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**ROBIN CALDER, ATTORNEY AT LAW**

59 WASHINGTON STREET, SUITE 182

SANTA CLARA, CALIFORNIA 95050

Email: [robincalderlaw@comcast.net](mailto:robincalderlaw@comcast.net)

PHONE: 408-896-7022

March 12, 2011

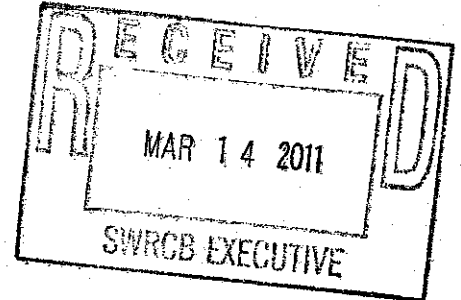
JEANIE TOWNSEND

Clerk To the Board

California State Water Resources Control Board

1001 I Street, 24<sup>th</sup> Floor

Sacramento, CA 95814



**Re: COMMENT LETTER: CALTRANS MS4 PERMIT**

Dear Honorable Charles R. Hoppin, Chairman and Other State Water Resources Board Members:

Using a blanket NPDES permit presupposes a government agency that complies with the law voluntarily or a strong State and Federal enforcement mechanism. The California Department of Transportation (Caltrans) has already failed as an agency that governs itself well since on November 16, 2010, the United States Environmental Protection Agency (USEPA) issued an order against Caltrans for violations of the United States Clean Water Act (Clean Water Act).

***EPA ordered Caltrans to upgrade its statewide storm water management program, and exert stronger controls over storm water discharges from its road construction and maintenance sites.*** Notable is that Caltrans District 5 apparently escaped any direct criticism because during the USEPA and California State Water Resources Board (SWRB) audits that precipitated this order. District 5 officials achieved this goal, according to the audit, by simply refusing to authorize the USEPA and SWRB auditors permission to visit its construction sites, an example of a troubling bureaucratic arm wrestling match in which the future of clean, uncontaminated water for the State of California lost.

For purposes of this Comment letter, gross deficiencies and planned violations of the Clean Water Act by Caltrans in connection with a major District 5 project called the Prunedale Improvement Project (PIP), which has either reached or is near reaching final design stage, is used as an example of why the current and planned future

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NPDES blanket permits are not and will not under the current tentative draft MS4 protect California and Federal waterways.

Following are comments regarding how the current draft "*National Pollutant Discharge Elimination System Permit For The Discharge Of Storm Water Runoff*" (NPDES) for use by the California Department of Transportation ("Caltrans") *Municipal Separate Storm Sewer System (MS4)*" could and should be upgraded. Reports are that Caltrans has approximately 50,000 miles of roadway under its jurisdiction in the State of California and hence impacts large and important sections of waterways in the State of California.

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→ The draft tentative NPDES Permit does not promise any improvements over the past NPDES permit, as much for what it ignores and fails to state as for what it proposes will be enforced. Paragraph 20 entitled "Receiving Water Limitations" states the following:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to design its storm water program to achieve compliance with *water quality standards*, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department (Caltrans) is required to revise its BMPs (including use of additional and more effective BMPs).

Problems not adequately address by subsequent language in the tentative permit include the following:

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- 1. **The draft NPDES Permit for Caltrans MS4's Needs To Be Updated To Reflect One Of The Most Significant Realizations Of The Public, The Congress of the United States, The U.S. Center For Disease Control and Food And Drug Administration Of The Past Decade—The Need For Uncontaminated Water To Grow Crops Safe For Human Consumption And Relevant New Legislation And Agricultural Industry Standards Developed To Protect The Public.**

An MS4 is a system of conveyances:

- (i) Owned or operated by a state, city, town . . . or other public body;
- (ii) Designed or used for collecting or conveying stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

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MS4's have been described to include detention and retention basins, pipelines for transport of storm water, culverts and other similar stormwater conveyances.

One of the great revelations in the public's and legislators' minds of the past decade was the realization that not only do humans need clean water to drink but there also need to be sources of reasonably clean water for irrigation of certain types of crops that tend to absorb and concentrate pollutants from polluted water in a process called bioaccumulation and biomagnification. This becomes especially important when nearby urban sources of storm water are discharged on or near agricultural lands. This is because urban storm water is very polluted with a variety of pollutants (including pathogens) as is road way water.

Specifically as to Caltrans, Draft NPDES Permit paragraph 12 notes that Caltrans roadway categories of pollutants include, without limitation:

heavy metals (copper, lead and zinc), synthetic organic compounds (pesticides) PAH's from vehicle emissions, oil and grease, nitrogen and phosphorus fertilizers, trash, **PATHOGENS** (which would include Ecoli and Salmonella) and oxygen demanding substances such as **animal waste**.

One of the most momentous and catalyzing developments in California on this issue was the September 2006 Salinas Spinach Scare that sickened approximately 200 members of the consuming public, hospitalized approximately 101 individuals and killed up to 4 people from the ***E. coli O157:H7*** pathogen. That pathogen kills by attacking the nervous system causing, in vulnerable individuals, terrible seizures; brain damage; paralysis; and in some cases death. It also attacks the kidneys causing bloody diarrhea; loss of kidney function necessitating transplants in some cases; and other long term disabilities.

Investigators with the *Centers for Disease Control* initially and in a follow-up joint report with the *California Department of Health Services* (CDHS) and *U.S. FDA* concluded that the probable source of the outbreak was an Angus cattle ranch that had leased land to spinach grower Mission Organics. The report found 26 samples of *E. coli* "indistinguishable from the outbreak strain" in water and cattle manure on the San Benito County ranch, some within a mile from the tainted spinach fields. Both reports named the presence of wild pigs

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on the ranch and the proximity of surface waterways (including river water) to irrigation wells as "potential environmental risk factors." *"Source of tainted spinach finally pinpointed". MSNBC.com. 2007-03-23. <http://www.msnbc.msn.com/id/17755937/>.*

Soon after the reports were released, California's farm industry through the Western Growers' Association announced that it would adopt a set of "good agricultural practices" to reduce the risk of *E. coli* contamination for leafy green vegetables. Those participating in the voluntary program are eligible for product seal of approval. This led to the creation of the Green Leafy Marketing Agreement in 2007, which has been updated every year since that time.

But of even greater significance has been the reaction of major food retailers, restaurants and packers to this and subsequent outbreaks involving lettuce and other vulnerable products. In the attached copy of a July 13, 2009 *San Francisco Chronicle* article entitled "Paying the Price To Keep Food Safe" written by Carolyn Lochhead, San Francisco Chronicle Washington Bureau, Ms. Lochhead reports on page 2. **Exhibit A:** Copy of July 13, 2009 article.

