



# CITY OF EL PASO DE ROBLES

*"The Pass of the Oaks"*

June 19, 2008

Mr. John Borst  
209 Navajo Avenue  
Paso Robles 93446

Dear Mr. Borst:

At the June 17, 2008 City Council meeting you presented a request to participate in the City's water resource educational outreach.

You are most welcome to participate in the community forum available on the water project web site located at [www.pasorobleswaterproject.com](http://www.pasorobleswaterproject.com). The web site affords any and all who access it the opportunity to post questions, comments, and concerns. It allows for response from the City as well as other concerned citizens. Additionally, interactive group discussions can be had if so desired. Entries posted are not edited.

The web site community forum is an effective means to interact with members of the community. You are encouraged to avail yourself of it.

Sincerely,

James L. App  
City Manager



# CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

June 20, 2008

Mr. John Borst  
209 Navajo Avenue  
Paso Robles, California 93446

Dear Mr. Borst:

## City Groundwater Rights - Urban Water Management Plan

You presented a letter to the City Council at their meeting of June 17, 2008 addressing the subject of groundwater rights.

Specifically, your letter focused upon overlying owner rights to groundwater in the groundwater basin. You cited a 2001 California Appellate Court decision that held "if the quantity is insufficient, each overlying owner is limited to his proportionate fair share of the total amount available based upon his reasonable need." While a true statement of the law, unfortunately that case is not really relevant to the City's rights to use of water from the Paso Robles Basin.

Except in certain narrow instances, municipalities cannot exercise overlying rights. Thus the City may have significant exposure to a loss of groundwater supplies if the Basin becomes overdrafted.

Owners of land overlying groundwater basins have the right to the reasonable, beneficial use of a share of a basin's groundwater for use on or in connection with their overlying lands. However, public agencies, such as cities, that operate their own water systems and pump groundwater may not exercise the overlying rights of their customers. Except for groundwater used on public lands, such as parks, the public purveyors of water can only exercise appropriative rights when producing groundwater. *San Bernardino vs. Riverside* (1921) 186 Cal. 7, 25; *Orange County Water District vs. Riverside* (1959) 173 Cal App 2nd 137, 165.

Owners of land overlying groundwater have paramount rights, which allow appropriative rights to attach only to surplus waters. *California Water Service Company vs. Edward Sidebotham & Son, Incorporated* (1964) 224 Cal App 2nd 715, 725. The rights of the overlying owner to the quantity of water necessary for use on overlying land are paramount to an appropriation for use on distant land. *Katz vs. Walkinshaw* (1903) 141 Cal 116, 134-137. Thus public agencies depending upon groundwater are limited to surplus water and their rights are junior to the needs of overlying users.

Katz involved an overlying user already using water on his land when the subsequent appropriation was made. The question of an overlying user's right to protect his *prospective* use was raised in *Burr vs. Maclay Rancho Water Company* (1908) 154 Cal 428. The court held that even an overlying owner

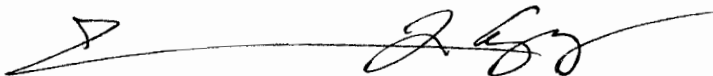
who has not yet used an overlying right can obtain a declaratory judgment protecting his or her paramount right. Until the overlying owners' use of water takes all of the supply, an appropriator has the right to use any existing surplus. *Burr*, page 436. The Court also confirmed the overlying users' right to reasonable protection against pumping which simply lowers groundwater levels in the overlying owners' wells. *Burr*, page 438.

Once a groundwater basin is in overdraft, there is no longer any surplus water available for the acquisition or enlargement of appropriative rights. The California Supreme Court has held that the appropriator's excess appropriation of water invades the overlying owners' senior rights, and can result in an injunction against the appropriator. (*City of Los Angeles vs. San Fernando* (1975) 14 Cal 3rd 199, 278.)

In short, the City's use of groundwater is an appropriative right. Thus, in the event of overdraft in the Basin, the City's rights will be treated as secondary to those of the overlying owners. We could lose access to a significant part of our current water supply. It is against that backdrop that the Council directed that we do as other prudent water suppliers have done throughout the West. We have sought to broaden our water sources, adding flexibility and reliability to the supplies on which our citizens depend. That is what makes the Nacimiento Water Project, which is not subject to groundwater restrictions, so critical to our future.

Thus while the statement you have suggested adding to the Urban Water Management Plan is an accurate statement of one aspect of water rights law, it would be misleading to include it without a broader explanation regarding the limitations on the City's groundwater rights.

Sincerely,

A handwritten signature in black ink, appearing to read 'James L. App', written over a horizontal line.

James L. App  
City Manager