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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
FALLBROOK PUBLIC UTILITY
DISTRICT, et al.,
Defendants.

No. 1247-SD-C
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INTERLOCUTORY JUDGMENT NO. 37
NAVAL ENCLAVE

FINDINGS OF FACT

1.

Lands of the United States
Within the Naval Enclave

The United States of America is the owner in fee simple of the lands which comprise Camp Pendleton, United States Naval Ammunition Depot and the United States Naval Hospital, all of which are referred to as the Naval Enclave. There follows a brief statement respecting the several tracts which comprise the Naval Enclave.

United States Ammunition Depot

The United States of America on January 21, 1942, by condemnation, acquired in San Diego County, California, fee simple title to the lands now constituting that segment of the

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1 Naval Enclave designated the United States Naval Ammunition
2 Depot which totals 9,147.55 acres, more or less, which lands
3 are more particularly described in the Decree on Declaration of
4 Taking recorded January 28, 1942, in Book 1311, page 1, Official
5 Records, San Diego County, California. The description of the
6 lands set forth in that Decree on Declaration of Taking is in-
7 corporated into these Findings and made a part of them by reference.

8 Camp Pendleton Marine Corps Training Base

9 The United States of America on December 31, 1942, by
10 Condemnation, in San Diego County, acquired fee simple title to
11 the lands now constituting that segment of the Naval Enclave
12 designated Camp Pendleton which totals 123,620 acres, more or
13 less, which lands are more particularly described in Decree on
14 Declaration of Taking, recorded January 9, 1943, in Book 1448,
15 page 192, Official Records, San Diego County, California. The
16 descriptions of the lands set forth in that Decree are incor-
17 porated into these Findings and made a part of them by reference.

18 The United States of America on December 23, 1943, by
19 condemnation acquired in San Diego County, California, fee simple
20 title to the lands now constituting that segment of the Naval
21 Enclave designated Camp Pendleton which totals 1,676.58 acres,
22 more or less, which lands are more particularly described in Decree
23 on Declaration of Taking, recorded January 11, 1944, in
24 Book 1618, page 90, Official Records, San Diego County, California.
25 The descriptions of the lands set forth in that Declaration on
26 Taking are incorporated into these Findings and made a part of
27 them by reference.

28 The United States of America on February 8, 1949,
29 acquired in Orange County, California, fee simple title to
30 112.11 acres, which were made a part of Camp Pendleton, which
31 lands are more particularly described in Association Grant Deed

1 within the Naval Enclave as follows:

2	<u>Date of Letter</u>	<u>Tract Described in Letter</u>
3	January 12, 1943	Acceptance of the 9,147.55-acre tract acquired January 21, 1942
4		
5	September 8, 1943	Acceptance of the 123,620-acre tract acquired December 31, 1942
6	February 18, 1944	Acceptance of the 1,676.58-acre tract acquired December 23, 1943.
7		

8 The record in this case fails to show that Letters of Acceptance
9 were filed with the California Governor covering the 1574.61-
10 acre tract, County of San Diego, withdrawn from the public
11 domain August 8, 1945, nor of the 112.11-acre tract acquired on
12 February 8, 1949.

13 The United States of America has never filed a plat of
14 the reservation, nor metes and bounds description of the Naval
15 Enclave pursuant to California Statutes of 1897, Chapter 56,
16 page 51, codified into Section 114, Government Code, in effect
17 until repealed September 19, 1947, by the California Statutes of
18 1947, Chapter 1532, page 3163; nor has the United States of
19 America made application to the California State Lands Commission
20 for consent to acquire the land comprising the Naval Enclave,
21 nor has the said Commission given its consent to such acquisition,
22 pursuant to section 126, California Government Code (California
23 Stats. First Extraordinary Session, 1946, Ch. 154, p. 199).

24 That the above facts present a substantial question of
25 law as to whether the United States of America has acquired
26 exclusive jurisdiction to the lands comprising the Naval Enclave.
27 That there is presently before the United States Supreme Court
28 the case of Paul v. United States, Case No. 239, October Term,
29 1961, wherein that Court may well decide on similar facts this
30 substantial question of law. Because of this fact, this Court
31 is not at this time entering conclusions of law on this question

1 of exclusive jurisdiction, but jurisdiction is hereby expressly
2 reserved to make such conclusions of law as such facts as found
3 herein warrant at such time as the above-entitled case now before
4 the United States Supreme Court becomes final. Such jurisdic-
5 tion may be exercised by this Court upon its own motion, or at
6 the request of the United States of America or any defendant
7 in this case.

8 4.

9 Watershed Boundary

10 The boundary of the watershed of the Santa Margarita
11 River within the Naval Enclave is set forth on the map, marked
12 Exhibit A, designated: "Physical Map of U. S. Naval Reservation
13 Within Santa Margarita River Watershed" which is attached to
14 these Findings of Fact and made a part of them by reference.
15 Within the Naval Enclave there are approximately 38,694 acres
16 which are within the Santa Margarita River watershed.

17 5.

18 National Defense.

19 The Naval Enclave is vital to the National Defense,
20 and in the development of the Enclave for purposes of National
21 Defense there has been expended by the United States of America
22 approximately \$200,000,000.00.

23 Construction of the Naval Enclave was initiated in
24 the year 1942; and the installations constituting it were com-
25 pleted to substantially their present size by the year 1945.
26 They were then, and have been at all times since, used for
27 purposes of National Defense.

28 6.

29 Location of Buildings and Installations.

30 Sixty per cent (60%) of the water use of the Santa
31 Margarita River within the Naval Enclave is used in or at

1 facilities, buildings and installations which were and are
2 planned and constructed and located outside of the watershed
3 of that River.

4 7.

5 Naval Enclave Uses

6 That it is the basic function of the Naval Enclave to
7 provide housing and training facilities for units of the Armed
8 Forces; to conduct training of units of the Armed Forces in
9 amphibious warfare and experimental work with landing craft,
10 landing vehicles, tracked and affiliated equipment of the
11 various units of the United States Marine Corps, including air-
12 ground support coordination, and use of artillery, tanks and
13 other equipment used in the conduct of modern amphibious and
14 land warfare. In addition to the aforementioned activities,
15 it is the function of Camp Pendleton to provide logistic support
16 for units of the United States Marine Corps together with
17 military maintenance and storage facilities for supplies and
18 equipment and to house and train replacements for subsequent
19 assignment to various operative units of the United States Marine
20 Corps.

21 The United States Naval Hospital, with a capacity of
22 approximately 1550 beds, established within the Naval Enclave,
23 provides medical and hospital services to personnel of the
24 Armed Forces, their dependents and other authorized personnel
25 stationed at approximately eighty-three Naval shore activities
26 located in the Southern California area and provides medical
27 and hospital care to personnel of units of the United States
28 Fleet.

29 The United States Naval Ammunition Depot provides
30 facilities for the storage, segregation, reconditioning and
31 issuing of ammunition for operating units of the United States

1 Fleet and the United States Marine Corps and maintains ammuni-
2 tion stocks for shore establishments of the United States Navy
3 located in the Southern California area. In addition, the Naval
4 Ammunition Depot stores and ships ammunition for use by combat
5 elements of the United States Navy and the United States
6 Marine Corps.

7 8.

8 Naval Enclave Population, Etc.

9 That the uses of the waters of the Santa Margarita River
10 by the United States of America on its Naval Enclave both
11 within and without the watershed other than for the maintenance
12 of a salt water barrier as set forth in Finding 29, and for irri-
13 gation are uses essentially municipal in character; that said
14 water is used to satisfy the needs of the population of the Naval
15 Enclave, both military and civilian; that said population has
16 averaged approximately 42,000 people per year. Testimony in
17 behalf of the United States which the Court credits shows that
18 based upon an estimated average water use of 200 gallons a day
19 per person 9,400 acre feet of water would have been required to
20 satisfy the needs of 42,000 persons per year. That in addition
21 to housing of Naval personnel, said Naval Enclave of the United
22 States of America provides housing facilities for dependents of
23 the Naval personnel, and since 1958 the number of such de-
24 pendants residing thereon has averaged approximately 5500
25 individuals annually; that in addition to the dependents of
26 said Naval personnel, limited numbers of civilians, not de-
27 pendants, are residing on said Naval Enclave.

28 The greatest number of persons requiring water within the
29 Naval Enclave during any past year was in 1944 when on a peak day
30 the military and civilian population on the Naval Enclave was
31 56,000 persons. Based on the same testimony in behalf of the

1 United States referred to above of an estimated average water
2 use of 200 gallons a day per person, 12,540 acre feet of water
3 would have been required to satisfy the needs of 56,000 persons
4 for one year.

5 From the records in this case it appears that not more
6 than 3620 acre feet of water was diverted from the Santa Marga-
7 rita River for military and civilian use in the Naval Enclave in
8 1944. The above apparent discrepancy is explained in part by
9 (1) the fact that 56,000 was a peak figure only, (2) approxi-
10 mately 3,000 acre feet of the water requirements were supplied by
11 water produced in the Naval Enclave outside the Santa Margarita
12 River watershed, and (3) in 1944 the Naval Enclave had not
13 completed its development and only minimal facilities existed.

14 In 1959 the Headquarters Marine Corps planning estimates
15 envisioned a total civilian and military annual population on the
16 Naval Enclave of 61,700 persons. Based on the estimated average
17 water use of 200 gallons per day per person, 13,800 acre feet of
18 water annually would be required to satisfy the water needs of
19 these 61,700 persons.

20 Based on an estimated average water use of 200 gallons
21 per day per person, there would be required 23,740 acre feet of
22 water annually to satisfy the water needs of the 106,000 persons
23 who would be on the Naval Enclave in the event of war and full
24 mobilization.

25 Based upon the most liberal estimate of the safe annual
26 yield of the waters within the younger alluvial deposits within
27 the Naval Enclave, to-wit: 10,000 acre feet, and the limited water
28 resources in the watershed, and the rights of others thereto, it
29 is apparent that the United States of America must satisfy the
30 increased water requirements resulting from:

31 - - - -

1 (A) the contemplated increased annual Naval Enclave
2 population to 61,700 persons and

3 (B) the 106,000 population of the Naval Enclave in the
4 event of full mobilization

5 by use of one or more of the following alternatives:

6 (1) the construction of a dam to capture flood waters
7 which would otherwise waste to the ocean,

8 (2) increasing the usable storage capacity of said
9 younger alluvial deposits by a physical barrier to prevent salt
10 water intrusion,

11 (3) importation of waters,

12 (4) condemnation or purchase of upstream water rights.

13 9.

14 Specific Types of Facilities Within the
15 Naval Enclave which use Waters of the
16 Santa Margarita River

17 That in order to provide for the welfare of the persons
18 living on the Naval Enclave as found above in Finding 8, a
19 variety of facilities exists thereon including, but not limited
20 to, the following:

21 a. Housing in barracks, single-family and multi-family
22 dwellings.

23 b. Messing and restaurant facilities.

24 c. Medical and dental facilities.

25 d. Recreational facilities including a golf course,
26 swimming pools, lake for boating, gymnasiums, tennis and hand-
27 ball courts, beach facilities, miscellaneous athletic and play-
28 ground facilities, and stables.

29 e. Theatres.

30 f. Libraries.

31 g. Churches.

h. Clubs and social facilities.

