

LOG losing Brief
Exhibit B

Michael T. Riddell, Bar No. 072373
Eric L. Garner, Bar No. 130665
Jeffrey V. Dunn, Bar No. 131926
LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502-1028
TELEPHONE (909) 686-1450

Attorneys for Defendant and
Cross-Complainant CITY OF
SANTA MARIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

SANTA MARIA VALLEY WATER)	Case No. CV 772014
CONSERVATION DISTRICT, a)	
public entity,)	CROSS-COMPLAINT OF CITY OF SANTA
)	MARIA AGAINST SANTA MARIA VALLEY
Plaintiff,)	WATER CONSERVATION DISTRICT FOR
)	DECLARATORY AND INJUNCTIVE
v.)	RELIEF AND ADJUDICATION OF WATER
)	RIGHTS
CITY OF SANTA MARIA, a)	
municipal corporation;)	
SOUTHERN CALIFORNIA WATER)	
COMPANY, a California)	
corporation; and CITY OF)	
GUADALUPE, a municipal)	
corporation; DOES 1 THROUGH)	
3,000 inclusive,)	
)	
Defendant.)	
)	
-----)	
CITY OF SANTA MARIA, a)	
municipal corporation;)	
)	
Cross-Complainant,)	
)	
v.)	
)	
SANTA MARIA VALLEY WATER)	
CONSERVATION DISTRICT, a)	
public entity; and ROES 1)	
through 10,000, inclusive.)	
)	
Cross-Defendants.)	
)	
-----)	

7001 ✓

Cross-Complainant City of Santa Maria alleges:

INTRODUCTION

1. The protection and conservation of the Santa Maria Groundwater Basin water is vitally important to the health, safety and welfare of the citizens of Santa Maria. For this reason, Santa Maria brings this Cross-Complaint to promote and protect the general welfare of its citizens and to serve a legitimate public purpose.

THE PARTIES

2. Santa Maria is a municipal corporation in the County of Santa Barbara, California.

3. Defendant and respondent Santa Maria Valley Water Conservation District is a public agency within Santa Barbara and San Luis Obispo counties under California Water Code Section 74000 *et seq.*

4. Santa Maria is informed and believes and upon that basis alleges that cross-defendants Roes 1 through 10,000, inclusive, claim some right, title or interest to the Basin and/or its water and that claim is adverse to Santa Maria's claim. Santa Maria is unaware of their true names and capacities and therefore, sues those cross-defendants by fictitious names.

5. Santa Maria is informed and believes and upon that basis

-1-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RV\Pub\JVD\48213

7002 ✓

alleges that each cross-defendant was the agent and/or employee of each other cross-defendant. In doing the things alleged in this Cross-Complaint, each cross-defendant was acting within the course and scope of the agency and/or employment.

THE SANTA MARIA GROUNDWATER BASIN

6. The Basin is located in Santa Barbara and San Luis Obispo counties.

7. Santa Maria is informed and believes and upon that basis alleges the Basin has been overdrafted for more than five (5) consecutive years immediately prior to the commencement of this action. Total annual demands upon the Basin have greatly exceeded, and do now exceed, the average annual supply of Basin water from natural sources. There has been a progressive and general lowering of Basin water levels; the available natural supply has been and is being gradually and increasingly depleted; and if demands upon the Basin are not limited, the Basin will be exhausted.

8. Each cross-defendant has, and is now, pumping, appropriating and diverting water from the natural supply of the Basin. Santa Maria is informed and believes and upon that basis alleges that the combined extraction of water by cross-defendants constitutes a substantial portion of the annual production of water from the Basin, and that each cross-defendant claims a right to take water and threatens to increase its taking of water without regard to the rights of Santa Maria in and to the Basin

waters. Cross-defendants' extraction reduces Basin water tables or levels and their extraction contributes to the deficiency of the Basin water supply as a whole. The deficiency results in a shortage of water for Santa Maria. Cross-defendants' continued and increasing extraction of Basin water has resulted in, and will result in, a diminution, reduction and impairment of the Basin water supply and has and will deprive Santa Maria, of water to which it is entitled.

9. Santa Maria is informed and believes and thereon alleges there are conflicting claims of overlying, appropriative and prescriptive water rights to the Basin and/or its water.

10. Santa Maria has acquired appropriative and prescriptive rights to Basin groundwater by virtue of Santa Maria's pumping. Santa Maria has pumped water from the Basin since the early 1900's. Since that time, Santa Maria has pumped water from the Basin and/or stored water in the Basin by reasonable extraction means and has used the Basin and/or its water for reasonable and beneficial purposes, and has done so under a claim of right in an actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse, use and/or manner for at least five years preceding commencement of this action.