For many giant food retailers, the ***choice between a dead pond and a dead child is no choice at all.*** Industry has paid more than \$100 million in court settlements and verdicts in spinach and lettuce lawsuits, a fraction of the lost sales involved. . . .

Large produce buyers have compiled secret "super metrics" that go much further. ***Farmers must follow them if they expect to sell their crops.*** These can include vast bare dirt buffers, elimination of wildlife and ***strict rules on water resources.*** To enforce these rules, retail buyers have sent forth armies of food-safety auditors . . . to inspect fields.

And on page 3 (labeled A 7 in the upper right hand corner) of the *Chronicle* article under the subheading "Crops, Ponds Eradicated For Food's Sake," Ms. Lochhead writes that,

***Farmers are told that ponds used to recycle irrigation water are unsafe. So they bulldoze the ponds . . . .***

These new industry practices are a fact of life in modern agricultural practices in the aftermath of the ***"September 2006 E Coli contamination of spinach that killed four people and sent 103 to hospitals, devastating the spinach industry."***

So, how has Caltrans responded to these new realities and their obligations under

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the Clean Water Act and the California Porter Cologne Water Quality Control Act not to mention existing and newly enacted federal food safety legislation? One might think they responded well if one only looked at Caltrans Final Environmental Protection Report (FEIR) approved March 22, 2006 pursuant to the California Environmental Quality Act (CEQA), Public Resources Code 21000, *et. seq.*. In response to a question about whether or not Caltrans planned to discharge water onto a 333.5 acre *row crop* farm co-located with Highway 101 in the Northern Salinas area, Caltrans staff responded that any discharges of water onto the farm and hence into a large creek on that property called "Little Bear Creek" would be "**INSIGNIFICANT.**" (Little Bear Creek merges along the farm's Southern border with the Santa Rita Creek that then travels downstream past a number of other farms to the Old Salinas River, which river eventually discharges into the Pacific Ocean). See *Prunedale Improvement Project FEIR, Volume II of II, Comments and Responses* (3/2006), "Private Individual Comments," p. 122.

After all, under the original Caltrans project as described in its FEIR, as part of an approximately 12 mile Highway 101 *improvement* project, Caltrans was seeking to construct a "fly-over overpass" so that individuals driving along Highway 101 could continue unimpeded by those seeking to turn left or right off of Highway 101 onto a perpendicular roadway called Espinosa Road on the West side of Highway 101 and Russell Road on the East side of Highway 101. At the same time, this fly-over overpass would facilitate those traveling along Espinosa-Russell Road from the impediment caused by the current bifurcation of that perpendicular roadway by Highway 101.

But, this was before Caltrans allowed its PIP project to be hijacked by the wishes of a local politically connected attorney named Jeff Gilles, Esq. of Lombardo & Gilles and the County of Monterey to use the PIP as a cover for a major storm water discharge project by the City of Salinas and County of Monterey in violation of the Clean Water Act, the Porter Cologne Water Quality Act, the California Environmental Quality Act and various food safety legislation.

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That is, during the design phase, Caltrans has significantly expanded the original purpose (highway improvement) and scope (no significant water will be discharged onto the Jarvis Farm and downstream farms) of this eminent domain action described in its FEIR and the Resolution of Necessity it requested from the California Transportation Commission in January 2009 ("CTC"). Caltrans' staff have increasingly expanded and provided for the overbuilding of its infrastructure in a manner that will allow local governments to also use the Caltrans' infrastructure to discharge millions of gallons of additional municipal contaminated storm water runoff (plus Caltrans' contaminated roadway water) into three large ponds of as much as one acre each Caltrans plans to construct on the Jarvis Farm for temporary contaminated water storage before discharging that contaminated water into local creeks that ultimately reach a river which in turn discharges into the Pacific Ocean.

#### **Caving Into Local Political Pressure**

In a **March 6, 2008** cover letter and memo **written by Jeff Gilles, Esq. and a memo written by his staff almost two years after the March 22, 2006 approval of the Caltrans' FEIR**, Mr. Gilles explains that he has been hired by the City of Salinas and County of Monterey to settle a dispute between them regarding the discharge of municipal storm water runoff. **Exhibit B: 3/6/2008 Letter from Jeff Gilles**. On page 2 of the letter, in the first full paragraph, and in the last sentence Mr. Gilles states:

**I pointed out that there are two properties that could be utilized as large storm water retention basins.<sup>1</sup> These properties are the JARVIS RANCH and the Chinn Ranch."** Emphasis added.

In this letter, Mr. Gilles asks to set up a meeting with the owner's representatives and the **MCWRA** [County agency that condemned the 1998 spillage easement on Jarvis Farm] to review the "**MCWRA**" plan/remedies for water problem solutions).

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<sup>1</sup> Retention ponds have a permanent pool of water; detention basins dry out between storms. *Int'l Stormwater Best Management Practices Database*, Version 2, 12/2007, p. 44 [www.bmpdatabase.org](http://www.bmpdatabase.org).

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Mr. Gilles further explains that the County seeks to remedy years of insufficient City municipal storm water planning with multiple past developers dating back to major regional shopping centers (Westridge Shopping Center, Northridge Shopping Center, Hardin Ranch and Salinas Auto Center [a Lombardo & Gilles client]) by now making the Jarvis Farm bear the burden for all of that previous bad planning and urban development (Memo, p. 2, first full paragraph) and so that the farmers near the Reclamation Ditch can avoid violating the "**Leafy Green Agreement**" food safety requirements that "*prohibits native vegetation adjacent to it as well as not allowing contamination from flood waters, but [sic besides] **flooding lowers the value of the cropland.***" (Exhibit B: Memo p. 3)

Within three months of this March 6, 2008 letter, in a letter dated May 27, 2008, the **MCWRA** was now writing to the Caltrans' staff giving them directions regarding how the MCWRA wanted their "ponds" constructed. **Exhibit C:** May 27, 2008 letter.

**Within five months**, Caltrans' engineer Dan Massa's **April 2007** drainage plans that are clearly marked as Caltrans drawings and showed ***NO ponds to be constructed on the Jarvis Farm*** but only a swale (i.e., a shallow trough like depression to help drain rain water) ***had been transformed*** into **August 2008** drawing depicting the 3 ponds. **Exhibit D:** April 2007 Caltrans drawings; **Exhibit E:** August 2008 Caltrans drawings.