- 1 i. Schools
 - 2 j. Garbage and sewage and waste disposal facilities.
 - 3 k. Police facilities.
 - 4 l. Fire protection facilities.
 - 5 m. Transportation facilities.
 - 6 n. Railroad, truck and bus terminals.
 - 7 o. Retail trading facilities.
 - 8 p. Laundries and dry cleaning establishments.
 - 9 q. Warehousing and storage facilities for both mili-
10 tary and civilian goods.
 - 11 r. Clothing and shoe repair facilities.
 - 12 s. Garage and vehicle repair facilities.
 - 13 t. Ordnance and weapons repair facilities.
 - 14 u. Harbor and boat basin facilities.
 - 15 v. Aircraft and helicopter landing facilities.
 - 16 w. Salvage yard facilities.
 - 17 x. Barber shops and beauty shops.
 - 18 y. Rock crushing and bulk cement plants.
 - 19 z. Commercial vegetable and flower growing.
 - 20 aa. Commercial orchards.
 - 21 bb. Commercial grazing of livestock.
 - 22 cc. Greenhouses.
 - 23 dd. Private gardens.
 - 24 ee. Public gardens and landscaping.
 - 25 ff. Commercial vegetable packing.
 - 26 gg. Newspaper.
 - 27 hh. Vehicle washing facilities.
- 28 That all of the foregoing facilities derive their supply of water
29 from the Santa Margarita River; that there is no substantial dif-
30 ference insofar as water demand and uses are concerned, between
31 that which has existed and that which presently exists on the

1 Naval Enclave, from that required by a city of comparable
2 size.

3 10.

4 Area of Use of Santa Margarita River
5 Water Within Naval Enclave

6 That since the acquisition by the United States of
7 America of the lands comprising the Naval Enclave said United
8 States of America has used water in substantial amounts from the
9 Santa Margarita River. That said uses of said waters have been
10 for both military and agricultural purposes within the Santa
11 Margarita River watershed; that in addition to the use of the
12 waters of the Santa Margarita River within its watershed, the
13 United States of America has exported large quantities of
14 water from said River for both military and agricultural pur-
15 poses to areas within the Naval Enclave situated outside of the
16 watershed; that commencing with the water year 1942 the United
17 States of America has annually used waters of the Santa Marga-
18 rita River for military and agricultural purposes within and
19 without the Santa Margarita River watershed in the Naval Enclave
20 in the following amounts:

		<u>USE WITHIN WATERSHED</u>			<u>USE WITHOUT WATERSHED</u>		
		(In Acre Feet)					
WATER							
YEAR	MILITARY	AGRICULTURAL	TOTAL	MILITARY	AGRICULTURAL	TOTAL	
1942	*	700	*	*	1090	*	
1943	*	920	*	*	1440	*	
1944	1840	730	2570	1780	1150	2930	
1945	2040	610	2650	1940	950	2890	
1946	1800	920	2720	1730	1440	3170	
1947	1550	840	2390	1690	1310	3000	
1948	2030	1090	3120	1790	1710	3500	
1949	2150	880	3020	2060	1370	3430	
1950	1880	890	2770	2060	1380	3440	
1951	1830	630	2460	1990	990	2980	
1952	2100	560	2660	2280	870	3150	
1953	2440	680	3120	2660	1070	3730	
1954	2170	740	2910	2030	1150	3180	
1955	2390	740	3130	2340	1160	3500	
1956	2660	680	3340	2410	1070	3480	
1957	2430	600	3030	2470	940	3410	
1958	2460	460	2920	2390	730	3120	
1959	2510	670	3180	2850	1060	3910	
1960	2040	430	2670	2600	680	3280	

*No figures available.

1
2 Uses of Santa Margarita River by Rancho
3 Santa Margarita, and Legal Status of Use of
4 Waters Outside Watershed.

5 Historically and down to the date of acquisition by the
6 United States of America, the Rancho Santa Margarita, predecessor
7 in interest to the United States of America, made riparian uses
8 of the water within the watershed. Several thousand head of
9 cattle were watered and grazed year after year. Cultivated crops
10 were irrigated. The court does not make specific findings herein
11 as to these uses since they neither add to nor detract from the
12 riparian rights possessed and owned by the United States of
13 America.

14 That commencing with the irrigation season of 1937,
15 and continuing thereafter to the acquisition of the Naval Enclave
16 by the United States of America, gradually increasing amounts of
17 the waters of the Santa Margarita River were diverted to agricul-
18 tural uses outside of the watershed by the predecessor in interest
19 of the United States of America, reaching a maximum of 1090 acre
20 feet in the water year 1941-1942. None of such uses of the
21 waters of the Santa Margarita River outside the watershed as are
22 found to have existed in Finding 10 above or as carried on by
23 the predecessor in interest of the United States of America, have
24 been adverse or hostile to any defendant herein. None of the
25 uses of the waters of the Santa Margarita River outside the water-
26 shed of the Santa Margarita River as are found to have existed in
27 Finding 10 above or as carried on by the predecessor in interest of
28 the United States of America, have been made under any appropria-
29 tive right recognized by the Laws of the State of California.
30 All of the water uses outside the watershed of the Santa Margarita
31 River referred to in this finding and in Finding 10 above have
been made and are being made without sanction of any water right

1 recognized or provided by the statutes and laws of the State of
2 California.

3 12.

4 Character of Use by the United States
5 of Santa Margarita River Waters Outside
6 the Watershed, and Fact such Use is not
7 Unlawful.

8 All uses by the United States of America of the waters
9 of the Santa Margarita River within its watershed have been
10 and are reasonable and beneficial as to character of use. All
11 uses by the United States of America of waters of the Santa
12 Margarita River outside its watershed have been and are for
13 reasonable and beneficial purposes as to character of use, and
14 none of such uses by the United States of America are improper or
15 unlawful or have injured any party to this cause for the reason
16 that the United States of America is the last water user upon the
17 stream, and thus can use such waters of the Santa Margarita River
18 as are physically available upon or within its lands as it
19 chooses. All uses of water by the United States of America
20 within and without the Santa Margarita River watershed have
21 been conservative and well-managed.

22 13.

23 Santa Margarita River Surface Stream
24 Within the Naval Enclave

25 That Santa Margarita River enters the Naval Enclave in
26 the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 12, Township 9 South, Range 4 West,
27 S.B.M. cutting the northwest corner of Section 13, thence
28 diagonally across Section 14 where at the center of that section
29 it becomes the north and western boundary of the United States
30 Naval Ammunition Depot.

31 Situated in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, Town-
ship 9 South, Range 4 West, S.B.M. is an infiltration gallery

1 that consists of a pipeline laid normal to the stream bed
2 approximately on bedrock which discharges into a well from
3 which the waters of the Santa Margarita River are pumped there-
4 from and used to supply the United States Naval Ammunition Depot.

5 The River leaves section 14 and proceeds across sec-
6 tion 15, enters and leaves after a short distance in the $SE\frac{1}{4}$
7 of the $SE\frac{1}{4}$ of section 16, reenters section 15, thence traverses
8 the northwest corner of section 22, then proceeds diagonally
9 across section 21 and across the northwest corner of section 28,
10 from which point it no longer constitutes the boundary of the
11 Naval Ammunition Depot.

12 From that point where the surface channel of the
13 Santa Margarita River leaves the northwest corner of section 28
14 it proceeds southwesterly across section 29. In the $SE\frac{1}{4}$ of the
15 $SW\frac{1}{4}$ of section 29, DeLuz Creek has its confluence with the Santa
16 Margarita River. From that point the Santa Margarita River has
17 its course almost due south across section 32, Township 9 South,
18 Range 4 West, S.B.M.

19 Leaving section 32 the surface channel of the Santa
20 Margarita River proceeds across the northwest corner of Section 5,
21 Township 10 South, Range 4 West, in which is situated on the south
22 bank of the River the headworks of the Lake O'Neil diversion
23 ditch through which water is diverted from the Santa Margarita
24 River into Lake O'Neil, an off-channel artificial reservoir for
25 impoundment and use. Detailed Findings of Fact, Conclusions of
26 Law and Interlocutory Judgment No. 24 concerning said Lake O'Neil
27 have previously been entered in this cause.

28 After emerging in the $NW\frac{1}{4}$ of Section 32, Township 9
29 South, Range 4 West, S.B.M. as found above, the Santa Margarita
30 River enters a broad valley which is underlain with younger
31 alluvial deposits which are more particularly described in

1 Finding 19 hereinafter.

2 That said Santa Margarita River flows throughout the
3 NW $\frac{1}{4}$ of Section 5 Township 10 South, Range 4 West, S.B.M., enters
4 Section 6, Township 10 South, Range 4 West, S.B.M. and proceeds
5 almost due south across that section and into Section 7.

6 That said River proceeds southerly across section 7,
7 crosses the northwest corner of section 18, enters section 13,
8 Township 10 South, Range 5 West, S.B.M., proceeds diagonally
9 across that section, enters the northwest corner of section 24,
10 proceeds southwesterly across section 23 and almost due south
11 through sections 26 and 35, Township 10 South, Range 5 West.

12 Said River then proceeds in a southwesterly direction
13 across sections 2, 11, 10 and 9 all in Township 11 South, Range 5
14 West, S.B.M., proceeds through the Ysidora Narrows into a lagoon
15 area and thence to the Pacific Ocean.

16 The last twenty-one (21) miles of the Santa Margarita
17 River traverse the Naval Enclave. There are no other water users,
18 water right claimants or landowners other than the United States
19 of America on the Santa Margarita River downstream from the point
20 where that River enters the Naval Enclave as found herein.

21 14.

22 Surface Flow of Santa Margarita River.

23 That at that point as found hereinabove in Finding 13
24 where said Santa Margarita River enters the lands of the United
25 States of America, and throughout its course to the Pacific
26 Ocean under natural conditions, i. e., in a state of nature,
27 said River flowed on the surface or almost immediately there-
28 under; that the evidence in this case shows that under natural
29 conditions, i. e., in a state of nature, there existed generally
30 either surface streams or pools of water from that point to the
31 Pacific Ocean; that said surface waters were available to and

1 used by cattle; that even in those areas where there was no
2 visible surface flow or pools, the waters of said River were
3 almost at the surface and in many areas the ground was saturated
4 as evidenced by marshes and phreatophytes of a type which would
5 exist only where the waters within the ground were at or near
6 the surface. That in fact, the predecessor in interest of the
7 United States of America found such grasses and other native
8 vegetation to be suitable for stock grazing and most of the area
9 of the flood plain of the Santa Margarita River was by said
10 predecessor used for this purpose.

11 15.

12 Naval Enclave Condition in a State
13 of Nature, and Ground Water Levels

14 A water level within at least five (5) feet of the
15 surface of the ground is necessary to maintain such native cover
16 on the area referred to in Finding 14, and such native cover
17 consumed on the average approximately 1.2 acre feet of water
18 per acre per year. With the development of pumping and irriga-
19 tion within the Naval Enclave and upstream therefrom, the ground
20 water level, except for the lower portion of the Ysidora Sub-basin
21 and downstream therefrom, throughout most periods of the year has
22 declined to a depth greater than five (5) feet below ground sur-
23 face, and the pumping of waters from the younger alluvial deposits
24 (hereinafter determined to be a part of the Santa Margarita River)
25 within the Naval Enclave and the use of such waters both within and
26 without the said watershed has substantially contributed proxi-
27 mately to said decline in said ground water levels. That the
28 use of ground waters as presently practiced by the United States
29 of America within the Naval Enclave is such that it is impossible
30 to maintain the ground water level at an elevation sufficient to
31 support native vegetation upstream from the Ysidora ground water

1 storage unit in that the present uses of said ground waters by
2 the United States of America within the Naval Enclave are such
3 that those uses alone would, in most periods, result in the
4 ground water levels in the Upper and Chappo Sub-basins of the
5 younger alluvial deposits being lower than that required to
6 support native vegetation.

7 16.

8 Surface Flow of Santa Margarita River.

9 That the Santa Margarita River surface flow within the
10 Naval Enclave varies from year to year depending upon precipitation
11 and runoff and diversions within and upstream from the Naval En-
12 clave.

13 17.

14 Fluctuations of Surface Flow of
15 Santa Margarita River.

16 That the location of the surface flow of the Santa Mar-
17 garita River is upon the younger alluvial deposits referred to
18 hereinabove; that the area of surface flow thereon will fluctuate
19 considerably and it is not uncommon for the surface flow to shift
20 its position upon the younger alluvial deposits from year to year
21 or within each year during periods of substantial surface flow.

22 18.

