

**FILED**

**FEB 26 2003**

SHERRI L. PEDERSEN  
CLERK OF THE SUPERIOR COURT  
*Sherril Pedersen* DEPUTY

1 Cressey H. Nakagawa  
State Bar No: 043006  
2 LAW OFFICES OF CRESSEY H. NAKAGAWA  
Patrick J. Maloney  
3 State Bar No: 042963  
Thomas S. Virsik  
4 State Bar No: 188945  
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6 Telephone: (510) 521-4575  
Attorneys for Plaintiffs  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF MONTEREY**

10 ORRADRE RANCH, et al. )

11 Plaintiffs, )

12 vs. )

13 MONTEREY COUNTY WATER )  
14 RESOURCES AGENCY AND ALL )  
PERSONS INTERESTED IN THE )  
15 VALIDITY OF THE establishment of )  
Fiscal Year 1999-2000 assessments for )  
16 Zones 2, 2A, 2Y and 2Z of the Monterey )  
County Water Resources Agency, )

17 Defendants. )  
18 )

Case No. M 45589

EX PARTE MOTION TO APPROVE  
SETTLEMENT AND ENTER  
JUDGMENT

CCP § 664.6

Date: 2/26/03  
Time: 8:30 am  
Department 14

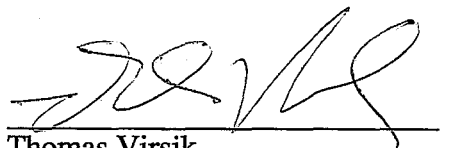
19 Plaintiffs Orradre et al. and defendant Monterey County Water Resources Agency  
20 (Agency or MCWRA) have reached a settlement of all pending litigation and other matters,  
21 including the present action. Defendant Castroville Agricultural Water Coalition, has, as part  
22 of the settlement, agreed to waive any claim for costs and fees. The terms of the settlement  
23 are recited in Exhibit 1 attached hereto. The waiver of costs and fees is attached hereto as  
24 Exhibit 2. Paragraph 9 thereof specifically recites the obligations of the parties with respect  
25 to the Court's approval of this settlement. This settlement would result in a dismissal of this  
26 entire action with prejudice.

27 By way of background, this litigation arose as a validation action under sections 860 et  
28 seq. of the Code of Civil Procedure. Notice was given as required by law shortly after the

1 filing of the action, giving the public an opportunity to join in the lawsuit. Substantial law  
2 and motion proceedings winnowed down the issues and/or parties, leaving only the present  
3 parties with any still existing controversies. The public would not be prejudiced in the  
4 dismissal of this action, having had ample opportunity to participate in whatever fashion it  
5 deemed appropriate.

6 Wherefore, movants respectfully ask that the Court approve the judgment in the form  
7 proffered.

8  
9 Date: 2/25, 2003

  
Thomas Virsik  
Attorney for plaintiffs Orradre et al.

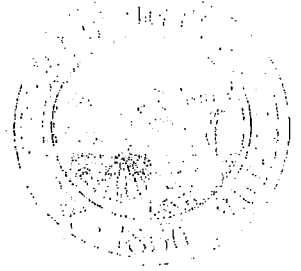
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**EXHIBIT 1**

# MONTEREY COUNTY

## OFFICE OF THE COUNTY COUNSEL

60 WEST MARKET STREET, SUITE 140, SALINAS, CALIFORNIA 93901-2653  
(831) 755-5045 FAX: (831) 755-5283



February 21, 2003

Kevin M. O'Brien, Esq.  
Downey, Brand, Seymour & Rohwer  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, California 94814-4686

Re: *Orradre* Settlement Agreement

Dear Kevin:

Pursuant to your request, we have obtained the signature of the Chairman of the Board of Supervisors on the original Settlement Agreement. A copy of the above-reference settlement agreement is enclosed herein and by copy of this correspondence, a copy is forwarded to Mr. Virsik. The original will be delivered to the Monterey County Water Resources Agency for retention in its file.