Using what appears to be an attempted tortured technical argument, **Caltrans' staff erroneously assert** in correspondence that Caltrans will ***not be liable*** for any damages because it is the County's water and the County's easement (which 1998 easement overlays Little Bear Creek) causing the problems.<sup>2</sup>

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<sup>2</sup> See *Skoumbas v. City of Orinda* (2008) 165 Cal.App.4th 783 where Court held that where public agency's water discharge caused serious problems for private citizens, that public agency would be liable for the damage even though its pipes were linked to pipes installed by private parties). See also the U.S. Clean Water Act, 33 USC § 1251, *et. seq.*, California Porter-Cologne Water Quality Control Act (Water Code Div. 7, commencing with Section 13000), California Environmental Quality Act (CEQA"), Public Resources 21000 and 21166; National Environmental Policy Act 42 U.S.C. 4321.



**Figure 2.** Picture of Santa Rita Creek on the subject farmland taken by 50% equitable property owner Todd Jarvis on July 21, 2009. Note the large SUV in the upper left hand corner of this picture in comparison with the size of the creek.

This runoff water, which already emanates in part through large underground pipes located immediately adjacent to the East Side Parcels on the urbanized East Side of Highway 101, will be exponentially increased by runoff water coming from a whole new Caltrans network of approximately 14 large underground water transport pipelines all converging on the Jarvis Farm and Little Bear Creek with offsite contaminated water.

The latest Caltrans drawing available show the following Caltrans plans approved on July 26, 2010 and consequent increase in stormwater runoff into an already fragile watershed area:<sup>3</sup>

**1,439,790 gallons per hour capacity for discharge from 3 Pipelines of 600 millimeters (i.e., 23.6 inches) in diameter each from the City of Salinas on the East Side of Highway 101 to the farmland on the West side of Highway 101. Each of these 23.6 pipelines has approximately a potential discharge capacity assuming stormwater flow at 4 miles per hour of approximately 479,930**

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<sup>3</sup> **Exhibit F:** July 16, 2010 Caltrans Hydrology Design Drawings:



gallons per hour; *Exhibit F: page D-2 of Caltrans Drainage and Contour Grading Plan.*

- 1,472,600 gallons per hour capacity for discharge from one 1050 millimeter (i.e., 41.34 inch) in diameter underground pipeline in additional to an already existing County of Monterey pipeline of equal size from the East Side of Highway 101 where the City of Salinas is located to the farmland on the West side of Highway 101. *Exhibit F: page D-3 of Caltrans Drainage and Contour Grading Plan.*
- 1,919,720 gallons per hour capacity for discharge from 4 Pipelines of 600 millimeters (i.e., 23.6 inches) in diameter each from the center of Highway 101 (i.e., Caltrans roadway water) over to the farmland, 2 of which pipelines are to be discharged into 2 of the 3 detention ponds to be constructed by Caltrans on the farmland. From there, that water will be channeled into Little Bear Creek. *Exhibit F: pages D-2 and D-3 of Caltrans Drainage and Contour Grading Plan.*
- 2,399,650 gallons per hour capacity for discharge from 5 Pipelines of 600 millimeters (i.e., 23.6 inches) in diameter each from an area North of the farmland along Espinosa Road, which area is an enclave of County of Monterey Septic Tank Fields. One of the largest septic tank fields, for the 140-unit 1960's era Village Mobile Homes Park, was determined to be at or near the end of its capacity in a Monterey County Water Resources Agency Report (MCWRA) in 2008. *Exhibit F: pages D-5 and D-6 of Caltrans Drainage and Contour Grading Plan.*
- 1,081,700 gallons per hour capacity for discharge from 1 large Pipelines of 900 millimeters (i.e., 35.43 inches) in diameter from a large detention pond North of the farmland along Espinosa Road, from the area of the 140-unit 1960's era Village Mobile Homes Park septic tank field that was already determined by the Monterey County Water Resources Agency Report (MCWRA) to be at or near capacity. Excavating so close to this septic tank field that has reached capacity and then piping that water potentially now contaminated with human wastewater to the detention ponds on the farmland and then into Little Bear Creek raises the specter of other diseases passed on to the consuming public such as *Cholera* in addition to Ecoli pathogen contamination. *Exhibit F: page D-5 of Caltrans Drainage and Contour Grading Plan.*

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But, a second problem, already documented by the USEPA in various of its publications, is that detention and retention ponds that may be suitable for urban use, create habitat for ground squirrels, other rodents and reptiles who then defecate on the food around their new "home," again exacerbating the risk of food contamination from pathogens such as Salmonella and Ecoli O157:H7.

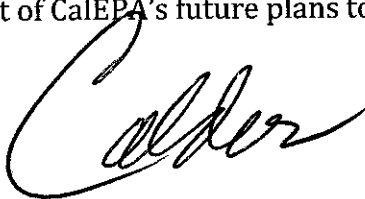
**J-3** → So, if this draft NPDES permit is to be finalized, special attention should be addressed to requiring Caltrans to protect valuable farmland and waters of the United States in and around farmland from the discharge of polluted water either by Caltrans or through storm water conveyances (MS4 systems) created by Caltrans that it then allows others to use.

**J-4** → Moreover, obviously the regional water boards who may be embroiled in the same local politics that Caltrans allowed itself to become involved in regarding Monterey County's desired storm water infrastructure are obviously not conducting adequate oversight even for arguably one of the biggest Caltrans projects in Monterey County history. Additional remedies to the public and additional oversight by local boards should be an integral part of CalEPA's future plans to protect California waterways.

Sincerely,

Robin Calder

Enclosures



# San Francisco Chronicle

SFGATE.COM | Monday, July 13, 2009 | PRINTED ON RECYCLED PAPER 75¢ ★★★★★

## AGRICULTURE

# Paying the price to keep food safe

Crops and ponds destroyed to kill disease, but culprit may be industrial farming methods



Paul Chinn / The Chronicle

Farmworkers harvest romaine lettuce to be shipped directly to market at Lakeside Organic Gardens Farm in Watsonville.

By Carolyn Lochhead  
CHRONICLE WASHINGTON BUREAU

WASHINGTON — Dick Peixoto planted hedges of fennel and flowering cilantro around his organic vegetable fields in the Pajaro Valley near Watsonville to harbor beneficial insects, an alternative to pesticides.

He has since ripped out such plants in the name of food safety, because his big customers demand sterile buffers around his crops. No vegetation. No water. No wildlife of any kind.

"I was driving by a field where a squirrel fed off the end of the field, and so 30 feet in we had

**"In 16 years of handling nearly every major food-borne illness outbreak in America, I can tell you I've never had a case where it's been linked to a farmers' market."**

Bill Marler, attorney  
in 2006 E. coli outbreak

to destroy the crop," he said. "On one field where a deer walked through, didn't eat anything, just walked through and you could see the tracks, we had to take out 30 feet on each side of the tracks and annihilate the crop."

