier MUSD project) mixed with some hydrogeological facts about Mendocino village -- a mile downstream from the proposed site -- and a "Water Budget" for an arbitrary area which includes the location of the present project but excludes areas downstream of the proposed well-field to the west where impacts would be the greatest, the wetlands of the Slaughterhouse Gulch watershed, for example. See Figure 18.

The "Water Budget" itself states (p. 16), "A full water budget is outside the scope of this report," but then it proceeds to discuss adequacy of supply. Yet, using the data the Report presents, one can make a very rudimentary and suggestive water budget simply by listing the amount of water that goes into the defined area and the amount of water that presently leaves the area, through extraction or flow. I have done this in Appendix II below. The result suggests quite strongly that the present situation is about balanced. There does not seem to be a large amount of excess water in the local aquifer.

One can reasonably, therefore, suspect that additional pumping by 10 or 11 new wells extracting who knows how much water will reduce (deplete) the aquifer, lower the water level, and increase local aridification.

Water scarcity in the immediate locality is historic, evidenced by an old water tower on Cummings Lane, the need for present residents to store water, my neighbor Norman de Vall's well going dry during the last drought, and my family's experience of losing our hand dug well after MUSD installed its first water wells in the 70s and having to drill a deeper well.

IV. Hydrological Study

The Staff Report follows the FSMND in claiming that pump testing the newly constructed wells will sufficiently protect the public. Pp. PC-11 and PC-12. The Commission, however, should look more closely at this mitigation.

The Memorandum of Understanding between MUSD and MCCSD sharing responsibility for this Project says that the Project's well development will follow the procedures of the MCCSD for new wells within its district. That standard is emphasized in the Staff Report for the Commission (p. PC-11) and supported by the inclusion of the MCCSD's regulations (Ordinance 2020-1) as Appendix D of the Hydrogeologic Report. Sections 4d and 4e of these rules for MCCSD's Extraction Permit state,

d. **Prior to Issuance of a Mendocino County Use Permit or a Coastal Development Permit**

Approval of a Groundwater Extraction Permit application shall be required prior to the issuance of a Mendocino County Use Permit or a Coastal Development Permit. No hydrological study shall be required prior to issuance of a Mendocino County Use Permit unless the project is a "new development", "change of use", or "expansion of existing use" that establishes an initial water demand on an undeveloped parcel or increases the water demand on a developed parcel.

e. **Prior to Issuance of a Mendocino County Building Permit**

Approval of a Groundwater Extraction Permit application shall be required prior to the issuance of a Mendocino County Building Permit. A Groundwater Extraction Permit application shall not be necessary prior to issuance of a Mendocino County Building Permit for minor repair and maintenance, such as painting, minor repairs to structures, and repair and replacement of roofs. No hydrological study shall be required prior to issuance of a Mendocino County Building Permit unless project is a "new development", "change of use", or "expansion of existing use" that establishes an initial water demand on an undeveloped parcel or increases the water demand on a developed parcel.

As far as I know the MCCSD has not approved an Extraction Permit for the wells in this project. It cannot according to Ordinance 2020-1 without a pump test. Is the Commission then barred from issuing a county use permit or a coastal development permit or a building permit? It seems that MUSD is applying prematurely, without the information the Commission should have for a decision. This is an impasse. The Commission should not act on this premature application.

This dilemma results from the refusal of the project planners to do a true aquifer study characterizing the local aquifer (specifically detailing the subsurface flow patterns which are extremely ambiguous at the location) in order to allow the Commission to judge sufficiency of water, depletion, and sustainability and to provide a basis for a water budget **prior** to the project being constructed. Without such information the project is not a project for emergency water but an experiment in looking for water. Drilling blindly puts the $5 million public moneys invested in this project at risk because of the high probability that it will violate California groundwater law if there is no excess water. How can the impact of this project on water resources be judged without a baseline against which its impacts can be compared?