23 Principal Causes of Fluctuations
24 of Rising Waters.

25 That in most years the Santa Margarita River does not
26 flow within the Naval Enclave as a surface stream downstream from
27 a point in section 5, Township 10 South, Range 4 West, S.B.M.
28 except during periods of substantial precipitation and runoff.
29 It may, in certain areas, flow intermittently in its course as
30 a surface stream, then disappear and flow underground, and then
31 again rise to the surface. That the points where the waters rise
32 to the surface and flow as a surface stream, over the younger

17

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1 alluvial deposits may vary considerably. That said variance in
2 points of rising surface flow is the result of pumping of the
3 waters contained in the younger alluvial deposits by the United
4 States of America, of pumping and diversions of the waters of the
5 Santa Margarita River and tributaries thereto upstream from
6 the Naval Enclave, and of fluctuations in precipitation and
7 consequent runoff.

8 19.

9 Younger Alluvial Deposits which Underlie
10 Santa Margarita River on Naval Enclave

11 That commencing at a point on the Santa Margarita River
12 just upstream from its confluence with DeLuz Creek and continuing
13 downstream to the confluence of said River with the Pacific Ocean
14 there are substantial younger alluvial deposits; that said
15 younger alluvial deposits are depicted on U. S. Exhibit 37 which
16 exhibit is herein incorporated and made a part of these findings
17 by reference; that said younger alluvial deposits were laid down
18 by the Santa Margarita River and deposition of material eroded
19 from the adjacent hills; that these younger alluvial deposits are
20 composed of sedimentary materials and have a relatively high water-
21 bearing capacity and permeability.

22 That said younger alluvial deposits as evidenced by
23 said U. S. Exhibit 37 vary in width within the Naval Enclave,
24 and for the sake of convenience in this case said younger
25 alluvial deposits have been referred to as sub-basins or ground
26 water storage units, and specifically in downstream order, the
27 Upper, the Chappo and the Ysidora Sub-basins or ground water
28 storage units.

29 In essence, the reason that said younger alluvial
30 deposits have been referred to in this case as the Upper, Chappo
31 and Ysidora Sub-basins or ground water storage units is that the

1 Upper Sub-basin evidences a substantial area of younger alluvial
2 deposits which are inter-connected to the Chappo Sub-basin by
3 a relatively narrow area of younger alluvial deposits in
4 Section 18, Township 10 South, Range 4 West, S.B.M., and the
5 Chappo Sub-basin is evidenced by a rather extensive area of
6 younger alluvial deposits which are connected to the Ysidora
7 Sub-basin by a relatively narrow area of younger alluvial
8 deposits in Section 26, Township 10 South, Range 5 West, S.B.M.
9 As found hereinafter, there is no barrier to ground water move-
10 ment between said designated sub-basins, and the younger
11 alluvial deposits which comprise these designated sub-basins
12 conform essentially, insofar as ground water movement is con-
13 cerned, to a surface stream which is wide in one area, narrows
14 in another and then widens again as it proceeds downstream.

15 The areal extent of these younger alluvial deposits
16 within the Naval Enclave is approximately 4680 acres. It varies
17 in surface widths from a maximum of two (2) miles in the Chappo
18 Sub-basin to its narrowest point of approximately one-quarter (1/4)
19 mile at the above-described Ysidora Narrows. By units the sur-
20 face area of the younger alluvial deposits are as follows:

21	Upper	960 acres
22	Chappo	2,640 acres
23	Ysidora	<u>1,080 acres</u>
24		4,680 acres

25 The surface area of these deposits is approximately
26 seven (7) square miles.

27 There is a relative degree of unanimity between the
28 evidence introduced by the United States of America and the State
29 of California representing the nature, characteristics, storage
30 capacity and usable storage capacity of said younger alluvial
31 deposits. Based upon that evidence it is found as follows:

1 Total storage capacity of the younger alluvial deposits
2 designated herein as the Upper, Chappo and Ysidora Sub-basins
3 is approximately 48,000 acre feet.

4 The usable storage capacity of the younger alluvial
5 deposits in each of the said designated sub-basins is approxi-
6 mately as follows:

7	Upper	10,000 acre feet
8	Chappo	15,000 acre feet
9	Ysidora	<u>1,200 acre feet</u>
10		26,200 acre feet

11 The usable storage capacity as set forth above is available for use
12 without affecting the maintenance of a salt water barrier as set
13 forth in Finding 29 hereinafter.

14 20.

15 Geologic Features Concerning Younger
16 Alluvial Deposits Which Underlie Santa
17 Margarita River within the Naval Enclave.

18 That the younger alluvial deposits as found in Finding 19
19 above, rest upon and are confined laterally by basement complex and
20 deposits of consolidated rocks; that these deposits of consolidated
21 rocks and basement complex are essentially non-water bearing and
22 are composed of considerably more compacted materials than the
23 younger alluvial deposits; that as a result thereof, ground waters
24 which are within the younger alluvial deposits do not move
25 laterally or vertically into said consolidated rocks and basement
26 complex but do in fact move through the younger alluvial deposits
27 in the identical direction as the surface flow of Santa Margarita
28 River or rise to the surface and flow as surface flow westerly
29 toward the confluence of that River with the Pacific Ocean; that
30 in the most westerly or downstream portion of the younger alluvial
31 deposits and downstream from and within section 2, Township 11
South, Range 5 West, S.B.M. there are, within said younger alluvial

1 deposits, deposits of fossil shells which were laid down by
2 marine action.

3 21.

4 Interconnection of Ground and Surface
5 Waters with the Younger Alluvial Deposits
6 Which Underlie Santa Margarita River.

7 That during such times as there is surface flow through-
8 out the course of the Santa Margarita River over the younger
9 alluvial deposits within the Naval Enclave the ground waters
10 within said younger alluvial deposits are in direct physical
11 contact with such surface flow. During such times as there is
12 no surface flow throughout the course of the River within the
13 Naval Enclave but only occasional surface waters at points where
14 ground waters contained within the younger alluvial deposits
15 have risen to the surface or the points where sewage effluent
16 has been discharged, such surface flows are nevertheless in
17 direct physical contact with the ground waters within the younger
18 alluvial deposits and said ground waters and surface flow move
19 in identical directions, i. e., westerly toward the Pacific Ocean.

20 22.

21 Ground Waters Within Younger Alluvial
22 Deposits Part of the Santa Margarita River.

23 That the deposits of consolidated rocks on each side
24 of the younger alluvial deposits and upon which said younger
25 alluvial deposits rest do in fact impede the ground waters from
26 moving out of the younger alluvial deposits and into the
27 consolidated rocks and do in fact act in the same manner as a
28 substantial impermeable bed and bank of a surface streamchannel;
29 that the ground waters within the younger alluvial deposits as
30 found herein are in fact in a known and definite channel, to wit,
31 the younger alluvial deposits, do in fact move in the same
direction as the surface flow, are in fact in direct contact

1 with the surface flow when it does flow, and do constitute that
2 water which rises to the surface and then disappears during
3 periods other than periods of considerable precipitation, and
4 said ground waters and said surface flow of the Santa Margarita
5 River are in fact one stream herein referred to as the Santa
6 Margarita River.

7 23.

8 Facts Concerned with Nature of Younger
9 Alluvial Deposits and Reliance on United States
10 of America Evidence for Surface Contact Line

11 That the vertical depth of the younger alluvial deposits
12 are depicted on U. S. Exhibit 39 which exhibit is incorporated
13 herein by reference.

14 That from that point where the Santa Margarita River
15 enters the broad valley underlain with younger alluvial deposits
16 as found in Finding 13 above and to the Pacific Ocean, there is a
17 steady increase in the depth of the younger alluvial deposits.
18 That this fact is shown on U. S. Exhibits 38 and 38B incorporated
19 herein by reference. That as shown on said exhibits just down-
20 stream from the point of confluence of DeLuz Creek with the Santa
21 Margarita River and at a land surface elevation of approximately
22 one hundred twenty-five feet (125') above sea level basement
23 complex is reached at a depth of approximately one hundred feet
24 (100') below land surface. Proceeding downstream, the depth
25 through the younger alluvial deposits to bedrock increases. In
26 portions of the Chappo Sub-basin the younger alluvial deposits
27 extend to a depth of approximately one hundred eighty feet (180')
28 below ground surface. In certain areas in the Ysidora Sub-basin
29 the younger alluvial deposits may well extend to an estimated
30 depth of approximately two hundred feet (200') below the surface
31 of the land.

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1 That throughout said younger alluvial deposits those
2 deposits feather out, i. e., show a gradual lessening in depth to
3 bedrock as they approach the areas of consolidated rock and
4 basement complex which are on either side of said younger allu-
5 vial deposits.

6 That the younger alluvial deposits are lenticular
7 in nature. While there is not complete uniformity, the younger
8 alluvial deposits generally consist of finer textured sand and
9 clay in the upper deposits of the Chappo and Ysidora Sub-basins
10 and at relatively shallow depths in the Ysidora Sub-basin lenses
11 of clay appear. That in the Upper Sub-basin there are substantial
12 deposits of gravel and sand near ground surface.

13 That throughout said younger alluvial deposits and
14 generally in the middle or lower portions there are substantial
15 deposits of cobbles and gravel.

16 Generally speaking, said U. S. Exhibits 38 and 38B
17 evidence differentiation between the deposits in the lower
18 member of the younger alluvial deposits as contrasted to those
19 in the upper member in that there are more deposits composed of
20 gravel and cobbles and gravel and sand in the lower member than
21 exist in the upper member and there are more deposits of clay,
22 sand and clay and silt in the upper member than exist in the lower
23 member.

24 That although the contact line on the surface between
25 the younger alluvial deposits and the deposits of consolidated
26 rock has not been determined with absolute exactness the deter-
27 mination of said contact line was sufficient for the United States
28 of America to prepare maps and exhibits showing said contact line
29 (including U. S. Exhibit 37) and said contact line as established
30 by said maps and exhibits prepared by the United States of
31 America has been accepted by this Court as being the contact

1 line between younger alluvial deposits and deposits of con-
2 solidated rock on ground surface.

3 24.

4 All Naval Enclave Producing Wells
5 Pump Waters of the Santa Margarita River

6 All presently producing wells which are drilled into
7 the younger alluvial deposits, as said deposits are depicted on
8 U. S. Exhibit 37, do not extend into the consolidated rocks which
9 lie beneath the younger alluvial deposits, but that all of such
10 wells are drilled into and their depth is within said younger
11 alluvial deposits, and that all of such wells pump waters of the
12 Santa Margarita River.

13 25.

14 Ground Water Contours Within Naval Enclave

15 That ground water contours within the younger alluvial
16 deposits within the Naval Enclave on or about October, 1957, are
17 depicted on U. S. Exhibit 45 which is incorporated herein by
18 reference. At the point of confluence of DeLuz Creek with the
19 Santa Margarita River the ground water elevation on the date
20 above-mentioned stood at or about one hundred thirty-five feet
21 (135') above sea level. The elevation of the ground water table
22 within said deposits as evidenced by said exhibit conformed
23 generally with ground surface downstream to the Pacific Ocean
24 and followed an approximately even downward gradient for the
25 entire length of said younger alluvial deposits to an elevation
26 of approximately five feet (5') above mean sea level at that
27 point where the Santa Margarita River enters the Ysidora Narrows.

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1

SEWAGE EFFLUENT DISCHARGES (Acre Feet)

2	Water	Plant	Plant	Plant	Plant	Plant
3	Year	No. 1	No. 2	No. 3	No. 8	No.13

3

4	1944			228.45		
5	1945			373.90		
6	1946			354.64		
7	1947			345.50		
8	1948			477.61		
9	1949			474.66		
10	1950			470.74		
11	1951			536.96		
12	1952	282.00	172.88	631.94		
13	1953	1171.74	866.93	681.48		
14	1954	1094.02	704.93	509.14	54.65	25.02
15	1955	1054.85	732.03	586.38	153.01	181.36
16	1956	1045.38	724.14	683.15	249.47	258.89
17	1957	843.98	788.50	588.05	243.07	225.87
18	1958	880.05	756.09	570.59	274.67	229.08
19	1959	693.81	707.44	440.10	204.98	422.03
20	1960	728.22	677.38	390.42	252.04	513.03
21	1961	761.55	709.68	337.85	311.74	414.76

22

23 The practices described hereinabove are commendable
 24 and by reason thereof the United States of America is making a
 25 most efficient use of the natural water supply.