In the verdant farmland surrounding Monterey Bay, a national marine sanctuary and one of the world's biological jewels, scorched-earth strategies are being imposed on hundreds of thousands of acres in the quest for an antiseptic field of greens. And the scheme is about to go national.

Invisible to a public that sees only the head-

*Farming continues on A6*

# Paying price for food safety

*Farming from page A1*

lines of the latest food-safety scare — spinach, peppers and now cookie dough — ponds are being poisoned and bulldozed. Vegetation har-

boring pollinators and filtering storm runoff is being cleared. Fences and poison baits line wildlife corridors. Birds, frogs, mice and deer — and anything that shelters them — are caught

in a raging battle in the Salinas Valley against *E. coli* O157:H7, a lethal, food-borne bacteria.

In pending legislation and in proposed federal regulations, the push for food safety butts up against the movement toward biologically diverse farming methods, while evidence suggests that industrial agriculture may be the bigger culprit.

## 'Foolhardy' approach

"Sanitizing American agriculture, aside from being impossible, is foolhardy," said UC Berkeley food guru Michael Pollan, who most recently made his case for smaller-scale farming in the documentary film "Food, Inc." "You have to think about what's the logical end point of looking at food this way. It's food grown indoors hydroponically."

Scientists do not know how the killer *E. coli* pathogen, which dwells mainly in the guts of cattle, made its way to a spinach field near San Juan Bautista (San Benito County) in 2006, leaving four people dead, 35 with acute kidney failure and 103 hospitalized.

The deadly bug first appeared in hamburger meat in the early 1980s and migrated to certain kinds of produce, mainly lettuce and other leafy greens that are cut, mixed and bagged for the convenience of supermarket shoppers. Hundreds of thousands of the bug can fit on the head of a pin; as few as 10 can lodge in a salad and end in lifelong disability, including organ failure.

## Going national

For many giant food retailers, the choice between a dead pond and a dead child is no choice at all. Industry has paid more than \$100 million

in court settlements and verdicts in spinach and lettuce lawsuits, a fraction of the lost sales involved.

Galvanized by the spinach disaster, large growers instituted a quasi-governmental program of new protocols for growing greens safely, called the "leafy greens marketing agreement." A proposal was submitted last month in Washington to take these rules nationwide.

A food safety bill sponsored by Rep. Henry Waxman, D-Los Angeles, passed this month in the House Energy and Commerce Committee. It would give new powers to the Food and Drug Administration to regulate all farms and produce in an attempt to fix the problem. The bill would require consideration of farm diversity and environmental rules, but would leave much to the FDA.

An Amish farmer in Ohio who uses horses to plow his fields could find himself caught in a net aimed 2,000 miles away at a feral pig in San Benito County. While he may pick, pack and sell his greens in one day because he does not refrigerate, the bagged lettuce trucked from Salinas with a 17-day shelf life may be considered safer.

The leafy-green agree-

ment is based on available science, but it is just a jumping-off point.

Large produce buyers have compiled secret "super metrics" that go much further. Farmers must follow them if they expect to sell their crops. These can include vast bare-dirt buffers, elimination of wildlife, and strict rules on water sources. To enforce these rules, retail buyers have sent forth armies of food-safety auditors, many of them trained in indoor processing plants, to inspect fields.

## Keeping children out

"They're used to working inside the factory walls," said Ken Kimes, owner of New Natives farms in Aptos (Santa Cruz County) and a board member of the Community Alliance With Family Farmers, a California group. "If they're not prepared for the farm landscape, it can come as quite a shock to them. Some of this stuff that they want, you just can't actually do."

Auditors have told Kimes that no children younger than 5 can be allowed on his farm for fear of diapers. He has been asked to issue identification badges to all visitors.

Not only do the rules conflict with organic and

environmental standards; many are simply unscientific. Surprisingly little is known about how *E. coli* is transmitted from cow to table.

## Reducing *E. coli*

Scientists have created a vaccine to reduce *E. coli* in livestock, and a White House working group announced plans Tuesday to boost safety standards for eggs and meat. This month, the group is expected to issue draft guidelines for reducing *E. coli* contamination in leafy greens, tomatoes and melons.

Some science suggests that removing vegetation from near field crops could make food less safe. Vegetation and wetlands are a landscape's lungs and kidneys, filtering out not just fertilizers, sediments and pesticides, but also pathogens. UC Davis scientists found that vegetation buffers can remove as much as 98 percent of *E. coli* from surface water. UC Davis advisers warn that some rodents prefer cleared areas.

Produce buyers compete to demand the most draconian standards, said Jo Ann Baumgartner, head of the Wild Farm Alliance in Watsonville, so that they can sell their products as the

*Farming continues on A7*



Organic farmer Dick Pelato walks through an unharvested section of a lettuce field at Lakeside Organic Gardens Farm in Arroyo (San Benito County). *Paul Chinn / The Chronicle*

## FROM THE COVER

# Crops, ponds eradicated for food's sake

Farming from page A6

"safest."

State agencies responsible for California's water, air and wildlife have been unable to find out from buyers what they are demanding.

They do know that trees have been bulldozed along the riparian corridors of the Salinas Valley, while poison-filled tubes targeting rodents dot lettuce fields. Dying rodents have led to deaths of owls and hawks that naturally control rodents.

### Unscientific approach

"It's all based on panic and fear, and the science is not there," said Dr. Andy Gordus, an environmental scientist with the California Department of Fish and Game.

Preliminary results released in April from a two-year study by the state wildlife agency, UC Davis and the U.S. Department of Agriculture found that less than one half of 1 percent of 866 wild animals tested positive for E. coli O157:H7 in Central California.

Frogs are unrelated to E. coli, but their remains in bags of mechanically harvested greens are unsightly, Gordus said, so "the industry has been using food safety as a premise to eliminate frogs."