Please do not confuse the Hydrogeologic Report appended to the FSMND – which is for well #6, the well drilled in a earlier MUSD project (CE 2020-0043) -- with the 9 or 10 new wells proposed in this present application. There can be no MCCSD mandated

pump test and hydrological study for these wells since they are yet to be drilled, but they cannot be drilled without the Commission's approval.

A true hydrological report (not a pumping test) must be made for this project **before** the project can go forward. That is to say, the MUSD must withdraw its Declaration and replace it with a full Environmental Impact Report. Whether the Commission has the authority to demand that, I do not know. But certainly, it can reject MUSD's application with the negotiated suggestion that it properly follow CEQA principles. The interested governmental bodies and the public require a just and thorough examination of impacts in order to judge the cost and benefits of any large project.

V. Excess Water

Whether there is sufficient groundwater for this project is crucial not just for the neighbors whose water might be stolen literally from under their feet, but it is crucial to the MUSD itself, since as a public body, its members have sworn specifically to uphold California water law. By case law, legislative law, and constitutional law, the use of groundwater **off-property** is illegal when there is no excess water. This has been established law since 1903 when the Supreme Court decided *Katz v. Walkinshaw* (141 Cal. 116). See Appendix III below for my survey of applicable law on this matter.

Nothing presented by MUSD in its Final Declaration suggests there is excess water. In fact, MUSD's Declaration suggests the opposite. The system is intended to provide emergency water. That means it operates only during drought, that is, during periods of insufficient groundwater to begin with. Further, its holding tanks, which might be filled during the rainy season, can only hold a few days of water for the village, thereby, necessitating pumping during periods of scarcity. FSMND, p. 1-3. Since the aquifer is shallow, MUSD says the storage capacity of the ground is very small. Basically, according to the Hydrogeologic Report, the area depends on rainfall. Unless MUSD can show that there is more water somewhere, it is hard to think that 10 or 11 new wells pumping perhaps 40 or 50 acre feet of water a year will be sustainable. Especially when one considers that local wells have a history of going dry already, without this new extraction.

Furthermore, the hydrological study imagined in MCCSD's Ordinance 2020-1is designed to address the problem of impacts on neighboring wells (adequacy of supply). It does not address the problem of excess water, which includes the concept of sustainability and sufficiency. A pumping well may not impact neighboring wells but be slowly depleting the aquifer in such a way as to permanently menace public welfare, violating public trust in MCCSD which is legally enjoined not to deplete the aquifer.

Excess water is important to me not only as a neighboring well owner who shares water with MUSD, but if the local aquifer is depleted, the wetlands and the headwaters of Slaughterhouse Gulch stream will certainly be damaged. The Staff Report notes that there will be a buffer to construction disturbance to protect the wetlands. P. PC-7. However, the threat to the wetlands comes not from surface disturbance but from reduction of underground water. The springs that feed this system, the Commission is told (p. PC-2), arise because impediments to underground flow push the groundwater up to the surface. What, then, happens to these springs if the groundwater level is lowered? Again, this is the kind of information a proper aquifer study would answer and the kind of information the Commission needs to judge the impact of this project.

Fifty years ago, when my family moved to Mendocino, the area where the new wells are to be located was marshy. Aridification has slowly taken place since – as the Bishop Pine dieback on my property attests -- and it is difficult not to see pumping groundwater from that now dry location as an acceleration of the process.

VI. Conclusion

Based on a mandated consideration of the need for sustainability of groundwater in the county, the distinction between sustainability and availability, and the legal need for demonstrating the existence of excess or surplus water at the project site, the Commission should not grant MUSD's request for a Coastal Development Use Permit for the construction of additional new

wells at its project site, conditionally or unconditionally. The Commission should request the applicant resubmit the application with sufficient information for the Commission to judge the long term hydrological impacts of the project by means of a modeling of the local aquifer, such modeling employing a model code which will allow determination of subsurface water flows not only in the saturated layer but also in the unsaturated vadose layer and its the root zone. The applicant should also be requested to provide sufficient information for the Commission to judge how much water will be needed, if there is to be a cap to the extraction or if the extraction will only be limited by the well-field's capacity, who will control the distribution of this water, and what role fire departments play in accessing the water.