26

27.

27 Water Conservation Practices Within
 28 the Naval Enclave

28

29 That the United States of America has diligently
 30 attempted to make the maximum and most efficient use of the
 31 waters available within the Naval Enclave, and in connection

1 therewith has constructed spreading works to increase the natural
2 percolation of surface waters into the younger alluvial deposits
3 and has entered into a comprehensive control of phreatophytes
4 and other water-loving vegetation, and the said conservation
5 practices have in fact resulted in the conservation of waters in
6 a substantial but undetermined amount.

7 28.

8 Salt Water Intrusion Downstream
9 From Ysidora Narrows

10 That the ground waters contained in the younger
11 alluvial deposits downstream from the Ysidora Narrows are
12 presently and have for many years been, as a result of salt water
13 intrusion, brackish and unfit for agricultural or domestic use;
14 that none of said waters have been used in recent times; that
15 said salt water intrusion below said Ysidora Narrows has not been
16 caused by any wrongful act of any defendant in this cause and there
17 is no known practical method whereby said salt water intrusion
18 in said area downstream from Ysidora Narrows can be corrected
19 so as to permit the beneficial use of the waters contained in
20 said younger alluvial deposits downstream from said Ysidora Nar-
21 rows for agricultural or domestic use.

22 29.

23 Maintenance of Fresh Water Barrier, and
24 Salt Water Intrusion Upstream from
25 From Ysidora Narrows

26 Approximately two-thirds (2/3) of the younger alluvial
27 deposits which underlie the Santa Margarita River within the
28 Naval Enclave are below sea level. As a consequence, to prevent
29 salt water intrusion, the United States of America has found it
30 necessary to maintain the water levels in the Ysidora segment of
31 of those deposits at a minimum elevation of five (5) feet above
sea level in order to prevent the waters of the Pacific Ocean

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1 recharge program consisted of spreading sewage effluent over said
2 deposits and of constructing and operating spreading works in
3 combination with an extensive program of eradicating phreatophytes
4 and other water-consuming vegetation. That substantial amounts
5 of the sewage effluent used to recharge the younger alluvial de-
6 posits was effluent from waters of the Santa Margarita River which
7 had been diverted outside of its watershed as found hereinabove;
8 as a result of said water conservation policies salt water intru-
9 sion into the younger alluvial deposits above Ysidora Narrows
10 has ceased and for approximately five (5) years there has been
11 no further salt water intrusion above said Ysidora Narrows.
12 That these practices are commendable and have contributed to the
13 efficient use of the waters of the Santa Margarita River and its
14 tributaries. That the United States of America has now resumed
15 limited pumping from said younger alluvial deposits above said
16 Ysidora Narrows.

17 31.

18 Defendants Did Not Wrongfully
19 Cause Salt Water Intrusion

20 That no past or present wrongful act of any defendant in
21 this case caused or now threatens to cause salt water intrusion
22 into any waters of the Santa Margarita River upstream from
23 Ysidora Narrows.

24 32.

25 Amount of Ground Water Movement through
26 Ysidora Narrows.

27 That in a state of nature, approximately 100 acre feet of
28 ground water per year passed through the younger alluvial deposits
29 within the Ysidora Narrows and out of the Ysidora Sub-basin. Sub-
30 sequent to the year 1956 when salt water intrusion was abated,
31 the quantity of ground water passing from the Ysidora Sub-basin
32 has been restored substantially to what it was in the state of nature.

1 Lands Riparian to Santa Margarita River.

2 That the following referred to lands are riparian
3 to the Santa Margarita River, said lands being held under
4 one chain of title a part of which abuts upon or is traversed
5 by the Santa Margarita River.

6 A. That portion of the 123,620 acres, more or
7 less, acquired by the United States of America on
8 December 31, 1942, by condemnation, in San Diego
9 County which are within the Santa Margarita River
10 watershed.

11 B. Approximately 1,705.3 acres which are a
12 portion of the 9,147.55 acres, more or less, which
13 were acquired by the United States of America on
14 January 21, 1942, by condemnation, in San Diego County;
15 said 1,705.3 acres being within the watershed of
16 the Santa Margarita River and from which the waters
17 thereon, in a state of nature, drain into the Santa
18 Margarita River within the limits of the Naval Ammuni-
19 tion Depot.

20 That the lands referred to hereinabove are depicted
21 on Exhibit A attached hereto.

22 That in addition to the lands specifically referred to
23 above, all of that part of the 9,147.55 acres, more or less,
24 within the Santa Margarita River watershed which comprise the
25 Naval Ammunition Depot were at the time of their transfer to
26 the United States of America on January 21, 1942, riparian
27 to the Santa Margarita River being held under one chain of
28 title which included lands traversed by the Santa Margarita
29 River throughout its course to the Pacific Ocean.

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1 That at the time of the transfer of said 9,147.55 acres
2 more or less to the United States of America it was fully con-
3 templated by the United States of America and the Rancho Santa
4 Margarita that water would be diverted from the Santa Margarita
5 River to certain areas within the sub-watershed of Fallbrook
6 Creek for the purpose of use by the United States Ammunition
7 Depot.

8 This Court finds that there was an implied transfer
9 and conveyance to the United States of America of the riparian
10 right of the Rancho Santa Margarita to use the waters of
11 the Santa Margarita River for the limited purpose of use in
12 connection with the physical facilities of the United States
13 Naval Ammunition Depot which are located upon lands within
14 the Southeast Quarter ($SE\frac{1}{4}$) of Section 22, South Half ($S\frac{1}{2}$) of
15 Section 23, those portions of Sections 24 and 25 westerly of
16 the Naval Ammunition Depot boundary, all of Section 26, the
17 East Half ($E\frac{1}{2}$) of Section 27, North Half ($N\frac{1}{2}$) of the North-
18 east Quarter ($NE\frac{1}{4}$) of Section 34, the North Half ($N\frac{1}{2}$) of the
19 Northwest Quarter ($NW\frac{1}{4}$) of Section 35, all in Township 9
20 South, Range 4 West, S.B.M., and for fire protection purposes
21 elsewhere within the limits of the Naval Ammunition Depot.

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34.

DeLuz Creek Surface Stream and Younger Alluvial Deposits Thereunder

That DeLuz Creek is an intermittent surface stream which has its confluence with the Santa Margarita River in the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 29 Township 9 South, Range 4 West, S.B.M.; that immediately upstream from its confluence with the Santa Margarita River, and for a distance of approximately four (4) miles, said surface flow of DeLuz Creek, when in fact it flows on the surface, flows over an area of younger alluvial deposits of considerable depth; that said younger alluvial deposits are depicted on United States Exhibits 67 and 68 incorporated herein by reference.

That DeLuz Creek enters the Naval Enclave at the North boundary of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 8, Township 9 South, Range 4 West, S.B.M., and proceeds in a southerly direction over sections 17, 20 and 29 to its point of confluence with the Santa Margarita River as found hereinabove.

35.

Geologic Factors Concerning Younger Alluvial Deposits which Underlie Surface Stream of DeLuz Creek Within Naval Enclave

That said younger alluvial deposits referred to in Finding 34 above rest upon and are confined laterally by deposits of basement complex. There are ground waters within said younger alluvial deposits, the source and recharge of which are primarily the surface flow of DeLuz Creek. The said younger alluvial deposits are composed of sedimentary materials of a relatively high water-bearing capacity and permeability, and the deposits of basement complex are essentially non-water bearing and relatively

1 impervious. As a result, the waters within said younger alluvial
2 deposits do not move laterally or vertically into the deposits
3 of basement complex, but do in fact move through the younger
4 alluvial deposits in the identical direction of the surface flow
5 of DeLuz Creek when in fact it exists. During such times when
6 DeLuz Creek flows as a surface stream, that is, during and after
7 periods of precipitation, the ground waters contained in said
8 younger alluvial deposits are in direct contact with said surface
9 flow. During all other times DeLuz Creek does not flow as a sur-
10 face stream within the Naval Enclave, but disappears underground
11 and during such periods the ground waters within the younger
12 alluvial deposits do in fact constitute the waters of DeLuz Creek.

13 36.

14 Ground Waters Within Younger Alluvial
15 Deposits are a part of DeLuz Creek

16 That the ground waters within the said younger alluvial
17 deposits are in fact in a known and definite channel, to wit,
18 the basement complex containing the younger alluvial deposits;
19 that said ground waters do in fact flow in the same direction
20 as the surface flow of DeLuz Creek when in fact it physically
21 flows, are in direct contact with said surface flow, and said
22 groundwaters and said surface flow constitute one creek herein
23 referred to as DeLuz Creek.

24 37.

25 Lands Riparian to DeLuz Creek

26 That the following referred to lands are riparian to
27 DeLuz Creek, said lands being held under one chain of title a
28 part of which abuts upon or is traversed by DeLuz Creek:

29 A. Southeast Quarter of the Southwest Quarter; Southwest
30 Quarter of the Southwest Quarter; West Half of the Northeast Quarter;
31 Northeast Quarter of the Southeast Quarter; Southwest Quarter of

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1 the Southeast Quarter; and, Northwest Quarter of the Southeast
2 Quarter of Section 8, Township 9 South, Range 4 West, San Ber-
3 nardino Base and Meridian. 267.74 acres, more or less.
4 Fractional North Half of Northwest Quarter of Section 17, Town-
5 ship 9 South, Range 4 West, San Bernardino Base and Meridian.
6 40.81 acres, more or less.

7 B. That portion of the 123,620 acres, more or less,
8 acquired by the United States of America on December 31, 1942,
9 by condemnation in San Diego County which are within the sub-
10 watershed of DeLuz Creek; said lands referred to in this sub-
11 paragraph B. being depicted on Exhibit A attached hereto.

12 38.

13 Continuing Jurisdiction to Determine Extent
14 of Younger Alluvial Deposits and Reliance
on U. S. Exhibits

15 While it is known, definite and certain that the younger
16 alluvial deposits as found in Finding 34 above, rest upon de-
17 posits of basement complex, it is not known with certainty the
18 exact depth of said younger alluvial deposits to their contact
19 with said basement complex throughout said area. As this Court
20 will keep continuing jurisdiction of this cause, jurisdiction is
21 reserved to determine such a fact if it becomes necessary to do
22 so in any particular factual situation which might arise in the
23 future. The contact line on the surface between said younger
24 alluvial deposits and said basement complex has not been deter-
25 mined with absolute exactness, but has been determined to a suffi-
26 cient degree for the United States of America to prepare maps and
27 exhibits delineating said contact line (including U. S. Exhibit 67)
28 and said contact line as established by said maps and exhibits pre-
29 pared by the United States of America has been accepted by this
30 court as being the contact line between the younger alluvial
31 deposits and the basement complex deposits on ground surface.

1 flow primarily over consolidated rocks and basement complex,
2 there are limited areas in which shallow alluvial deposits underlie
3 the stream channel. In all such cases such shallow alluvial de-
4 posits rest upon and are laterally contained by deposits of con-
5 solidated rock or basement complex and the ground waters contained
6 in such alluvial deposits are in direct physical and hydrologic
7 contact with the surface flows, at such times as there are surface
8 flows, in all of said creeks, gullies or watercourses. The ground
9 waters contained in such shallow alluvial deposits, if any, are in
10 a known and definite channel, to wit, the younger alluvial deposits,
11 and such ground waters and surface flows as may exist do in fact
12 constitute a single creek, gully or watercourse.

13 42.