Farmers are told that

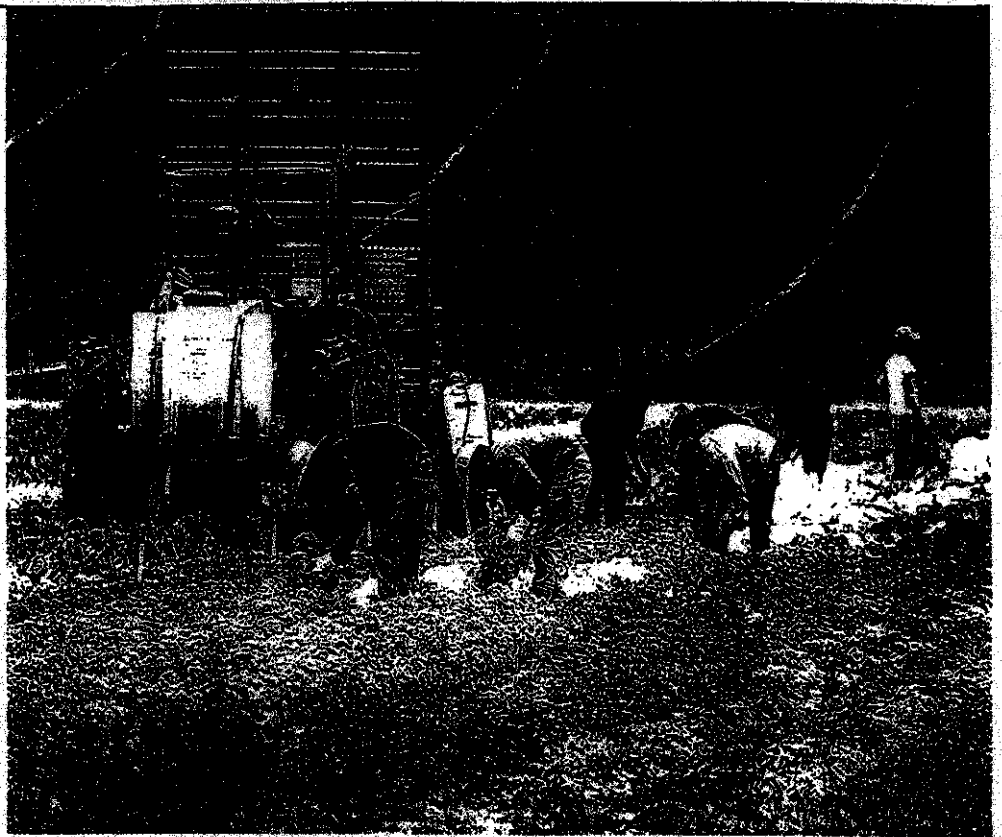
ponds used to recycle irrigation water are unsafe. So they bulldoze the ponds and pump more groundwater, opening more of the aquifer to saltwater intrusion, said Jill Wilson, an environmental scientist at the Central Coast Regional Water Quality Control Board in San Luis Obispo.

Wilson said demands for 450-foot dirt buffers remove the agency's chief means of preventing pollution from entering streams and rivers. Jovita Pajarillo, associate director of the water division in the San Francisco office of the Environmental Protection Agency, said removal of vegetative buffers threatens Arroyo Seco, one of the last remaining stretches of habitat for steelhead trout.

### Turning down clients

"It's been a problem for us trying to balance the organic growing methods with the food safety requirements," Peixoto said. "At some point, we can't really meet their criteria. We just tell them that's all we can do, and we have to turn down that customer."

Large retailers did not respond to requests for comment. Food trade groups in Washington suggested calling other trade groups, which



Paul Chinn / The Chronicle

Farmworkers harvest organically grown lettuce at Lakeside Organic Gardens Farm in Watsonville.

## Some major recent outbreaks of food-borne illness

The Food and Drug Administration lists 40 food-borne pathogens. Among the more common: E. coli O157:H7, salmonella, listeria, campylobacter, botulism and hepatitis A.

**June 2009:** E. coli O157:H7 found in Nestle Toll House refrigerated cookie dough manufactured in Danville, Va., resulted in the recall of 3.6 million packages. Seventy-two people in 30 states were sickened. No traces found on equipment or workers; investigators are looking at flour and other ingredients.

**October 2008:** Salmonella found in peanut butter from a Peanut Corp. of America plant in Georgia. Nine people died, and an estimated 22,500 were sickened. Criminal negligence was alleged after the product tested positive and was shipped.

**June 2008:** Salmonella Saintpaul traced to serrano peppers grown in Mexico. More than 1,000 people were sickened in 41 states, with 203 reported hospitalizations and at least one death. Tomatoes were suspected, devastating growers.

**April 2007:** E. coli O157:H7 found in beef, sickening 14 people. United Food Group recalled 5.7 million pounds of meat.

**December 2006:** E. coli O157:H7 traced to Taco Bell restaurants in New Jersey and Long Island, N.Y. Green onions suspected, then lettuce. Thirty-nine people were sickened, some with acute kidney failure.

**September 2006:** E. coli O157:H7 found in Dole bagged spinach processed at Earthbound Farms in San Juan Bautista (San Benito County). The outbreak killed four people, sent 103 to hospitals, and devastated the spinach industry.

didn't comment.

Chiquita/Fresh Express, a large Salinas produce handler, told the advocacy group Food and Water Watch that the company has "developed extensive additional guidelines for the pro-

curement of leafy greens and other produce, but we consider such guidelines to be our confidential and proprietary information."

Seattle trial lawyer Bill Marler, who represented many of the plaintiffs in

the 2006 E. coli outbreak in spinach, said, "If we want to have bagged spinach and lettuce available 24/7, 12 months of the year, it comes with costs."

Still, he said, the industry rules won't stop

lawsuits or eliminate the risk of processed greens cut in fields, mingled in large baths, put in bags that must be chilled from packing plant to kitchen, and shipped thousands of miles away.

"In 16 years of handling nearly every major food-borne illness outbreak in America, I can tell you I've never had a case where it's been linked to a farmers' market," Marler said.

"Could it happen? Absolutely. But the big problem has been the mass-produced product. What you're seeing is this rub between trying to make it as clean as possible so they don't poison anybody, but still not wanting to come to the reality that it may be the industrialized process that's making it all so risky."

E-mail Carolyn Lochhead at [clochhead@sfgate.com](mailto:clochhead@sfgate.com).

Anthony L. Lombardo  
Jeffery R. Gilles

Dennis C. Beougher  
Patrick S.M. Casey  
Sheri L. Damon  
E. Soren Diaz  
J. Kenneth Gorman  
Virginia A. Hines  
Koren R. McWilliams  
Paul Rovella  
Bradley W. Sullivan  
James W. Sullivan Kelly  
McCarthy Sutherland

Lombardo  
& Gilles  
LIMITED LIABILITY PARTNERSHIP

318 Cayuga St.  
P. O. Box 2119  
Salinas, CA 93902-2119  
831-754-2444 (SALINAS)  
888-757-2444 (MONTEREY)  
831-754-2011 (FAX)

225 Sixth Street  
Hollister, CA 95023  
831-630-9444

File No.: 3176.000

March 6, 2008

John McDonnell, Jr.  
1999 Harrison Street, Suite 2400  
Oakland, California 94612

Re: Executive Summary

Dear John:

Attached is an information memo from Dennis Beougher and Jeff Grote with regard to an overview of the City of Salinas and Monterey County drainage issues concerning the City's LAFCO application to add 3,347 acres to its sphere of influence and the annexation of a portion of the amended sphere of influence, 2,388 acres (approximately 950 acres would be annexed into the city in another application).