FIRST CAUSE OF ACTION

(For Declaratory Relief - Prescriptive Rights)

11. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 10, inclusive.

-3-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\48213

7004 ✓

12. Santa Maria contends that no cross-defendant has a right to take or increase its take of Basin water, and that any right of any cross-defendant to do so is subordinate to the rights of Santa Maria and the general welfare of the citizens and inhabitants of Santa Maria.

13. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

14. Santa Maria desires a judicial determination as to the correctness of its contentions and the amount of Basin water to which Santa Maria and each of the cross-defendants is entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(For Declaratory Relief - Physical Solution)

15. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 14, inclusive.

16. Cross-defendants claim the right to take Basin water and further claim they can increase their take without regard to the rights of Santa Maria. Unless restrained by order of the court, cross-defendants will continue to take larger and increasing amounts of Basin water to the great and irreparable damage and injury to Santa Maria, which cannot be compensated for in money damages.

- 4 -

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\48213

7005 ✓

17. By reason of the large and increasing amounts of Basin water extracted by cross-defendants as alleged above, the amount of Basin water available to Santa Maria has been reduced. Unless cross-defendants and each of them are enjoined and restrained, the aforementioned conditions will continue and will become more severe; there will occur further depletion of the Basin groundwater which will further permanently damage and ultimately destroy the Basin's ability to supply water.

18. To prevent irreparable injury to the Basin, it is necessary that the court determine, impose and retain continuing jurisdiction to enforce a physical solution upon the cross-defendants who pump water from the Basin. The solution may include, but is not limited to, a monetary assessment, and metering and assessments upon Basin water extraction to pay for the purchase, and delivery of supplemental water to the Basin.

THIRD CAUSE OF ACTION

(For Declaratory Relief - Municipal Priority)

19. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 18, inclusive.

20. Santa Maria has the right to extract water from the Basin not only to meet current demands, but also to take increased amounts of water as necessary to meet future demands. The right exists not only as a result of the priority and extent of Santa Maria's appropriative and prescriptive rights, but as a result of the law and public policy of the State of California: "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (Water Code § 106.)

21. Water Code Section 106.5 provides: "It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses. . . ."

22. Under Water Code Sections 106 and 106.5, Santa Maria has a prior right to Basin water as against all non-municipal pumpers.

23. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief,

that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph. Santa Maria is informed and believes and on that basis also alleges that the majority of water pumped by cross-defendants is used for irrigation purposes.

24. Santa Maria desires a judicial determination as to the correctness of its contentions and the amount of Basin water to which Santa Maria and each of the cross-defendants is entitled to pump from the Basin. Santa Maria also desires a declaration that it has the right to pump water from the Basin to meet its reasonable present and future needs, and that such rights are prior and paramount to the rights, if any, of cross-defendants to the use of water for irrigation purposes.

FOURTH CAUSE OF ACTION

(Injunctive or Equitable Relief Against Respondent District)

25. Santa Maria realleges and incorporates by this reference the allegations contained in paragraphs 1 through 24, inclusive.

26. Santa Maria is informed and believes and upon that basis alleges that District was formed, inter alia, for the purpose of conserving Santa Maria Basin Groundwater (Water Code § 74521).

27. As a public agency formed and existing under the laws of the State of California, District has a duty to avoid wasting water. District is responsible to obey the mandate of Article X, Section 2 of the California Constitution "that the general welfare

-7-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\49213

7008

requires the water resources of the State to be put to beneficial use to the fullest extent to which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."

28. District is empowered by statute to perform acts necessary so that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants of the District, and so that water will not be wasted. (Water Code §§ 74521, 74522, 74508.) In furtherance of this power, the District can sell or purchase water, levy charges on groundwater production and require the use of water measuring devices. (Water Code §§ 75500 et seq.)

29. District has the ability and duty to exercise its powers to limit waste and unreasonable use and to relieve the condition of overdraft in the Basin.

30. District has failed to exercise its duties and powers as required by law. District's failure to regulate pumping in the Basin allows the Basin to be continually overdrafted and permanently and irreparably damaged, and constitutes an unreasonable use and waste of water which is prohibited by the Constitution and violates the purposes for which the District was formed. District's inaction and omissions violate the public policy of the State which is to foster the beneficial use of water and to discourage its waste.

-8-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\48213

7009

31. Santa Maria has no plain, speedy, adequate remedy at law in that an award of damages cannot cure the overdraft of the Basin. Santa Maria will suffer irreparable injury unless this court exercises its equitable and legal jurisdiction by requiring District to comply with its duties and by issuing a writ of mandate compelling the District to, among other things, relieve the condition of overdraft and waste in the Basin.