14 Jurisdiction Reserved as to Said
15 Creeks, Gullies, etc.

16 That said small creeks, gullies or watercourses have not
17 been considered in detail herein, nor has any party to this cause
18 requested detailed findings thereto; that as this judgment is
19 interlocutory, should the United States of America or any party
20 to this cause desire such detailed findings as to such small
21 creeks, gullies or watercourses, this court will do so prior to
22 the entry of final order and decree upon such a request; that if no
23 such request is made, the location of such creeks, gullies or
24 watercourses are depicted on U. S. Exhibits 29A, 29B, 29C, 29F,
25 29G and 29H incorporated herein by reference, and this court can
26 in the future refer to said exhibits to determine any controversy
27 which may arise as to such waters.

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2 Minor Surface Impoundments.

3 That in addition to Lake O'Neil, which is the subject
4 of Interlocutory Judgment No. 24, there are within the Naval
5 Enclave and within the watershed of the Santa Margarita River,
6 many structures used for the impoundment of surface runoff for
7 the purpose of providing stock water, or to encourage ground
8 water recharge, or for purposes of soil conservation, recreation
9 or other beneficial purposes. There is no evidence that any of
10 such structures or impoundments presently constitute an un-
11 reasonable, wasteful or non-beneficial use of water. None of
12 such structures or impoundments have been constructed or are
13 maintained under the authority of any Permit or License of the
14 State of California, and none of such structures or impoundments
15 have been maintained adversely to any party to this cause.

16 That these minor surface impoundments as described in this
17 Finding are of the same type as those considered in Findings of
18 Fact, Conclusions of Law and Interlocutory Judgment No. 28.
19 (Miscellaneous Surface Impoundments).

20
21 Effect of Such Minor Surface Impoundments.

22 That all such structures and impoundments as are
23 described in Finding 43 above intercept surface runoff of waters
24 of the Santa Margarita River System, which runoff would in a
25 state of nature contribute to the Santa Margarita River; that
26 while the impact of any such individual impoundment on the availa-
27 ble water supply of the Santa Margarita River is at present
28 de minimis, the cumulative effect of such structures and impound-
29 ments may at a future date become substantial and require regula-
30 tion or control.

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1 45.

2 Vagrant, Local, Percolating Waters and
3 Surface Waters Other Than Those Herein
4 Found to be a Part of a Specific River
5 or Creek

6 That all ground waters within the Santa Margarita River
7 watershed and contained within deposits of consolidated rocks,
8 weathered basement complex or basement complex, as depicted on
9 U. S. Exhibits 37, 67 and 70, and within the Naval Enclave,
10 are vagrant, local, percolating waters not a part of the Santa
11 Margarita River or any tributary thereto; that all surface
12 waters which flow upon the deposits of consolidated rock,
13 weathered basement complex or basement complex on the lands
14 comprising the Naval Enclave within the Santa Margarita River
15 watershed are a part of the Santa Margarita River or a tributary
16 thereto.

16 46.

17 Future Jurisdiction.

18 That the United States of America by bringing this
19 action has submitted to the jurisdiction of this Court and to the
20 continuing jurisdiction of this Court in this cause, and all
21 rights claimed to the use of the waters of the Santa Margarita
22 River and its tributaries and all rights claimed to the use of
23 the waters which add to and support the Santa Margarita River
24 and its tributaries by the United States of America and all
25 defendants in this case and by their heirs, successors and assigns
26 shall be and are subject to the continuing jurisdiction of this
27 Court.

28 47.

29 Stipulation as to California Law.

30 On November 29, 1951, the United States of America
31 and the State of California entered into a written stipulation

38

1 in this case which provided as follows:

2 "On the 15th day of August, 1951, the People of
3 the State of California, in accordance with invitation
4 of the United States of America, petitioned this Court
5 to intervene in this litigation. On that date an
6 Order was allowed and entered by this Court granting
7 the Petition.

8 "For the clarification of the issues in this
9 litigation and for the benefit of all of the parties to
10 this cause, it is hereby stipulated:

11 "I

12 "That in Paragraphs VIII and IX of plaintiff's
13 Complaint herein, and in Paragraph 2 and 3 of the Prayer
14 of this Complaint, the word 'paramount' is used in the
15 same sense in which that word is used in the second para-
16 graph, on page 374 of the opinion of the Supreme Court
17 of California, in the case of Peabody v. Vallejo, 2 Cal.2d
18 351 (fourth paragraph on page 494, 40 Pac.2d 486).

19 "II

20 "That in this cause, the United States of America
21 claims only such rights to the use of water as it acquired
22 when it purchased the Rancho Santa Margarita, together
23 with any rights to the use of water which it may have
24 gained by prescription or use, or both, since its acquisi-
25 tion of the Rancho Santa Margarita.

26 "III

27 "That the United States of America claims by reason
28 of its sovereign status no right to the use of a greater
29 quantity of water than is stated in Paragraph II, hereof.

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"IV

"That the rights of the United States of America to the use of the water herein are to be measured in accordance with the laws of the State of California.

"V

"That the parties to this Stipulation will request the entry of a Pre-trial Order by this Court defining the issues in this cause, in conformity with the statements contained in this Stipulation.

"VI

"That there will be a full, complete and mutual exchange of data and information as to the subject matter of this cause collected by the respective parties to this Stipulation, including data respecting the issuance of any permits or licenses issued by the State of California in connection with the rights to the use of water of the Santa Margarita River. Such exchange of information by the United States will be subject to clearance by the Commanding Officer, Camp Joseph H. Pendleton, in respect to military security, as determined by said officer:

"Dated: November 29, 1951.

"ERNEST A. TOLIN
United States Attorney
BETTY MARSHALL GRAYDON
Assistant United States
Attorney
WILLIAM H. VEEDER,
Special Assistant to the
Attorney General of the
United States
by
WILLIAM H. VEEDER
WILLIAM H. VEEDER

EDMOND G. BROWN
EDMOND G. BROWN, Attorney General
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B. ABBOTT GOLDBERG
B. ABBOTT GOLDBERG
Deputy Attorney General
Attorneys for the People of the
State of California"

That on April 7, 1958, this Court entered its Order permitting the United States of America to file a Complaint and Supplementary and Amendatory Complaint. That in said Supplementary

1 and Amendatory Complaint the United States of America realleged
2 and reaverred each and every allegation in the original Complaint
3 including paragraphs 8 and 9 of said original Complaint.

4 48.

5 Authorization for Stipulation

6 That counsel for the United States of America in this
7 case had authorization to enter into the Stipulation set forth
8 above in Finding 47 and his action in so doing was authorized,
9 ratified and approved by the Attorney General of the United
10 States and the Department of Justice.

11 49.

12 Certain Parties Agree to be Bound
13 by the Stipulation

14 That during the trial of this cause said Stipulation
15 referred to above in Finding 47 was joined in and consented to
16 by counsel for defendants, Fallbrook Public Utility District
17 and Vail Company.

18 50.

19 California Law Binds All Parties
20 to this Case

21 That this case has been tried before this Court on
22 the theory that the rights to the use of the waters of Santa Mar-
23 garita River and its tributaries and the rights to the use of
24 waters which add to and support said River and its tributaries
25 shall be determined by California law as to the plaintiff and all
26 defendants in this cause. That, therefore, by so proceeding upon
27 this theory before this Court, all parties to this action not
28 parties to the Stipulation referred to in Finding 47 above,
29 and not defendants who expressly joined in and consented to said
30 Stipulation as set forth in Finding 49 above, have impliedly, by
31 their conduct in this case, assented to the substance of said

41

1 Stipulation; and their rights and the rights of all parties in
2 this case shall be and are determined by the laws of the State
3 of California.

4 That notwithstanding said Stipulation set forth in
5 Finding of Fact 47 above, there is no Federal water law as such
6 and of necessity this Court would be required to determine the
7 rights of all parties to the use of the waters of the Santa
8 Margarita River and its tributaries and to the use of the waters
9 which add to and support said River and its tributaries, pursuant
10 to the applicable laws of the State of California.

11 51.

12 Opinion Construing Stipulation

13 That heretofore this Court entered an Opinion dated
14 August 8, 1958, reported in United States of America v. Fall-
15 brook Public Utility District, et al., 165 Fed.Supp. 806, which
16 concerned the meaning, application and scope of the Stipulation
17 referred to in Finding of Fact 47 hereinabove, and also certain
18 pre-trial rulings. That to the extent that said Opinion is
19 not inconsistent with any finding entered herein, all rulings
20 as are set forth in said Opinion are adopted herewith.

21 52.

22 Prima Facie Evidence

23 That on Exhibit B attached to and made a part of
24 these findings there appear certain factual statements con-
25 cerning lands of the United States of America within the Naval
26 Enclave which concern such matters as wells, surface diver-
27 sions, gross acreages, ~~irrigated acreages~~, irrigable acreages
28 and water duty. Said factual statements which pertain to
29 wells and surface diversions are as of the date of this Inter-
30 locutory Judgment true. The factual statements contained in
31 said Exhibit B which pertain to gross acreages, ~~irrigated~~

1 ~~acres~~, irrigable acreages and water duty are based on evi-
2 dence introduced in this case by the United States of America
3 with an express assurance by its counsel that apportionment
4 was not being sought at this stage of the litigation. Because
5 of this fact and the fact that this Court is not at this time
6 making any Order apportioning or regulating the use of the
7 waters involved herein, said facts pertaining to gross acreages,
8 ~~irrigated acres~~, irrigable acreages and water duty are not
9 material to any issue decided by Interlocutory Judgment No. 37
10 entered herewith. That in the exercise of this Court's
11 continuing jurisdiction in this cause said facts may well
12 be material to an issue presented to this Court in the future;
13 therefore, this Court finds that such factual statements which
14 are contained in said Exhibit B which pertain to gross acreages,
15 ~~irrigated acres~~, irrigable acreages and water duty are sup-
16 ported by the evidence in this case and such factual statements
17 shall be prima facie evidence as to gross acreages, ~~irrigated~~
18 ~~acres~~, irrigable acreages and water duty in any subsequent
19 proceedings before this Court in this cause; as used herein prima
20 facie evidence is that which suffices for the proof of the parti-
21 cular fact until contradicted or overcome by other evidence.

22 53.

23 Reference to Interlocutory Decree No. 25

24 That this Court has previously entered Findings of Fact,
25 Conclusions of Law and Interlocutory Decree No. 25 pertaining
26 to a State court judgment in the case of Rancho Santa Margarita
27 v. Vail, et al., Case No. 42850 in the records of the Superior
28 Court of the State of California, in and for the County of
29 San Diego.

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Revocable Permit to Fallbrook Public Utility District

When the United States of America acquired the Rancho Santa Margarita there was in force and effect a revocable license executed in 1932 by the Rancho Santa Margarita and approved by the Vail Company, allowing the Fallbrook Public Utility District to pump from the Santa Margarita River at a point immediately upstream from the Rancho's eastern boundary a maximum of ten (10) miner's inches of water for domestic purposes. When the United States of America acquired the Rancho Santa Margarita, Fallbrook Public Utility District neither owned nor claimed any rights to the use of waters of the Santa Margarita River. In 1946 and 1947, the Fallbrook Public Utility District filed with the State of California applications to appropriate rights in the stream, as more particularly described in Interlocutory Judgment No. 23. In 1948, the United States of America cancelled Fallbrook's revocable license.

CONCLUSIONS OF LAW

1.

The United States of America is the owner of the lands described in Finding of Fact No. 1 herein.

2.

Based on the facts as set forth in Finding of Fact No. 3, jurisdiction is reserved by this Court to enter further Conclusions of Law either on its own motion or upon the motion of the United States of America or any defendant in this cause on the issue of whether the United States of America has exclusive jurisdiction over the lands or any portion thereof comprising the Naval Enclave.

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3.

All uses of the waters of the Santa Margarita River by the United States of America within the Naval Enclave and both within and without the watershed of the Santa Margarita River, other than uses for stock watering, irrigation and sub-irrigation, and the maintenance of a fresh water barrier to prevent salt water intrusion are as to their characteristics municipal uses.

4.