APPENDICES

Appendix I: My Op-Ed in *Fort Bragg Advocate-News* and *Mendocino Beacon*, July 13, 2023 (Draft Version)

Last Wednesday at the K-8 about 30 people watched as the School Board enacted what used to be called a "tragedy of the commons." By a 3-0 vote the MUSD board approved their Final Subsequent Mitigated Negative Declaration. The Declaration is a CEQA step which advances MCCSD's project of adding 10 new wells on MUSD property across Little Lake from the K-8. Those wells will have a total capacity of 40,000 to 45,000 gallons a day, enough to supply every MCCSD member with 50 gallons of water a day. The Document declares that the project has no serious consequences for groundwater levels. It's an odd declaration given that it suggests there is a lot of water between Gurley and Cummings which water strapped local residents have never been able to find.

A few residents of Cummings questioned the board with their worries since they are not MCCSD members and fear their groundwater being trucked away. The board wholeheartedly sympathized and promised that it would act responsibly if push came to shove. It is, afterall, a small, localized issue, affecting perhaps a dozen people, but this little disturbance reflects larger water struggles all over the West.

Since I am one of the neighbors, my view is understandably narrow. I don't want my well to dry up. But as someone who has spent over a decade working on groundwater problems, I see issues of policy, administration, and law that will determine whether this over-pumped county and this overdrafted state will be able to apportion its scarce groundwater equitably and sustainably.

That larger issue is not whether a neighbor can legally, with bigger pumps and more wells, deprive me of my share of groundwater, because to a certain extent, they can. More complicatedly, the little ruckus is about whether a neighbor can do that not for their own use, but to convey it off-property to a third party who has overused their own water. Does that third party have a proper claim through my neighbor's rights to take the water underlying my land? If so, then, groundwater in this county or this state may not be sustainable. It's ultimately a matter of boundaries: MUSD's property boundaries and MCCSD's membership boundaries.

We once thought limited natural resources treated simply as shared and available-to-all would inevitably be doomed to destruction. Competition among users would exhaust the supply as some users will take a greater share because they can, thus shifting the cost to others. But, at the end of the last century, studies of communal use localities from across the world showed that when responsibility for the common resource was in the hands of the users themselves limited resources could be sustained. Elinor Ostrom won the Nobel Prize for that demonstration. California's Sustainable Groundwater Management Act enshrined that principle of local stakeholder management of water by mandating local water management agencies in areas of significant concern and encouraging their formations in others. The buzz words are: local governance, stakeholder management, sustainability, and community.

In theory, all the county's groundwater is under some local management, either the county Water Agency or under some special agency like municipalities, irrigation districts, the Ukiah Valley Basin Groundwater Sustainability Agency, or, in Mendocino, the MCCSD. The actual boundaries of the smaller, local agencies, do not matter as long as some agency is actively responsible for planning the long-term sustainability of its own groundwater throughout the county. Self-interest, presumably, merges with community interest to motivate preservation.

But curiously, those boundaries do matter once established, arbitrary as they are in dividing up a flowing and continuous body of groundwater. Sustainable water means you don't overuse what's within your boundaries. When a district plans a sustainable water future, it makes a water budget. Sustainable, means that you live within your budget: water in equals water out. On the coast, where the layer of saturated soil that holds the groundwater – the aquifer -- is quite thin, groundwater use should just about equal the rainfall. Otherwise, the aquifer gets depleted. What happens overall if a district goes outside its boundaries into a neighboring district to get water to balance its local budget? It takes water from another district that, if extracted within its own district, would amount to a further deficit.

That is now going to happen in Mendocino. MCCSD and its members will fill its needs from a few feet outside its area of responsibility for sustainabilty.

This action puts us back into the competitive dilemma of resource depletion, what rightly was called a "tragedy"; although the competition here is between districts rather than individuals, the shifting of costs to others is the same. That shift encourages overuse and a shirking of responsibility. The irony is that this is done in the name of sustainability and community.