The City of Salinas and Monterey County are currently involved in a dispute as a result of the City's LAFCO application. Monterey County is threatening to file a lawsuit to challenge the City's LAFCO application by questioning the City environmental documents submitted as part

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of the application. Monterey County's challenge focuses on the issues of farmland protection and more importantly, stormwater. The City's EIR states that the stormwater from its expanded sphere of influence and proposal annexation area, located adjacent to the City's eastern and northern boundary, can be mitigated by keeping all stormwater on site with no net increased stormwater. The County continues to firmly believe that the mitigation measures are totally insufficient and based on previous City assertions that it will fix the drainage problem, do not believe the City. As a result of the threatened litigation over its application, the City and County have executed a tolling agreement to extend the statute of limitations for the County to challenge the adequacy of the City's EIR documents for its LAFCO application.

The tolling agreement was to expire last week. I received several calls from City and County officials requesting that I intervene in resolving or possibly assisting them in drafting a resolution that could resolve this dispute. I urged both sides to extend the tolling agreement and I met separately with city council officials and with county officials. I floated, informally, the concept of using property on the west side of 101 as a location for a large stormwater detention/retention basin that could help resolve the stormwater runoff issue. I pointed out that there are two properties that could be utilized as large stormwater retention basins. These properties are the Jarvis Ranch and the Chinn Ranch.

As you are aware, there is nothing in the City/County Memorandum of Understanding that addressed development on the west side of Highway 101, except that the West Side Bypass alignment will be located adjacent to existing City development. In addition, the City/County Memorandum of Understanding fails to address the glaring need for the West Side Bypass to make a connection between the Prunedale Improvement Project/Highway 101 ("PIP") rerouting at Espinosa Road/Russell Road with the current planned alignment of the West Side Bypass as it terminates at Boronda Road, rather than Espinosa. There is an obvious need for the bypass to make a connection through the Jarvis Parcel to the PIP/ Espinosa Road/Russell Road.

Strategically, I believe we have a very short window of opportunity to facilitate a settlement between the County and City. The proposed strategy would allow the Jarvis Ranch and key adjoining parcels to be utilized to help resolve the County's dispute with the City over drainage issues and associated threatened litigation. Essentially, the strategy would involve taking immediate steps as follows:

1. Meet with Jeff Grote, Steve Collins (vice-chair of the Monterey County Water Resources Agency) and George Fontes (a landowner adjacent to the west edge of the City and a representative of county farmers concerned with the Reclamation Ditch flooding) with regard to north county farmers' positions and the position of the Monterey County Water Resource Agency;



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24 Meet with Curtis Weeks of the Monterey County Water Resource Agency to discuss the County's plan to solve the stormwater runoff situation as a result of proposed new development in the city but currently rejected by City and State officials;

- \* 3. Set up a meeting with Jeff Grote and Lombardo & Gilles to review the plan/remedies provided by the MCWRA and then determine how to best complement those recommendations;
4. Set up a meeting with a Salinas City Councilmember (preferably Sergio Sanchez) and an engineer from the City to review a redacted version of the plan/remedies in an effort to facilitate a solution to the County/City threatened litigation; and
5. Request that Dennis Beougher, concurrent with the above, prepare draft provisions that can be included in any settlement agreement between the County and the City with regard to modification to the County/City MOU to include language acceptable to Jarvis that would bring the Jarvis parcel into the City's Sphere of Influence in order to create both a stormwater and transportation solution.

I believe that we might be able to refer to adverse impacts resulting from the City's eastern expansion in the City/County Settlement Agreement as an amendment to the current City/County MOU. We should determine whether or not the Settlement Agreement could remain confidential under those circumstances. We also might consider simply stating in the settlement agreement that the County and the City of Salinas will effectuate a modification to the MOU to be consistent with the settlement agreement within twelve months of the date of the settlement agreement, so that it occurs after the elections in November. Please note that the provisions that Dennis needs to add to any settlement agreement between the County and the City should include a requirement that a supplemental or focused EIR be conducted on the alternatives or plan/remedies that we come up with as to West Side Bypass extension to Espinosa Road and the stormwater retention basins on the west side properties.

Sincerely yours,

**Lombardo & Gilles, LLP**

Jeffery R. Gilles

JRG/1c

Enclosure



**MEMORANANDUM  
CITY AND COUNTY STORMWATER  
DISPUTE**

Prepared by Dennis Beougher and Jeff Grote  
March 6, 2008

There is a dispute between Monterey County and the City of Salinas over the lack of specific storm water management plans for the City's proposed urban development annexation area and the possible consideration of west side detention basin opportunities, particularly at Jarvis Ranch, as part of the solution.

**Current Situation**

The City of Salinas has filed a LAFCO application to expand its sphere of influence by 3,347 acres and the annexation of a portion of the increased area of the sphere of influence, 2,388 acres, located adjacent to the existing northern and eastern boundary of the City. (See attached Figure 3-3). The City wants the County to sign off on a tax sharing agreement but wants to delay resolution of storm water runoff mitigations until project level design. Monterey County opposes Salinas' LAFCO application citing two major reasons, farmland preservation and the city's failure to address stormwater drainage issues in a meaningful way. The County wants an agreement that either: 1). provides a specific planning framework for storm drainage facilities and measures; or 2). guarantees and preserves rights to have standing in the future to secure final resolution of stormwater drainage facilities and mitigations and to preserve the rights of individual Agricultural land owners. Towards that end, the Monterey County Water Resources Agency ("MCWRA") prepared a plan for Storm Water Management which was forwarded to the City, but was apparently ignored. We are working on obtaining a copy of this MCWRA plan.

Currently there exists a tolling agreement executed by the City and County to extend the statute of limitation date when the County must file a lawsuit to stop the city's LAFCO application. Although both sides have seemingly reached an impasse on February 25, 2008, both public agencies agreed to extend the tolling agreement for another month, or until March 25, 2008.

**The Issues**

The county's threat to file a lawsuit to stop the City's LAFCO application is based upon the application's EIR response to stormwater management which does not provide a plan of specific measures and facilities to mitigate potential stormwater runoff, particularly as the County downstream facilities such as the Reclamation Ditch and Moss Landing tide/flood gates. The LAFCO application's EIR states that all storm water will have "no net increase in runoff." It further states new development will provide storm water and flood management facilities to control direct and indirect erosion and discharges of

pollutants and/or sediments. Also, the EIR states that surface hydrology impacts associated with future development within the proposed development will be fully mitigated prior to discharging to the natural drainage courses through central facilities and land planning features within the development using various approaches. The City argument is that the annexation does not obviate any drainage issue and argues that site specific storm water management plans will be addressed over time as each new development in the annexation area is proposed. Salinas opines that the County can preserve its argument about drainage until a later date when development is actually being proposed.