That except as provided in Interlocutory Judgment No. 24 (Lake O'Neil), the United States of America has not established nor obtained nor does it own or possess any appropriative rights to use the waters of the Santa Margarita River or its tributaries on any lands of the Naval Enclave.

5.

That the United States of America has not established nor does it own or possess any prescriptive right to the use of the waters of the Santa Margarita River or any tributaries thereto, on any lands of the Naval Enclave.

6.

That the acts of the predecessor in interest of the United States of America in exporting waters from the Santa Margarita River without the watershed were not adverse or hostile as to any upstream landowner or water user or water-right claimant and said acts did not result in said predecessor obtaining a prescriptive right to the use of any water of the Santa Margarita River, or its tributaries.

That such waters exported outside the watershed of the Santa Margarita River by the predecessor in interest of the United States of America were either surface waters or waters within a known and definite channel and part of the underground flow of the Santa Margarita River, and as all such exportations of

1 such waters occurred subsequent to the year 1937, such exporta-
2 tions were not made under any appropriative right recognized by
3 the laws of the State of California.

4 7.

5 That the continued use by the United States of America
6 of the waters of the Santa Margarita River, as the same have been
7 defined in the Findings herein, within the boundaries of the
8 Naval Enclave, but outside the watershed of the Santa Margarita
9 River, will not in the future give rise to any right to the use
10 of water enforceable against any upstream appropriator
11 prescriptor, riparian or overlying owner.

12 8.

13 That except as to uses of the waters of the Santa
14 Margarita River to maintain native vegetation and grasses and
15 as provided in Interlocutory Judgment 24 (Lake O'Neil) all uses
16 of the waters of the Santa Margarita River by the United States
17 of America within the Naval Enclave and within the watershed of
18 the Santa Margarita River, are reasonable and beneficial ripa-
19 rian uses. That all uses of the waters of the Santa Margarita
20 River by the United States of America within the Naval Enclave,
21 but outside the watershed of the Santa Margarita River, are
22 beneficial uses, and are proper uses in that the United States of
23 America is the last water user on the stream, and for that
24 reason the use of waters outside the watershed does not injure
25 any other party to this cause.

26 9.

27 That at the present status of this case, the issue of
28 apportionment or the quantity or proportion of waters to which
29 any lands are entitled has not been presented; and this Court
30 has taken no evidence directed to establishing whether any water
31 uses pursuant to correlative riparian rights are reasonable or

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15.

That the Stipulation as set forth in Finding 47 has at all times since November 29, 1951, been in full force and effect and the provisions thereof binding on the United States of America and the State of California.

16.

That heretofore this Court entered an opinion dated August 8, 1958, reported in United States of America vs. Fallbrook Public Utility District, et al., 165 F.Supp. 806, which concerned the meaning, application and scope of the Stipulation set forth in Finding 47, and certain pre-trial rulings. That to the extent said Opinion is not inconsistent with any Finding of Fact or Conclusion of Law entered herein, said rulings of law pertaining to said Stipulation as are set forth in said Opinion are adopted herewith into these Conclusions of Law as if set forth in full herein.

17.

That the Fallbrook Public Utility District and the Vail Company in open court in this cause expressly joined in and consented to said Stipulation and are therefore bound by its terms and provisions.

18.

This case has been tried on the theory that the applicable California law would determine the rights to the use of the waters of Santa Margarita River and its tributaries and the rights to the use of the waters which add to and support said River and its tributaries and, therefore, all parties not parties to the Stipulation set forth in Finding 47 by pursuing this theory of the case have implied by such conduct assent to the application of California law in this cause.

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19.

That notwithstanding said Stipulation and notwithstanding the fact that this case was tried on the theory that California law would determine such rights, the laws of the State of California would apply in that there is no Federal law as to water rights as such, and this Court would of necessity be required to apply the applicable California law.

20.

That the United States of America has no rights to the use of the waters of the Santa Margarita River or its tributaries upon lands within the Naval Enclave, based upon its ownership of Indian Reservation Lands, National Forest Lands, Public Domain Lands, or other Federally-owned lands located elsewhere within the watershed upstream from the Naval Enclave.

21.

That the designation of the Naval Enclave, and/or various portions thereof, as a military reservation did not by such designation confer upon the United States of America any rights to the use of the waters of the Santa Margarita River or its tributaries.

22.

That the United States of America has acquired no rights to the use of the waters of the Santa Margarita River or its tributaries within the Naval Enclave by inverse condemnation.

23.

That the United States of America has acquired no rights, appropriative or otherwise, to the use of the waters of the Santa Margarita River and its tributaries within the Naval Enclave by reason of its conservation practices, including, but not limited to the reclaiming of sewage, the control of

1 phreatophytes or the construction of spreading works.

2 24.

3 That no Act of the Congress of the United States of
4 America including the Acts of 1866 (14 U.S.Stats.253) and 1870
5 (16 U.S. Stats. 218) and the Desert Land Act of 1877 was intended
6 to or does provide or could constitutionally provide that the
7 United States of America can acquire or take vested rights to
8 the use of water for its uses within the Naval Enclave without
9 payment of compensation.

10 25.

11 That said Acts specifically referred to in Conclusion
12 of Law 24 pertain to lands which were a part of the Public Domain
13 and have no application to those lands within the Naval Enclave
14 which are referred to in Finding of Fact 2 which lands were in
15 private ownership at the time of the Treaty of Guadalupe Hidalgo,
16 and remained in private ownership at all times thereafter until
17 acquired by the United States of America as set forth in Finding
18 of Fact 1 above.

19 26.

20 That except as to such rights, if any, which may be
21 permitted under the appropriative right considered in Interlocu-
22 tory Judgment No. 24 (Lake O'Neil), the United States of America
23 has no right to compel any Santa Margarita River water user up-
24 stream from the Naval Enclave to release water or curtail up-
25 stream water use so as to allow such water to reach the Naval
26 Enclave for the purpose of exportation without the Santa Mar-
27 garita River Watershed.

28 27.

29 That except as to reasonable and proper riparian uses
30 on lands within the Naval Enclave upstream from the point of
31 confluence of the Santa Margarita River with DeLuz Creek in

1 Section 29, Township 9 South, Range 4 West, S.B.M. and the rights
2 as provided in Interlocutory Judgment No. 24 (Lake O'Neil), no
3 upstream riparian, overlying owner, prescriptor or appropriator
4 shall be required to release water or curtail reasonable and bene-
5 ficial water uses so as to allow water to reach the Naval Enclave
6 for any purpose, unless and until water exportation from ~~without~~
7 the Santa Margarita River watershed by the United States of America
8 is abandoned, and the ground water levels within the younger allu-
9 vial deposits which underlie the Santa Margarita River downstream
10 from said point of confluence of said DeLuz Creek with the Santa
11 Margarita River have been restored to that level at which they would
12 have been if such exportation had not taken place.

13 28.

14 That all surface waters which flow upon lands of the
15 Naval Enclave within the watershed of the Santa Margarita River
16 are a part of the Santa Margarita River and subject to the
17 continuing jurisdiction of this Court.

18 29.

19 All waters contained within the younger alluvial deposits
20 within the Santa Margarita River watershed and within the Naval
21 Enclave are in known and definite channels, are not percolating
22 waters, but are in fact a part of the underground flow of the
23 stream system.

24 30.

25 That all lands specifically referred to in sub-paragraphs
26 A and B of Finding 33 herein have a correlative riparian right to
27 the use of the waters of the Santa Margarita River.

28 That all lands within the Naval Ammunition Depot boundary
29 and within the Santa Margarita River watershed have a limited ripa-
30 rian right to use the waters of the Santa Margarita River for fire
31 protection purposes.

32 That the following described lands which are within the

1 boundary of the United States Naval Ammunition Depot have a
2 riparian right to use the waters of the Santa Margarita River
3 for the limited purpose of use in connection with the physical
4 facilities of the Naval Ammunition Depot which are located thereon:

5 Southeast Quarter ($SE\frac{1}{4}$) of Section 22, South Half ($S\frac{1}{2}$)
6 of Section 23, those portions of Sections 24 and 25 westerly of
7 the Naval Ammunition Depot boundary, all of Section 26, the
8 East Half ($E\frac{1}{2}$) of Section 27, North Half ($N\frac{1}{2}$) of the Northeast
9 Quarter ($NE\frac{1}{4}$) of Section 34, the North Half ($N\frac{1}{2}$) of the North-
10 west Quarter ($NW\frac{1}{4}$) of Section 35, all in Township 9 South,
11 Range 4 West, S.B.M.

12 31.

13 That those lands specifically described or referred
14 to in sub-paragraphs A and B in Finding 37 herein have a correla-
15 tive riparian right to the use of the waters of DeLuz Creek.

16 32.

17 That those lands specifically referred to in sub-
18 paragraph A of Finding 40 herein have a correlative riparian
19 right to the use of the waters of Fallbrook Creek.

20 33.

21 That the smallest tract of land held under one chain
22 of title and within the Santa Margarita River watershed, a part
23 of which abuts upon or is traversed by any area containing younger
24 alluvial deposits as depicted on U. S. Exhibits 37, 67, and 70,
25 within the Naval Enclave, and not heretofore found to be riparian
26 to a specific river or creek, has a correlative riparian right
27 to the use of the ground waters within said younger alluvial de-
28 posits, and such surface flow as may exist over and upon said
29 deposits, and the use of such waters shall be and is subject to
30 the continuing jurisdiction of this Court. That except as to the

31 - - - -

1 Santa Margarita River, DeLuz Creek and Fallbrook Creek, such
2 lands have not been specifically considered in these findings,
3 but they can be readily ascertained in the future should it be
4 necessary to do so by reference to the areas of younger alluvial
5 deposits as depicted on said U. S. Exhibits 37, 69 and 70,
6 and the watershed line as depicted on Exhibit A attached hereto.

7 34.

8 That the exercise of the correlative riparian rights
9 as provided in Conclusions of Law 30, 31, 32 and 33 to the use
10 of such specified waters is subject to the continuing juris-
11 diction of this Court. That all uses of the waters of the
12 Santa Margarita River, DeLuz Creek, Fallbrook Creek and their
13 tributaries are subject to the continuing jurisdiction of this
14 Court.

15 35.

16 That all ground waters found within areas of deposits
17 of consolidated rocks, basement complex or weathered basement
18 complex as said deposits are depicted on U. S. Exhibits 37,
19 67 and 70 and within the Santa Margarita River watershed and the
20 Naval Enclave do not add to, support nor contribute to the Santa
21 Margarita River or any tributary thereto, and are local, vagrant,
22 percolating waters not a part of said River or any tributary
23 thereto.

24 36.

25 Such facts as are set forth on Exhibit B attached hereto
26 which pertain to gross acreages, irrigated acreages, irrigable
27 acreages and water duty shall be prima facie evidence as to such
28 matters in any subsequent proceeding before this Court in this
29 cause. As used herein, prima facie evidence is that which suf-
30 fices for the proof of the particular fact until contradicted
31 or overcome by other evidence.

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37.

That the United States of America by bringing this action has submitted to the jurisdiction of this Court and to the continuing jurisdiction of this Court in this cause, and all rights claimed to the use of the waters of the Santa Margarita River and its tributaries and all rights claimed to the use of the waters which add to and support the Santa Margarita River and its tributaries by the United States of America and all defendants in this case and by their heirs, successors and assigns shall be and are subject to the continuing jurisdiction of this Court.

38.

Conclusions of Law 1, 2, 3, and 4, as set forth in the Conclusions of Law attached to Interlocutory Judgment No. 28 (Miscellaneous Surface Impoundments) are incorporated herein and made a part hereof as if set forth in full.

39.

That this Interlocutory Judgment No. 37 is not intended to nor does it apply to any lands of the United States of America other than those lands within the Naval Enclave as said lands are described in Finding of Fact 1; that other lands owned or supervised by the United States of America, such as Forest Service lands and Indian Reservation lands, will be covered in other Findings of Fact, Conclusions of Law and Interlocutory Judgments in this cause.