Thank you for your assistance.

Sincerely,

DAVID NAWI,  
Acting County Counsel

A handwritten signature in cursive script, appearing to read "Dennis E. Leclere", is written over the typed name.

DENNIS E. LECLERE  
Deputy County Counsel

DEL/gej

Enclosure

CC: Thomas S. Virsik

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement is made as of February 18, 2003 by and between Monterey County Water Resources Agency (“Agency”), and the entire group of Salinas Valley landowners listed as plaintiffs in the lawsuits filed against Agency and others (“the Litigation”) set forth in Exhibit “A” attached and incorporated by reference (“Orradre Plaintiffs” or “Plaintiffs”).

### RECITALS

A. Agency is a duly organized water resources agency under the Monterey County Water Resources Agency Act, West Water Code App. § 52-1 *et seq.*, with the responsibility for, among other things, managing water resources in the Salinas Valley. Plaintiffs are Salinas Valley landowners whose lands are situated primarily in the southern Salinas Valley, south of Gloria Road.

B. Plaintiffs have instituted numerous legal actions against Agency, certain of which remain pending, as set forth in Exhibit “A.” Plaintiffs have challenged the validity of certain Agency ordinances which have authorized the assessment and collection of fees and charges for the provision and availability of water to lands within the Agency. Plaintiffs have also challenged a settlement agreement between Agency and Tanimura & Antle, Inc. (“TAP”) on the basis of its alleged effect on the Agency’s administration of Ordinance 3790, which concerns the implementation of the Castroville Seawater Intrusion Project. The parties to this Agreement wish to end the Litigation, to resolve their differences and to cooperate in the manner described in this Agreement in order to best serve their mutual and respective interests in the management and conservation of Salinas Valley water resources, including without limitation the following:

- Agency wishes to obtain the necessary approvals for the Salinas Valley Water Project, and to implement this and other water management initiatives, such as the Castroville Seawater Intrusion Project and the Salinas Valley Reclamation Project, so as to secure equitably and in an environmentally sound manner, in compliance with all applicable laws, ordinances and regulations, the benefits of these and all Agency projects and activities to the greatest number of lands which the Salinas Valley Groundwater Basin can reasonably support;
- Plaintiffs seek to assure that the costs of Agency's activities are distributed fairly to foster the recognition of their water rights claims, and to secure the benefits of the Agency's activities and programs to the maximum possible number of their lands.

In order to settle completely all pending litigation and related claims and causes of action, and to enter into the present Settlement Agreement according to the terms and conditions below, the parties, therefore, in consideration of the mutual promises, covenants and agreements contained herein, hereby agree as follows:

### **AGREEMENT**

1. Conserved Water. With respect to lands owned by Plaintiffs south of Gloria Road, to the extent that Plaintiffs reduce consumptive use of water through Water Conservation implemented before or after execution of the Settlement Agreement, Agency will not sell or otherwise transfer the water conserved by Plaintiffs. "Water Conservation" shall be defined in accordance with California Water Code Section 1011(a). Nothing in this Settlement Agreement will affect Plaintiffs' obligation to obtain

approval from the State Water Resources Control Board in connection with the transfer of conserved water. Plaintiffs will have no right whatsoever, under this Agreement, to dictate Agency's operation of any water project including but not limited to Nacimiento Reservoir, San Antonio Reservoir or the Salinas Valley Water Project. Plaintiffs retain the right, however, under California water law, to seek relief from the State Water Resources Control Board and/or a court of law in connection with any alleged infringement of Plaintiffs' claimed water rights by Agency.

2. Good Faith Effort to Annex Plaintiffs' Additional Lands. In response to a duly presented petition from Plaintiffs, Agency will in good faith conduct proceedings for the annexation to Agency Zone 2C of a portion of the parcels of land identified in Exhibit "B" attached hereto and incorporated herein, in accordance with this paragraph 2.