\* Monterey County believes that it mistakenly has gone along with these city arguments before, dating back to the Westridge Shopping Center, Northridge Shopping Center, Hardin Ranch, and the Salinas Auto Center annexations and construction, with the result of suffering unmitigated urban runoff, increased velocity in stormwater runoff, and downstream flooding of the farmland closest to Reclamation Ditch and tide gates. The county has determined that it is now in the strongest and best position to get the City to resolve the storm water management issue. The County also believes that if it does not legally challenge the EIR findings and allows this EIR to be certified, the City could tier off of the findings made in this document to permit development without mitigating drainage impacts upon the County's storm water facilities.

The City's LAFCO application area conveys its storm water runoff to four major receiving waters: Carr Lake, Gabilan Creek, Natividad Creek, and Santa Rita Creek. A portion (320 acres) of the large Santa Rita Creek watershed lies within the western (the initial) development area of the City's LAFCO application area. If unmitigated this added urban runoff will flow along and through the southerly edge of the Jarvis Ranch, draining downstream out to Markeley Swamp and eventually draining to the Reclamation Ditch.

#### **Significance To Jarvis Ranch and Downstream Farmlands**

This County/City dispute cuts two ways for the Jarvis Ranch:

1. the Ranch Trust must protect itself from the threat of unmitigated increases in urban runoff through its property's drainages;
2. on the other hand, the Trust should explore the linkages between becoming part of the City/County drainage plan solution to the extent it will enable the properties annexation to the City of Salinas. However, it must not put itself at risk of becoming an offsite, partial solution for urban runoff *without requiring the City/County to assure annexation and/or development rights.*

The Jarvis Ranch and its neighbor, the Desanti Ranch, have a major stake in the outcome of this dispute, just as it did in its lawsuit with the county regarding the Rancho San Rom Specific Plan. The downstream properties, (including the Chinn parcels) will benefit to

the degree that Santa Rita Creek affects them within the composite of downstream flooding problems affecting the lower farmlands along the Salinas River.

During the Jarvis Trust meeting with City of Salinas Mayor Dennis Donahue, of February 31, Jeff Grote proposed that one of the environmental features of a bypass roadway (associated with development of the Jarvis Ranch and other properties in the vicinity) could be to create a detention/retention basin dam across the Santa Rita Creek. Such a facility could contribute positively to an overall North County flood control solution when coupled with upstream drainage improvements in the Santa Rita Basin portions of the City's annexation area.

### **Significance of Santa Rita Creek Basin Solutions to The North County's Overall Drainage-Flood Problem**

The Santa Rita Creek watershed is an important piece of the much larger farmland/urban development drainage management solution for the North County area. Detention basins and other mitigation measures and facilities along its flow would contribute to a part of the solution, but certainly would not address the entire problem. At its simplest, the bigger problem is defined by the velocity and quantity of all storm waters flowing into the Reclamation Ditch from all many sources including Carr Lake, Gabilan Creek, Natividad Creek, and Santa Rita Creek which all flow entirely or in part through the City, particularly when high tides and large storms simultaneously occur. At its most complex, there is a breadth of projects and their history of debate over the years without a consensus or resolution. The last major improvement to the drainage/flood control facilities was the Moss Landing Tide Gates upgrade system; few, if any, other projects have been implemented since then.

**Background Overview.** Natividad Creek and Gabilan Creek flow south into Carr Lake. At Carr Lake, water is conveyed by a reclamation ditch constructed in 1917 to drain upland swamps and marshes. As the Reclamation Ditch and the Salinas River are the only two water courses that convey storm water to the ocean, the Reclamation Ditch is a vital component of the City of Salinas as well as the County's storm water management solution. During high tides and storms water now backs up into the Reclamation Ditch and overflows its banks and floods adjacent farmland areas. The Leafy Green Agreement prohibits native vegetation adjacent to it as well as not allowing contamination from flood waters, but flooding lowers the value of the cropland.

The County believes that new development proposed in the city's LAFCO application area will only worsen a bad situation. The City has not come up with any meaningful solution to address the city's proposed growth area upon the County storm water facilities and potential impacts to county farmland that is subject to flooding from the Reclamation Ditch overflow. The Reclamation Ditch controls ocean tide push back on the Reclamation Ditch by an inadequate tide/flood gates at Moss Landing. The County does not want the City to dump its stormwater into the County's drainage system and then have the County pay to fix the tide gates or creating detention basins along the

Reclamation Ditch or for the lawsuits from flooded property owners along the Reclamation Ditch, as a result of the Salinas' actions approving new development.

County wants the City to propose a framework for resolving the flooding issue. Monterey County Water Resources Agency has a plan for the Reclamation Ditch and wants the City to agree to implement it. This is a very costly plan plus requiring a long time for any environmental review necessary to implement the Water Resources Agency plan. The plan requires upgrading of the tide gates at Moss Landing and detention/retention basins along the Reclamation Ditch. Various other plans have been proposed including expanding Carr Lake and Merritt Lake, not allowing Carr Lake to drain by gravity but to make Carr Lake a large detention basin, or pumping the storm water collected at Carr Lake into the Salinas River rather than the Reclamation Ditch.

#### Next Steps

We are just on the front end of understanding the specifics of the dispute between the two jurisdictions and the degree to which the Jarvis Ranch Property can be positioned to play a role in resolving the dispute and obtaining status in the annexation process. It is urgently important to continue to meet with the key agency staffers and political representatives who can contribute to our developing a strategy and program for furthering the annexation interests of the Jarvis Ranch Trust.

It is too early to know the how much of an opportunity this situation offers but it plays into the overall strategy of positioning the Jarvis Ranch annexation as a mitigation measure whose timing affects the early development phases of the Eastside annexation areas.

# MONTEREY COUNTY

## WATER RESOURCES AGENCY

PO BOX 930  
SALINAS, CA 93902  
(831) 755-4860  
FAX (831) 424-7935

CURTIS V. WEEKS  
GENERAL MANAGER

STREET ADDRESS  
893 BLANCO CIRCLE  
SALINAS, CA 93901-4455

May 27, 2008

Daniel Massa, P.E.  
State of California Department of Transportation  
2015 E. Shields Avenue, Suite 100  
Fresno, CA 93726-5428

Subject: Proposed Route 101 - Near the intersection of Russell Rd, Espinosa Rd, and Harrison Rd

Dear Mr. Massa:

Thank you for the opportunity to review the preliminary hydraulic design and drainage study for the proposed Prunedale Improvement Project. To determine the effectiveness of the proposed stormwater detention basins, the Water Resources Agency (Agency) requests the following:

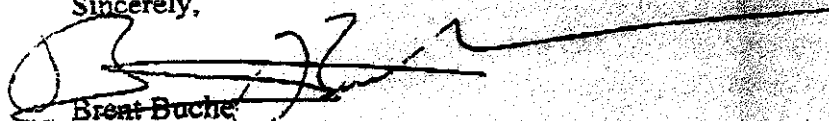
- A revised drainage plan showing the existing and proposed watershed area for each pond.
- A revised drainage analysis that includes summary tables showing all variables used to calculate the 2-year, 10-year, and 100-year runoff rates for existing and proposed conditions.
- Construction details for the outlet pipes and a summary of the criteria used for their design.