INTERLOCUTORY JUDGMENT

1.

IT IS ORDERED, ADJUDGED AND DECREED that the United States of America has not established nor obtained, nor does it own or possess a prescriptive right to the use of the waters of the Santa Margarita River or its tributaries.

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2.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as provided in Interlocutory Judgment No. 24 (Lake O'Neil), the United States of America has not established nor obtained, nor does it own or possess, an appropriative right to the use of the waters of the Santa Margarita River or its tributaries.

3.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following described or referred to lands have a correlative riparian right to the use of the waters of Santa Margarita River:

A. That portion of the 123,620 acres, more or less, acquired by the United States of America on December 31, 1942, by condemnation in San Diego County, which is located within the Santa Margarita River watershed.

B. Approximately 1705.3 acres, more or less, which is that portion of the 9,147.55 acres, more or less, acquired by the United States of America on January 21, 1942, by condemnation in San Diego County, which is within the Santa Margarita River watershed, and from which the waters thereon, in a state of nature, drain into the Santa Margarita River within the limits of the Naval Ammunition Depot.

That said lands referred to in sub-paragraphs A and B above are depicted on Exhibit A attached hereto.

It is further ordered, adjudged and decreed that all lands within the Naval Ammunition Depot boundary and within the Santa Margarita River watershed as depicted on Exhibit A attached hereto have a limited riparian right to use the waters of the Santa Margarita River for fire protection purposes.

It is further ordered, adjudged and decreed that the following described lands which are within the boundary of the Naval Ammunition Depot have a limited riparian right to use the

1 waters of the Santa Margarita River for the single purpose of
2 use in connection with the physical facilities of the Naval
3 Ammunition Depot which are located thereon:

4 Southeast Quarter ($SE\frac{1}{4}$) of Section 22, South Half ($S\frac{1}{2}$)
5 of Section 23, those portions of Sections 24 and 25 westerly of
6 the Naval Ammunition Depot boundary, all of Section 26, the
7 East Half ($E\frac{1}{2}$) of Section 27, North Half ($N\frac{1}{2}$) of the Northeast
8 Quarter ($NE\frac{1}{4}$) of Section 34, the North Half ($N\frac{1}{2}$) of the North-
9 west Quarter ($NW\frac{1}{4}$) of Section 35, all in Township 9 South, Range
10 4 West, S.B.M.

11 4.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
13 following described or referred to lands have a correlative
14 riparian right to the use of the waters of DeLuz Creek:

15 A. That portion of the 123,620 acres, more or less,
16 acquired by the United States of America on December 31, 1942,
17 by condemnation in San Diego County which is within the sub-
18 watershed of DeLuz Creek. That said lands are depicted on
19 Exhibit A attached hereto.

20 B. Southeast Quarter of the Southwest Quarter;
21 Southwest Quarter of the Southwest Quarter; West Half of the
22 Northeast Quarter; Northeast Quarter of the Southeast Quarter,
23 Southwest Quarter of the Southeast Quarter, and, Northwest
24 Quarter of the Southeast Quarter of Section 8, Township 9 South,
25 Range 4 West, S.B.M., 267.74 acres, more or less. Fractional
26 North Half of Northwest Quarter of Section 17, Township 9 South,
27 Range 4 West, S.B.M., 40.81 acres, more or less.

28 5.

29 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that those
30 lands within the sub-watershed of Fallbrook Creek as depicted on
31 Exhibit A attached hereto have a correlative riparian right to

1 the use of the waters of Fallbrook Creek.

2 6.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
4 smallest tract of land held under one chain of title within the
5 Naval Enclave and the Santa Margarita River watershed, a part of
6 which abuts upon or is traversed by younger alluvial deposits,
7 as said deposits are depicted on U. S. Exhibits 37, 67 and 70,
8 not heretofore specifically determined to be riparian to the
9 Santa Margarita River, DeLuz Creek, or Fallbrook Creek, have
10 correlative riparian rights to the use of the waters contained
11 in said deposits and such surface waters as may flow over and
12 upon said deposits; it is further ordered, adjudged that this
13 Court shall have jurisdiction to make such findings in the future
14 as may be necessary to settle any dispute concerning the pro-
15 priety of the use of the said waters, and that this Court shall in
16 the future refer to Exhibit A, attached hereto, and to U. S. Ex-
17 hibits 37, 67 and 70 to determine the location of said younger
18 alluvial deposits.

19 7.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 correlative riparian rights to the use of the waters as provided
22 in paragraphs 3, 4, 5, and 6 of this Interlocutory Judgment and all
23 other uses of said waters shall be and are subject to the
24 continuing jurisdiction of this Court.

25 8.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
27 ground waters found within areas of younger alluvial deposits within
28 the Naval Enclave and within the Santa Margarita River watershed
29 as said deposits have been described in the Findings of Fact and
30 Conclusions of Law herein and as such younger alluvial deposits
31 are delineated upon U. S. Exhibits 37, 67 and 70 incorporated

1 into this Interlocutory Judgment by reference constitute the sub-
2 surface flow of the Santa Margarita River or a tributary thereto,
3 and that the bed and banks of such sub-surface flow of the Santa
4 Margarita River, or a tributary thereto, are the deposits of con-
5 solidated rock, basement complex or weathered basement complex
6 that contain said younger alluvial deposits.

7 9.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
9 surface waters which flow over and upon any of the lands within
10 the Naval Enclave and within the Santa Margarita River watershed
11 are a part of the Santa Margarita River or a tributary thereto
12 and subject to the continuing jurisdiction of this Court.

13 10.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
15 ground waters found within areas of deposits of consolidated
16 rock, basement complex or weathered basement complex as said
17 deposits are depicted on U. S. Exhibits 37, 67 and 70 and within
18 the Santa Margarita River watershed and the Naval Enclave do not
19 add to, support nor contribute to the Santa Margarita River or
20 any tributary thereto and are local, vagrant, percolating waters
21 not a part of said River or any tributary thereto.

22 11.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
24 rights of the United States of America as the owner of the lands
25 referred to in Paragraph 10 of this Interlocutory Judgment and
26 its successors and assigns to the use of said ground waters are
27 forever quieted in the United States of America and its successors
28 and assigns, and against all other parties having rights to the
29 use of the waters of Santa Margarita River or its tributaries, or
30 waters which add to and support said River or its tributaries,
31 their heirs, successors and assigns.

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12.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as to the use of waters as considered in Interlocutory Judgment No. 24 (Lake O'Neil) and the use of the waters to maintain native grasses and vegetation cover and the uses of water in minor surface impoundments which may not be proper riparian uses, all uses of the waters of the Santa Margarita River and its tributaries within the Naval Enclave and within the Santa Margarita River watershed by the United States of America are, as to their character, reasonable and beneficial riparian uses.

13.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all uses of the waters of the Santa Margarita River by the United States of America within the Naval Enclave but outside the watershed of the Santa Margarita River are beneficial uses, but that such uses are not being made, nor have they been made pursuant to any water right recognized or provided by the laws of the State of California; that notwithstanding the fact that said uses without the watershed are without right, they are not unlawful or wrongful in that the United States of America, as the last water user on the stream, may use the waters which are physically available on or within its lands at such location as it elects.

14.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court does not at this time pass upon the question of whether the maintaining of natural grasses and vegetation cover on the lands of the Naval Enclave within the Santa Margarita River watershed is or will be in the future a reasonable use of water in view of the other purposes for which water has been and will be used. Jurisdiction is herein reserved to determine at such future time as an apportionment

1 proceeding or regulation proceeding is presented the issue as to
2 whether the maintaining of natural grasses and vegetation cover is
3 a reasonable use of water and such issue will be determined at that
4 time based upon the facts as may then appear and pursuant to the
5 laws of the State of California.

6 15.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all uses
8 of the waters of the Santa Margarita River by the United States of
9 America within the Naval Enclave and both within and without the
10 watershed of the Santa Margarita River other than those uses for
11 stock watering, irrigation and sub-irrigation and the maintenance
12 of a fresh water barrier to prevent salt water intrusion are as to
13 their characteristics municipal uses.

14 16.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no
16 determination is to be made at this time in this Interlocutory
17 Judgment as to the reasonableness of the amounts of water of
18 the Santa Margarita River used by the United States of America
19 within the Naval Enclave in that this issue can only be deter-
20 mined at such time as the Court may be concerned with an apportion-
21 ment or regulation proceeding. Jurisdiction is expressly reserved
22 to decide this issue in the future should the need occur and such
23 issue will be determined by the facts as they then appear and
24 pursuant to the laws of the State of California.

25 17.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
27 United States of America has no rights to the use of the waters
28 of the Santa Margarita River on the lands which comprise the
29 Naval Enclave except as such rights have been specifically set
30 forth in Interlocutory Judgment No. 24 (Lake O'Neil) or in this
31 Interlocutory Judgment.

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18.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as to reasonable and proper riparian uses on lands within the Naval Enclave upstream from the point of confluence of the Santa Margarita River with DeLuz Creek in Section 29, Township 9 South, Range 4 West, S.B.M., and such rights to the use of water as provided in Interlocutory Judgment No. 24 (Lake O'Neil), no upstream riparian, overlying owner, prescriptor or appropriator shall be required to release water or curtail reasonable and beneficial water uses so as to allow water to reach the Naval Enclave for any purpose unless and until water exportation by the United States of America from ~~without~~ the Santa Margarita River watershed is abandoned and the ground water levels within the younger alluvial deposits downstream from said point of confluence of said DeLuz Creek with the Santa Margarita River have been restored to that level at which they would have been if such exportation had not taken place.

19.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as to such rights, if any, which may be permitted or authorized pursuant to the laws of the State of California under the appropriate rights considered in Interlocutory Judgment No. 24 (Lake O'Neil), the United States of America has no right to compel any Santa Margarita River water user upstream from the Naval Enclave to release water or curtail upstream water use so as to allow such water to reach the Naval Enclave for the purpose of exportation without the Santa Margarita River watershed.

20.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the issue of apportionment has not been presented at this stage of the proceeding, and this Court has taken no evidence directed to

1 establishing whether the use of any waters herein adjudged to be
2 subject to the continuing jurisdiction of this Court are
3 reasonable or unreasonable as to amount of water used in the light
4 of rights which may exist as to such waters; and this issue is
5 left open, is not decided herein and shall be litigated by this
6 Court if and when in the future it becomes necessary to do so
7 and pursuant to California law.

8 21.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that uses of
10 the waters of the Santa Margarita River by the United States of
11 America within the Naval Enclave and outside the Santa Margarita
12 River watershed have not and will not in the future give rise to
13 any right to the use of waters enforceable against any upstream
14 appropriator, prescriptor, riparian or overlying owner.

15 22.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
17 Stipulation as set forth in Finding of Fact 47 has at all times
18 since November 29, 1951, been in full force and effect and the
19 provisions thereof were and are binding on the United States of
20 America and the State of California.

21 23.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED based upon
23 the decision of the United States Court of Appeals for the Ninth
24 Circuit in the case of California vs. United States, 235 F.2d 645,
25 that this is not a final decree, but is interlocutory in character
26 and by reason of the Order by this Court that all parties are
27 adverse, one to the other, thus dispensing with cross pleadings,
28 all parties to these proceedings may object to these Findings of
29 Fact, Conclusions of Law and Interlocutory Judgment, and will be
30 given full opportunity upon due notice to interpose their ob-
31 jections prior to entry of final judgment in this case.

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24.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Interlocutory Judgment is not intended to nor does it apply to any lands of the United States of America other than those lands within the Naval Enclave as said lands are described in Finding of Fact 1 herein; that other lands owned or supervised by the United States of America such as Forest Service lands and Indian Reservation lands will be covered in other Findings of Fact, Conclusions of Law and Interlocutory Judgments in this Cause.

25.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no unlawful or wrongful act of any defendant in this cause has resulted in salt water intrusion into the waters contained within the younger alluvial deposits heretofore adjudged to be a part of the underground flow of the Santa Margarita River.