Agency waives all annexation fees for lands proposed for annexation under this Agreement, and any lands approved for annexation shall have an initial land classification that is consistent with Agency's land classification policies. In connection with the annexation proceeding Agency, will comply with all applicable law, will apply state and Agency established criteria in determining the eligibility of lands for annexation, and to the extent consistent with applicable law, Agency will utilize existing data and analyses in connection with the annexation proceeding. The total acreage eligible for annexation shall not exceed 12,000 irrigable acres of the lands identified in Exhibit "B," and Agency will utilize its best efforts to process in good faith the annexation of at least 9,000 irrigable acres of the lands identified in Exhibit "B." The annexations contemplated in this paragraph 2 shall be completed, if at all, within five years of the date of this Agreement, provided that Plaintiffs shall take all necessary

actions in a timely manner so as to enable completion of the annexation process within five years. In the event that annexation of the lands described in Exhibit "B" does not occur, in whole or in part, this Settlement Agreement shall remain in full force and effect.

3. Plaintiffs' Water Rights Claims. Agency acknowledges that Plaintiffs claim riparian, appropriative (including pre-1914 appropriative) and other water rights for lands owned by Plaintiffs in the Salinas Valley, and that Plaintiffs assert that their claimed water rights are superior in priority to appropriative water rights held by Agency. Agency's acknowledgment of Plaintiffs' water right claims as described in the first sentence of this paragraph 3 shall not constitute an acknowledgment or admission by Agency, express or implied, as to the validity of Plaintiffs' water right claims. In the event that Agency becomes a party to any administrative or judicial proceeding or environmental review process in which the existence of water right claims held by Plaintiffs is in issue, Agency will acknowledge Plaintiffs' water right claims as described in this paragraph 3, without acknowledging or admitting the validity of Plaintiffs' claims.

4. Limit on Assessments to Finance CSIP. Agency will not increase the assessments in Zones 2Y or 2Z to finance the implementation of any portion of Ordinance 3790. Agency will limit the contribution of lands south of Gloria Road for funding the operation and maintenance of Castroville Seawater Intrusion Project and the Salinas Valley Reclamation Project to assessments under Ordinances 3635 and 3636.

5. Plaintiffs' Support for SVWP Permitting. Plaintiffs will support the Agency with respect to all applications or petitions filed with the State Water Resources Control Board relating to implementation of the Salinas Valley Water Project. Agency will not object to the inclusion in any permits or licenses issued by the SWRCB of a term



providing that Agency's water rights are subject to prior vested water rights. Agency will not oppose Plaintiffs' use of surface water reservoirs used in connection with Plaintiffs' farming operations.

6. Adoption of Sanitary Seal Regulations. In connection with the adoption of sanitary seal regulations for groundwater well drilling, Agency will in good faith consider the hydrologic and water quality conditions existing within the area south of Gloria Road, including but not limited to the shallower depth from which water is drawn in this area, consistent with Water Well Standards, State of California, DWR Bulletins 74-81 and 74-90.

7. Assessment of Vineyard Lands. For the determination of acreage to be assessed in connection with lands within the Salinas Valley containing vineyards, Agency will rely on the California State Board of Equalization Assessor's Handbook Section 521, as interpreted by the Monterey County Assessor.

8. No Opposition to Zone 2C Assessment. Plaintiffs will not oppose the Agency's proposed Zone 2C assessment.

9. Dismissal of Lawsuits; Waiver of Costs and Fees; Court Approval. Plaintiffs will dismiss with prejudice the Litigation listed in Exhibit "A". As a condition of settlement, Castroville Agricultural Water Coalition and Tanimura & Antle, Inc. will execute a written waiver as to all claims to costs or attorneys fees arising from the Litigation. This Settlement Agreement shall be submitted to the Monterey County Superior Court for approval as a condition precedent to the dismissals. Plaintiffs warrant

that no other civil actions are currently pending between Plaintiffs, or any individual members of Plaintiffs, and the Agency. The dismissals contemplated in this paragraph will be executed and filed within 10 days following the Court's approval of this Settlement Agreement.