The Agency recommends the following design standards:

- The ponds should have adequate volume to limit the 100-year post-development runoff rate to the 10-year pre-development rate.
- The pond outlets should be designed to mitigate higher frequent events, as well as the lower frequency 100-year event, to mitigate impacts to Jarvis Creek.
- Each pond should have a reinforced spillway capable of conveying the 100-year post-development runoff rate.

If you have any questions or need additional information, please call me at (831) 755-4860.

Sincerely,

  
Brent Buche  
Assistant General Manager  
Chief - Operations & Maintenance

ALL DIMENSIONS ARE IN METERS  
UNLESS OTHERWISE SHOWN.



**LITTLE BEAR CREEK**

AUGUST 2008 CALTRANS DRAWING not received by Todd Jarvis until 6/26/2009

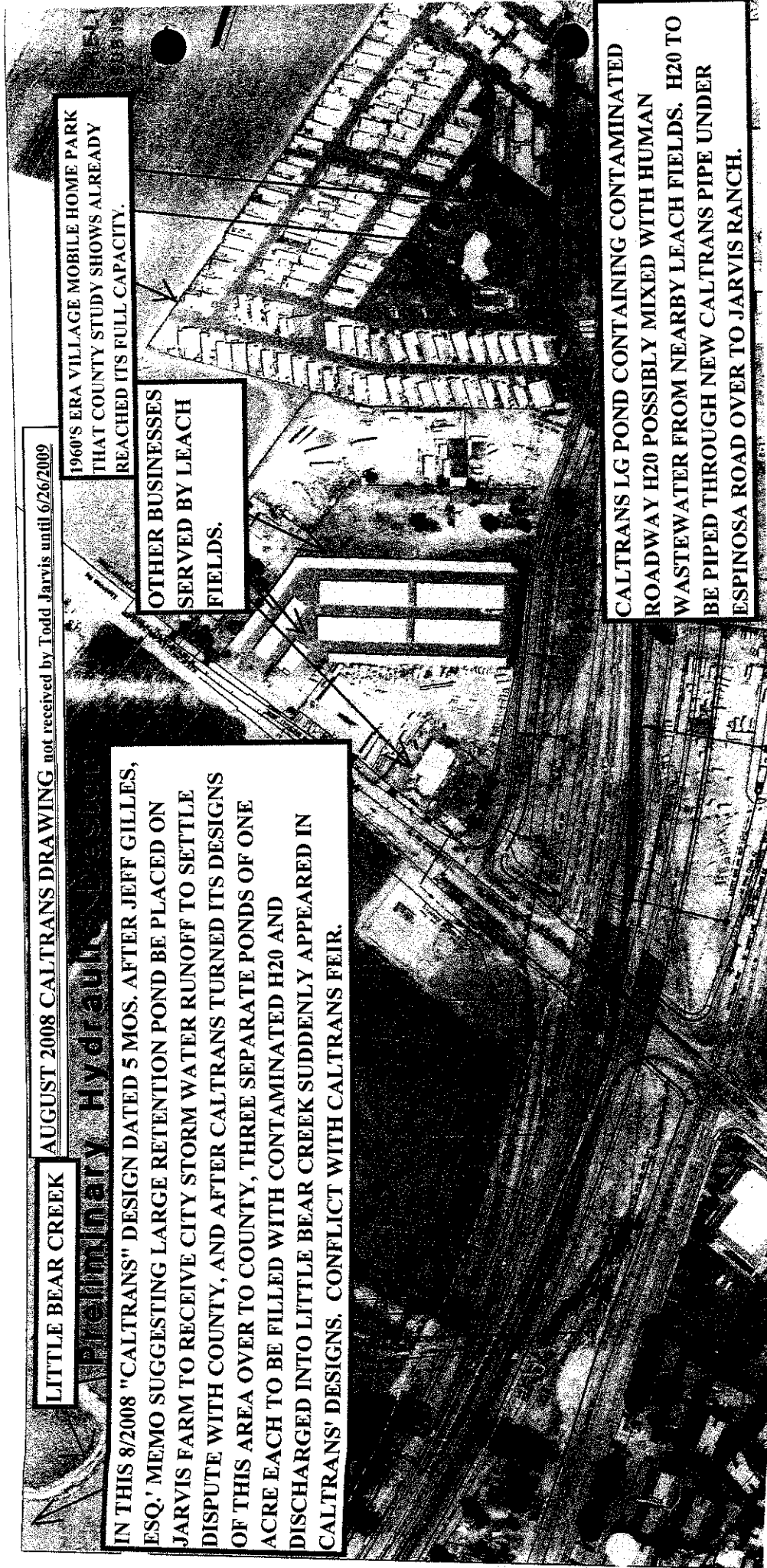
**Preliminary Hydraulic Design**

IN THIS 8/2008 "CALTRANS" DESIGN DATED 5 MOS. AFTER JEFF GILLES, ESQ.' MEMO SUGGESTING LARGE RETENTION POND BE PLACED ON JARVIS FARM TO RECEIVE CITY STORM WATER RUNOFF TO SETTLE DISPUTE WITH COUNTY, AND AFTER CALTRANS TURNED ITS DESIGNS OF THIS AREA OVER TO COUNTY, THREE SEPARATE PONDS OF ONE ACRE EACH TO BE FILLED WITH CONTAMINATED H2O AND DISCHARGED INTO LITTLE BEAR CREEK SUDDENLY APPEARED IN CALTRANS' DESIGNS. CONFLICT WITH CALTRANS FEIR.

1960'S ERA VILLAGE MOBILE HOME PARK THAT COUNTY STUDY SHOWS ALREADY REACHED ITS FULL CAPACITY.

OTHER BUSINESSES SERVED BY LEACH FIELDS.

CALTRANS LG POND CONTAINING CONTAMINATED ROADWAY H2O POSSIBLY MIXED WITH HUMAN WASTEWATER FROM NEARBY LEACH FIELDS. H2O TO BE PIPED THROUGH NEW CALTRANS PIPE UNDER ESPINOSA ROAD OVER TO JARVIS RANCH.



Preliminary Hydraulic Design