26.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as is provided in Interlocutory Judgment No. 24 (Lake O'Neil), the construction or maintenance of any structure for the impoundment of surface runoff of the waters of the Santa Margarita River and/or its tributaries within the Naval Enclave has not resulted in the acquisition by the United States of America of any appropriative or prescriptive right against any party to this cause and the continued maintenance of such structures or the impoundment of waters therein shall not in the future give rise to any appropriative or prescriptive right to the use of such waters against any party in this cause, his heirs, successors or assigns.

27.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction is reserved to enter Findings of Fact, Conclusions of Law and Judgment as to the issue of exclusive jurisdiction at such time

1 as the case of Paul v. United States, Case No. 239, October Term,
2 1961, is final.

3 28.

4 IF IS FURTHER ORDERED, ADJUDGED AND DECREED that this
5 Interlocutory Judgment is not appealable, is not final, and shall
6 not be operative until made a part of the final judgment; and
7 this Court expressly reserves jurisdiction to modify or vacate it
8 either upon its own motion or upon motion of any party to this
9 proceeding until such time as the final judgment in this cause is
10 entered.

11 Dated: _____

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JUDGE

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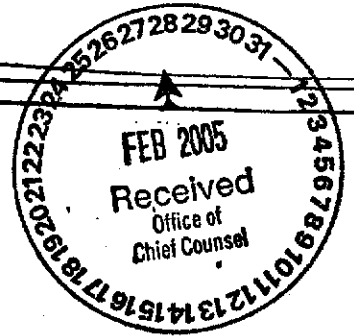
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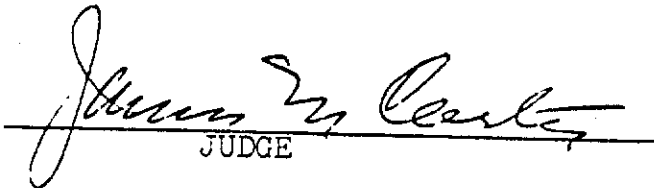


1 as the case of Paul v. United States, Case No. 239, October Term,
2 1951, is final.

3
4 28.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
6 Interlocutory Judgment is not appealable, is not final, and shall
7 not be operative until made a part of the final judgment; and
8 this Court expressly reserves jurisdiction to modify or vacate it
9 either upon its own motion or upon motion of any party to this
10 proceeding until such time as the final judgment in this cause is
11 entered.

12 Dated: 4-6-62

13 
14 JUDGE

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TABULATION OF GROSS AND IRRIGABLE LANDS
AND
WATER POINTS WITHIN THE
SANTA MARGARITA RIVER WATERSHED
OF THE
NAVAL ENCLAVE

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By Office of Ground Water Resources

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2	Table II - Wells
3	Table III - Water Duty
4	Description of Naval Ammunition Depot Diversion
5-6	Description of Lake O'Neill Diversion
7	Table IV - Applied Duty of Water

TABLE I
GROSS AND IRRIGABLE ACREAGE

	<u>Irrigable</u>	<u>Non-Irrigable</u>	<u>Total</u>
Naval Ammunition Depot Acquired by Decree Filed 21 January 1942	4,858	2,080	6,938
Fallbrook Creek Watershed	2,952	856	3,808
Riparian to Santa Margarita River	624	1,081	1,705
Remainder	1,282	143	1,425
Camp Pendleton Acquired by Decree Filed 5 January 1943	13,974	14,575	28,549
Acquired by Decree Filed 22 December 1943	115	1,583	1,698
Riparian to Roblar Creek	33		
Riparian to De Luz Creek	39		
Acquired by Public Land Order No. 293 Dated 8 August 1945	0	1,509	1,509
Totals	18,947	19,747	38,694

TABLE II
WELLS WITHIN THE UNITED STATES NAVAL ENCLAVE
 AND WITHIN THE SANTA MARGARITA RIVER WATERSHED

<u>Well Number</u>	<u>Use</u>
9/4 14N1	Camp Supply
9/4 26M1	Camp Supply
9/4 29L1	Camp Supply
10/4 5D1	Camp Supply
10/4 7A2	Camp Supply
10/4 7H2	Camp Supply
10/4 7R2	Camp Supply
10/4 18E1	Camp Supply
10/4 18M4	Camp Supply
10/5 13R2	Camp Supply
10/5 23J1	Camp Supply
10/5 23K1	Camp Supply
10/5 26C1	Irrigation
10/5 26F1	Irrigation
10/5 35K1	Irrigation
11/5 2A1	Camp Supply
11/5 2D3	Irrigation
11/5 2E1	Irrigation
11/5 2F1	Irrigation

TABLE III
 WATER DUTY FOR AGRICULTURAL CROPS
 Grown in the Santa Margarita Watershed

CROP	YEARLY WATER DUTY Ac-Ft/Acre
Truck Gardening	1.67
Avocados	2.35
Citrus	1.86
Alfalfa	3.00
Deciduous	1.07
Mixed, Citrus Deciduous Avocados	2.35
Pasture	3.83
Row Crops (Commercial)	4.00
Small Grains (Oat, Wheat, Barley, etc.)	1.75

NAVAL AMMUNITION DEPOT DIVERSION
ON SANTA MARGARITA RIVER

The Naval Ammunition Depot water supply system consists of a diversion located on the Santa Margarita River in T9S, R4W, 14N. This diversion consists of an infiltration gallery laid beneath the river bed. The gallery extends approximately 164 feet from the west bank to the east bank of the river. It is composed of a horizontal concrete pipe entrenched normal to the river bed and averaging 15 to 19 feet in depth. This pipe is an 18 inch reinforced concrete pipe with 4 inch openings on the top half, spaced 90 degrees apart, and at two foot intervals. Around the pipe is a rock filled envelope consisting of 1 cubic foot or larger rocks. The water is discharged from the gallery through the pipe to a collecting well on the east bank of the stream.

The collecting well is 60 inches in diameter, 40 feet deep, and has a 60 inch precast concrete casing on the portion of the well above bedrock.

The water is pumped from the collecting well to a steel desanding tank which discharges into a 20 foot diameter wooden surge tank. From here it is pumped through an 8 inch cement lined, cement covered pipe, approximately 3,000 feet in length, into a 1,000,000 gallon concrete reservoir. From the reservoir the water passes through a chlorinator and into a 10 inch pipeline to the water distribution system. Tied to this water system is an emergency 100,000 gallon capacity elevated tank situated at T9S, R4W, 23J.

LAKE O'NEILL DIVERSION DITCH

The Lake O'Neill Diversion Ditch, henceforth called O'Neill Ditch rises in the Southwest Quarter of the Northwest Quarter of Section 5, Township 10 South, Range 4 West, San Bernardino Base and Meridian, where water is diverted from the Santa Margarita River by means of a weir dam. This dam is a barrier of quarried rock normal to the stream and embedded in the river bed for approximately sixteen feet. The weir dam will divert a maximum of 100 c.f.s. into O'Neill Ditch. From its point of beginning the ditch runs Southerly through the said Southwest Quarter of the Northwest Quarter of Section 5, said Township and Range for a distance of approximately 300 feet where it passes through a control structure composed of two 36 inch culverts with control gates on them. These gates can vary the flow from zero to 100 c.f.s. The ditch continues in a Southerly direction for a distance of about 400 feet where it passes through a modified five foot Parshall flume whose theoretical capacity is 100 c.f.s. The head on the flume is recorded continuously by a Stevens Water Level Recorder installed at the flume. The ditch then continues in its Southerly direction for a distance of about 600 feet into the Northwest Quarter of the Southwest Quarter of said Section 5 where it passes through a division box which allows water to be diverted into the off-channel spreading basins, continue down the ditch, or both. Then the ditch runs Southeasterly for a distance of about 350 feet where it passes through a three foot Parshall Flume with an approximate capacity of 75 c.f.s. and the water level is recorded by a Stevens Water Level Recorder installed at the flume. The ditch continues Southeasterly for a distance of approximately 1600 feet through the Southwest Quarter of the Southwest Quarter of said Section 5, said Township and Range and into the Northwest Quarter of the Northwest Quarter of Section 8, said Township and Range into a division box where water may be diverted through a culvert into Lake O'Neill, allowed to pass on into the Lake O'Neill spillway ditch, or both. At the end of the culvert where it empties into the lake there is a gate that will control the flow into the lake as desired.

Lake O'Neill lies within Sections 5 and 8, Township 10 South, Range 4 West, San Bernardino Base and Meridian, the bounds of which at maximum capacity are as follows: Beginning in the South line of the Northeast Quarter of the Northwest Quarter of Section 8, said Township and Range; thence Northeasterly through said Northeast Quarter of the Northwest Quarter and the Northwest Quarter of the Northeast Quarter of said Section 8 and into the Southwest Quarter of the Southeast Quarter of Section 5, said Township and Range; thence continuing North and Easterly touching the Southeast Quarter of the Southeast Quarter of said Section 5 and thence Northwesterly through the said Southwest Quarter of the Southeast Quarter and the Northwest Quarter of the Southeast Quarter, the Southeast

Corner of the Southeast Quarter of the Northwest Quarter; thence South through said Southeast Quarter of the Northwest Quarter, Northeast Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of said Section 5, said Township and Range and into the Northwest Corner of the Northeast Quarter of the Northwest Quarter of Section 8, said Township and Range; thence Southwesterly into the Northeast Corner of the Northwest Quarter of the Northwest Quarter; thence Southeasterly through said Northwest Quarter of the Northwest Quarter and the Northeast Quarter of the Northwest Quarter to the point of beginning.

Table IV
Applied Duty of Water

Santa Margarita Watershed within Camp Pendleton, California

	Acres	Irrigation Requirements Acre Feet												Total Requirement Ac Ft/Yr	
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		Total
For Crops (2 Crops)	6,502	0.25 1,625.5	0.25 1,625.5	0.25 1,625.5	0.25 1,625.5	0.50 3,251	0.50 3,251	0.50 3,251	0.50 3,251	0.25 1,625.5	0.25 1,625.5	0.25 1,625.5	0.25 1,625.5	4.00	26,008.0
Cropland	2,140	0.00	0.00	0.00	0.12 256.8	0.26 556.4	0.26 556.4	0.28 599.2	0.28 599.2	0.28 599.2	0.26 556.4	0.12 256.8	0.00	1.86	3,980.4
Arroyos	7,246	0.00	0.00	0.00	0.17 1,231.8	0.33 2,391.2	0.33 2,391.2	0.34 2,463.6	0.34 2,463.6	0.34 2,463.6	0.33 2,391.2	0.17 1,231.8	-	2.35	17,028.0
Irrigated Pastures	3,059	0.00	0.00	0.20 611.8	0.40 1,223.6	0.43 1,315.4	0.60 1,835.4	0.60 1,835.4	0.60 1,835.4	0.40 1,223.6	0.20 611.8	0.00	0.00	3.83	11,716.0
Total Irrigable	18,947	1,625.5	1,625.5	2,237.3	4,337.7	7,422.2	7,514.4	8,149.2	8,149.2	6,523.7	5,796.7	3,725.9	1,625.5	58,732.4*	
Percent of Water Used		2.8	2.8	3.8	7.4	12.5	12.8	13.9	13.9	11.1	9.9	6.3	2.8	100%	
Grazing	19,605														
Fresh Water Surfaces	142														
Total Area	38,694														

OFFICE OF GROUND WATER RESOURCES
November 1958

*Add 10% for Project Duty to take care of losses from point of diversion to the field.

rshed Lines

313

PHYSICAL MAP OF U.S. NAVAL RESERVATION
WITHIN
SANTA MARGARITA RIVER WATERSHED

Office of Ground Water Resources
Marine Corps Base
Camp Pendleton, California

Drawn by J M. CASTRO

Scale 1:24,000

Checked by M. BASS, JR

Date 20 MARCH 1962

Approved by A.C. BOWEN

Drg. No.

EXHIBIT A

66