10. No Modification of Plaintiffs' Claimed Water Rights. This Settlement Agreement will not modify Plaintiffs' claimed water rights.

11. Release. Plaintiffs, on behalf of themselves individually, and for their respective officers, directors employees, shareholders, heirs, executors, administrators, successors, and assigns, hereby release, acquit, and discharge Agency from all claims and causes of action arising out of or in any way connected to the allegations set forth in the complaints and cross-complaint set forth in Exhibit "A," including any known or unknown, foreseen or unforeseen injury or damage arising out of or pertaining to the events, circumstances and conduct alleged in the Litigation. Plaintiffs expressly waive any benefits they may have under Section 1542 of the Civil Code of the State of California which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Plaintiffs hereby acknowledge they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this release, but it is their intention to and they do hereby fully, finally, and forever settle any and all claims encompassed by this release, known or unknown,

suspected or unsuspected, claimed or concealed, asserted or unasserted, contingent or noncontingent. Plaintiffs expressly warrant and represent that the effect and import of the provisions of Section 1542 have been fully explained to them by their respective attorneys.

12. Other Documents. The Parties hereby agree to execute such other documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. No Admissions. This Agreement is entered in settlement of disputed claims and to avoid the expense and inconvenience of further litigation. Neither this Agreement nor any action taken to carry out this Agreement may be construed or used as an admission of any issue, fact, wrongdoing, liability, or violation of any law, rule, or regulation whatsoever.

15. Not Evidentiary. Evidence of the existence, terms and negotiations of this Agreement shall not be admissible in any litigation as evidence of the respective rights, duties, or obligations of any of the parties hereto; provided, however, that such evidence may be offered in seeking to enforce the terms of this Agreement.

16. Construction. Each party to this Agreement has participated in the drafting of this Agreement. The language of this Agreement, therefore, shall not be construed either in favor of or against any of the Parties hereto.

17. Agreement Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns and representatives of each Party to this Agreement.

18. Integration; Amendments. This Agreement contains the entire agreement between the Parties, and all previous statements or understandings, whether express or implied, oral or written, relating to the subject matter of this Agreement are superseded by this Agreement. This Agreement may not be modified or amended except by written agreement signed by the Parties.

19. Captions. The Captions appearing in this Agreement are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this Agreement.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21. Authority to Enter Into Agreement. All Parties represent and warrant that each has the capacity and legal authority to execute the Settlement Agreement on behalf of the entity involved, and to effectuate the purposes of the settlement.

22. Advice of Counsel. The Parties agree that the settlement expressed herein has been arrived at following bargaining and negotiation and represents a final, mutually agreeable settlement agreement, and that signing this Agreement is their own free act.

Each Party has carefully read and understood the contents hereof.

23. Severability. In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired or affected thereby.

Dated: 2/18/03

MONTEREY COUNTY WATER RESOURCES  
AGENCY

By: Federico Aventura

Title: Chair, Monterey County Board of Supervisors

Approved as to Form:

By: Ken M. O'Brien

Title: Special Counsel

ORRADRE RANCH, MICHELE ORRADRE ET AL.

By \_\_\_\_\_

Mary Orradre

MARGARET R. DUFLOCK, ET AL.

By \_\_\_\_\_

Margaret R. Duflock

SAN BERNABE VINEYARDS, TRIVINTNERS

By \_\_\_\_\_

Chris Indelicato

CALIFORNIA ORCHARD COMPANY  
SALINAS LAND COMPANY  
BARBARA BARNARD SMITH  
BARBARA BARNARD SMITH LIVING TRUST  
HELEN MARGARET SMITH LIVING TRUST

By \_\_\_\_\_  
Greg Smith

Approved as to Form:

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT A**

**CASES PENDING IN MONTEREY COUNTY SUPERIOR COURT**

- Case No. 115777**      Orradre Ranch, et al. v. Monterey County Water Resources Agency and All Persons Interested in the Validity of the establishment of Fiscal Year 1998-99 assessments for Zones 2, 2A, 2y and 2Z of the Monterey County Water Resources Agency. Entry of Judgment 10/23/02 - Appeal No. H024696 Dismissed - Appeal No. H025282 filed 11/22/02.
- Case No. M 55891**      Orradre Ranch, et al. v. Monterey County Water Resources Agency and all Persons Interested in the Validity of the Establishment of Fiscal Year 2001-2002 Assessments for Zone 2 and 2A of the Monterey County Water Resources Agency.
- Case No. M 46013**      Consolidated with M54484. Tanimura & Antle, Inc. and Chris Bunn, Trustee of the Thomas M. Bunn Living Trust Agreement dated August 22, 1984 v. Monterey County Water Resources Agency and All Persons Interested in the Matter of the Validity of Increases to Zone 2b Assessments and the Board of Supervisors of the Monterey County Water Resources Agency in Resolutions 99-288 and 299-289.
- Case No. 45589**      Orradre Ranch, et al. v. Monterey County Water Resources Agency and All Persons Interested in the Validity of the establishment of Fiscal Year 1999-2000 assessments for Zones 2, 2A, 2Y, and 2Z of the Monterey County Water Resources Agency.

**EXHIBIT B**

DUFLOCK MARGARET ROSENBERG TR E	237031010	467.69
DUFLOCK MARGARET ROSENBERG TR E	237032007	10.8
DUFLOCK MARGARET ROSENBERG TR E	422121041	34
DUFLOCK MARGARET ROSENBERG TR E	422121042	43.1
Orradre Ranch	423081010	47
Margaret Rosenberg Dufflock	423081015	57
Michel J & Mary F Orradre	423081016	594.8
Michel J Orradre	423081017	38.36
Orradre Ranch	423081018	640
Orradre Ranch	423081020	254
Orradre Ranch	423081025	320
ORRADRE RANCH	423081044	125.96
Orradre Ranch	423081045	313.2
Orradre Ranch	423081046	640
Orradre Ranch	423081052	176.6
ORRADRE RANCH	423091011	50
ORRADRE RANCH	423091012	47.81
Orradre Ranch	423091013	280
ORRADRE RANCH	423091014	149.33
ORRADRE RANCH	423091015	120
Orradre Ranch	423091016	40
ORRADRE RANCH	423091017	97.21
ORRADRE RANCH	423091046	30.08
Orradre Ranch	423101001	616.9
Orradre Ranch	423101010	397.45
Orradre Ranch	423101011	557.6
Orradre Ranch	423101012	160
Orradre Ranch	423101014	480
Orradre Ranch	423101015	320
Orradre Ranch	423101016	320
Orradre Ranch	423101023	33.46
Orradre Ranch	423101024	46.5
Orradre Ranch	423101025	540
Orradre Ranch	423101026	619.4
Orradre Ranch	423101027	425.6
Orradre Ranch & Five ""O"" Land	423101028	254.4
Orradre Ranch & Five ""O"" Land	423101029	600
Orradre Ranch & Five ""O"" Land	423101030	560
Orradre Ranch	423101032	480
Orradre Ranch	423111001	618.1
Orradre Ranch	423111002	425.6
Orradre Ranch & Five ""O"" Land	423111003	214.4
Orradre Ranch & Five ""O"" Land	423111004	480
Orradre Ranch & Five ""O"" Land	423111005	160
Orradre Ranch & Five ""O"" Land	423111017	638.8
Orradre Ranch & Five ""O"" Land	423111018	640
Orradre Ranch	423111019	618.4
Orradre Ranch	423111021	613.4