The MUSD Board clarified for its audience that its primary intent was altruistic. All good people, it will offer its water to the community. But the problem is that the water is not theirs to give. Water is a commons. The fundamental recognition of that fact is our law that says water belongs to the people. That sounds vague and of no consequence, but it means specifically and clearly that no individual property owner owns the water under their land. MUSD's generous actions are based on an illegal taking of what is not theirs. MUSD's hubris is the same as those Kern County farmers who use all the groundwater they can pump because they think the water underground is theirs for the taking. But people means everyone, not just property owners who can drill wells on their property, and that is the sustaining beauty of this law.

Appendix II: Water Balance or Budget

The Hydrogeologic Report provides the following information on the 12.4 acre defined area: 28.3 AFY goes into the groundwater after the run-off is subtracted; 18 to 27 acre feet are evaporated off the vegetation into the atmosphere every year; and 180 AFY are said (without evidence) to be possibly flowing into this area's groundwater along the eastern surface of the aquifer. A quick glance might suggest plenty of water in the ground

But the report leaves out the amount of water that the wells in this defined area already withdraw every year. MUSD uses about 5 AFY, and there are 5 private wells in this defined area using, say 1 AFY each. More significantly, the report leaves out the amount of water flowing out of this area on its western side. That has to be sustained or we are into depletion, and therein lies the difference between adequacy and sustainability. An apparent present situation looks like this:

Water In:		Water Out:	
Rain minus runoff:	28.3 AFY	Evaporation off the vegetation:	18 to 27 AFY
		Present Usage:	10 AFY
Aquifer inflow:	180 AFY	Aquifer outflow:	[180 AFY]
Totals:	208.3 AFY		208 to 217 AFY

I have set the aquifer outflow to equal the presumed inflow in the interest of sustainability, maintaining the capacity of the aquifer to store a sustained amount of water. My little calculation was criticized by the MUSD team as being inaccurate since it left out the water inputted from septic systems. I have to reply that the criticism misses the point. The amount of water from 5 private leach fields is necessarily less than the amount of private extractions (i.e. less than 5 AFY), which is within the deviations of this exercise. Further, most leached water is evaporated directly or taken up by the vegetation in the root zone of the vadose layer above the aquifer: hardly any will go into the aquifer. This cursory calculation using the given data shows this area is neither becoming a swamp nor a desert; that is, we are neither rapidly gaining nor rapidly losing water in this area. There seems to be a relative balance or a slight loss of water capacity because we and the environment use about the same amount of water the heavens give us. But I do not see where the increased water consumption of the project can come from.

Appendix III: Applicable Water Law and Excess Water

I. The project described in MUSD's FSMND puts MUSD at legal risk because it potentially violates California water law. Only a proper sufficiency of water study and modeling of the local groundwater flows can reduce that risk.

II. The pertinent facts are the following:

- The project combines MUSD's original project with MCCSD's project Drought Tolerance Emergency Water Supply and Storage Improvements. FSMND, §1.1.
- MUSD and MCCSD are special agencies of the State of California. Memorandum of Understanding between the MUSD and the MCCSD (MOU), 4/20/2023.
- The project proposes extracting groundwater from the property of MUSD at 44020 Little Lake Road, Mendocino, CA. FSMND, §1.1.
- The record does not show MCCSD owns an interest in the property. MOU, Agreement 1.

- The property or point of diversion is located **outside** the MCCSD's area of authority. MCCSD Municipal Services Review and Sphere of Influence Update, Mendocino LAFCo Resolution No. 2020-21-01, adopted 8/3/2020, Fig.2-1a.
- The project proposes exporting water for use **off-property** to MCCSD's area of authority, from Gurley Lane westward. FSMND, §1.6.
- The project proposes extraction during official drought and during the seasons of least rainfall when the aquifer is most depleted; so that the negative impact is maximized. FSMND, §1.6.

III. The laws that govern are the following, many are foundational:

- All government agencies owning property agree to abide by California water laws in their use of the water to which that property gives access. CA Constitution art X §7.
- "All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law." California Water Code §102 (2022), *State of California v. Superior Court,* 93 Cal. Rptr. 2D 276. MUSD does not own the water under its property, and its use is constrained by law.
- The right to use water is limited by reasonable and beneficial use. Unreasonable use creates no rights of use. CA Constitution art X §2, CA Water Code §100 (2022).