Orradre Ranch	423111022	640
Orradre Ranch & Five ""O"" Land	423111023	481.75
Orradre Ranch	423121001	118.3
Orradre Ranch	424101028	36.88
Orradre Ranch	424351001	2.75
DUFLOCK MARGARET ROSENBERG TR E	421141005	200
Margaret Rosenberg Duflock	421161033	80
Margaret Rosenberg Duflock	421161036	240
Margaret Rosenberg Duflock	422111002	14
DUFLOCK RANCHES	422111018	400
Margaret Rosenberg Duflock	422121016	40
Margaret Rosenberg Duflock	422121017	40
Margaret Rosenberg Duflock	422121046	40
Margaret Rosenberg Duflock	422121047	160
Margaret Rosenberg Duflock	422121048	640
Margaret Rosenberg Duflock	422141031	160
Margaret Rosenberg Duflock	422141034	75.57
Margaret Rosenberg Duflock	422141035	463.36
Margaret Rosenberg Duflock	423081053	152.5
<i>Edwin A Bergersen</i>	421111011	316
<i>Edwin A Bergersen</i>	422081055	160
<i>Edwin A Bergersen</i>	422081059	160
		20018.06

23. Severability. In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired or affected thereby.

Dated: \_\_\_\_\_ MONTEREY COUNTY WATER RESOURCES AGENCY

By: Fernando Armenta

Title: Chair, Monterey County Bureau of Supervisors

Approved as to Form:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: 2-17-03 Orradre Ranch, Michelé Orradre et al

By: Mary Orradre

Title: \_\_\_\_\_

Mary Orradre

Dated: 2/17/03 Margaret R. Duflock, et al.

By: Margaret R Duflock

Title: \_\_\_\_\_

Margaret R. Duflock

Dated: 2-17-03 San Bernabe Vineyards, Trivintners

By: Chris Indelicato

Title: Owner  
Chris Indelicato

Dated: \_\_\_\_\_ California Orchard Company  
Salinas Land Company  
Barbara Barnard Smith  
Barbara Barnard Smith Living Trust  
Helen Margaret Smith Living Trust

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Greg Smith

Dated: 2/17/03 Scheid Vineyards

By: \_\_\_\_\_

Title: Scott D. Scheid  
Scott Scheid President

**EXHIBIT 2**

**WAIVER OF COSTS AND FEES**

The undersigned have participated as parties in one or more of the following actions in Monterey County Superior Court, including appeals therefrom.

- Case No. 115777** Orradre Ranch, et al. v. Monterey County Water Resources Agency and All Persons Interested in the Validity of the establishment of Fiscal Year 1998-99 assessments for Zones 2, 2A, 2y and 2Z of the Monterey County Water Resources Agency.  
Entry of Judgment 10/23/02 - Appeal No. H024696 Dismissed - Appeal No. H025282 filed 11/22/02.
- Case No. M 55891** Orradre Ranch, et al. v. Monterey County Water Resources Agency and all Persons Interested in the Validity of the Establishment of Fiscal Year 2001-2002 Assessments for Zone 2 and 2A of the Monterey County Water Resources Agency.
- Case No. M 46013** Consolidated with M54484. Tanimura & Antle, Inc. and Chris Bunn, Trustee of the Thomas M. Bunn Living Trust Agreement dated August 22, 1984 v. Monterey County Water Resources Agency and All Persons Interested in the Matter of the Validity of Increases to Zone 2b Assessments and the Board of Supervisors of the Monterey County Water Resources Agency in Resolutions 99-288 and 299-289.
- Case No. 45589** Orradre Ranch, et al. v. Monterey County Water Resources Agency and All Persons Interested in the Validity of the establishment of Fiscal Year 1999-2000 assessments for Zones 2, 2A, 2Y, and 2Z of the Monterey County Water Resources Agency.

The undersigned hereby waive any and all claims for attorneys fees, costs, or fees arising from any part of the above litigation.

Dated: February 24, 2003

Robert E. Donlan

Rob Donlan, Attorney for  
Tanimura & Antle, Inc.

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Piero Dallarda, Attorney for  
Castroville Agricultural Water Coalition  
Ocean Mist Farms  
Steve Collins