- The reasonable use doctrine of the Constitution requires that "overlying" groundwater rights are "correlative" and "usufructuary" as defined by *Katz v. Walkinshaw* (141 Cal. 116). Landowners have rights to use groundwater underlying their property but only to enrich that overlying land (usufruct). That is to say, only excess water, that is water not needed by other correlative sharers of that water, can be transported off that property for use at a distance. **When there is no excess water, none of the underlying water can be used off-property.** See the analysis of the Constitutional meaning of "reasonable use" in *Peabody v. City of Vallejo,* 2 Cal. 2d 351. On excess or surplus water see *City of Pasadena v. City of Alhambra,* 33 Cal. 2d 908, at 925. On transporting water **off-property** see *Burr v. Maclay Ranch Water Co.*, 154 Cal. 128. Shockingly, during the CEQA process, MUSD's team dismissed these basic court stipulations as vague generalities.
- CA Water Code §113 (2022) mandates all water projects to be sustainable.

IV. MUSD has not shown that the local aquifer has excess water:

1. The County has classified the Mendocino area including the project site as "critical" in water resources, its most serious designation along the coast. Coastal Ground Water Resources, map produced by the Mendocino County Department of Planning and Building Services, March, 2015. P. PC-11.

2. The FSMND's Hydrogeologic Report says, "A full water budget is outside of the scope of this report." P. 16. Further, it admits that this aquifer has a "small storage capacity," indicating the delicacy of water balance.
3. The FSMND does not intend to achieve a water balance in the local aquifer. The word "sustainability" appears only 4 times in the FSMND, each time to say that a Groundwater Sustainability Plan is not needed. Without excess water the project is not sustainable. Presumably, the planners think that because the water is for "emergencies," the law need not be obeyed. However, the Commission needs to ask if a self-declared emergency is an emergency.
4. A cursory calculation of local water budget shows a near balanced baseline, without further extraction. See my Appendix II.
5. Nothing suggests the presence of excess water during official drought.
6. According to the data presented in the Hydrogeologic Report, the expected impact will be either a lowering of groundwater levels locally and/or a reduction of groundwater flow out of the localized area, making the extraction of possibly up to 48 AFY of groundwater unsustainable without even considering climate change. The Commission should not continence this depletion of groundwater. MCCSD's authority includes the specific charge to "reduce ground water extraction." See Letter to Ryan (Rhoades), 11-22-22, from Uma Hinman, EO, Mendocino LAFCo, on MCCSD's website. This project increases ground water extraction.

7. A history of well failures in the neighborhood and the presence of former water towers may evidence that the local aquifer lacks excess water. Both my immediate neighbor and myself have experienced well failures during prolonged droughts.

V. MUSD's legal liability can only be offset by a thorough demonstration that there is excess water locally. That hydrological study is beyond the scope of a Mitigated Negative Declaration. It can only be provided by a full Environmental Impact Report, because only an EIR's required aquifer study and modeling can provide the clarity and the details that allow the owners of the water, the public, to judge the merits of this project.

VI. "In the absence of contract or enactment, whatever it is reasonable for the owner to do with his sub-surface water, regard being had to the definite rights of others, he may do. . . . But to fit it up with wells and pumps of such pervasive and potential reach that from their base the defendant can tap the water stored in the plaintiff's land, and in all the region thereabout, and lead it to his own land, and by merchandising it prevent its return, is, however reasonable it may appear to the defendant and its customers, unreasonable as to the plaintiff and the others whose lands are thus clandestinely sapped, and their value impaired." *Forbell v. City of New York*, 164 N.Y. 522 and cited approvingly by the *Katz* court.

VII. I urge the Commission to reject MUSD's application and to ask it to pursue an EIR according to CEQA regulations. The project violates the spirit of CEQA which is to reasonably preview a project's impact precisely to prevent a "boots on the ground" situation.