FIFTH CAUSE OF ACTION

(Declaratory Relief - Storage
of Imported Water in The Basin)

32. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 31, inclusive.

33. In 1991, Santa Maria entered into a contract with the Central Coast Water Authority to purchase water from the State Water Project ("SWP"). This imported water is being used, in part, to decrease Santa Maria's pumping from the Basin. This imported water would not otherwise have been brought to the Basin. Santa Maria will pay approximately \$13,000,000 this year for this imported water supply. This is an annual amount and will probably be higher in future years.

34. As an importer of SWP water, Santa Maria has the right to store imported water in the Basin and the sole right to pump or otherwise use that stored imported water. The rights, if any, of cross-defendants are limited to the native supply of the Basin, and do not extend to groundwater derived from any water imported

into the Basin.

35. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

36. Santa Maria desires a judicial determination as to the correctness of its contentions and that Santa Maria can store imported SWP water in the Basin and that Santa Maria has the sole right to pump or otherwise use such stored imported water.

SIXTH CAUSE OF ACTION

(Declaratory Relief - Recapture of Return
Flows From Imported Water in The Basin)

37. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 36, inclusive.

38. A portion of the imported SWP water that is used by Santa Maria returns or enters the Basin in the course of use. These are "return flows" attributable to the imported SWP water.

39. Santa Maria has the sole right to recapture return flows attributable to the imported SWP water. The rights, if any, of cross-defendants are limited to the Basin's native supply, and do not extend to groundwater attributable to any imported water.

40. An actual controversy has arisen between Santa Maria and

-10-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\48213

7011 ✓

cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

41. Santa Maria desires a judicial determination as to the correctness of its contentions and that Santa Maria has the sole right to recapture the return flows in the Basin that are attributable to imported SWP water.

SEVENTH CAUSE OF ACTION

(Right to Water from Twitchell Reservoir Project)

42. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 41, inclusive.

43. Santa Maria has paid, and is currently paying, for a significant portion of the Twitchell Reservoir Project. Santa Maria is an intended beneficiary of the Twitchell Reservoir Project and Santa Maria is entitled to water from the project.

44. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

45. Santa Maria desires a judicial declaration as to the correctness of its contentions and seeks a declaration that it has a right to water from the Twitchell Reservoir.

EIGHTH CAUSE OF ACTION

(Equitable Apportionment)

46. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 45, inclusive.

47. The application of water rights priorities among overlying and appropriative users is subject to the doctrine of equitable apportionment. To the extent that any of the cross-defendants may have overlying rights, and to the extent that strict application of water rights priorities would preclude Santa Maria from pumping from the Basin to meet Santa Maria's needs, application of such a priority rule would neither be just or equitable. Santa Maria alleges that while water rights priorities may be a guiding principle in the allocation of water, the court must also consider many other equitable factors, and the final apportionment of water must represent an adjustment and balance of interests that results in an equitable apportionment of the available Basin supply from natural sources.

48. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

49. Santa Maria desires a judicial determination as to the correctness of its contentions and seeks an equitable apportionment.

NINTH CAUSE OF ACTION

(Failure to Conserve)

50. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through - 48, inclusive.

51. Article X, Section 2 of the California Constitution requires the implementation of reasonable conservation measures in order to prevent waste, misuse and the unnecessary use of water. Santa Maria is informed and believes and on that basis alleges that some cross-defendants who use Basin water for agricultural irrigation fail to employ reasonable and available conservation measures: wells are not metered; flood or furrow irrigation is used on crops that could be irrigated by sprinkler or drip systems, thereby using less water; and systems to recirculate and reuse tailwater run-off are not utilized.

52. Santa Maria is informed and believes and on that basis alleges that the use of water by many cross-defendants for irrigation purposes is excessive and constitutes waste, unreasonable use or an unreasonable method of diversion or use within the meaning of Article X, Section 2 of the California Constitution and is thereby unlawful.

53. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief, that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraph.

54. Santa Maria seeks a judicial declaration that cross-defendants have no rights to unreasonable use, unreasonable methods of use, or waste of water, and their rights, if any, should be determined on the basis of water reasonably required for beneficial use rather than upon the amount of water actually used in the past.

TENTH CAUSE OF ACTION

(Wasteful Operation of Basin)

55. Santa Maria realleges and incorporates by reference the allegations contained in paragraphs 1 through 54, inclusive.

56. Santa Maria is informed and believes and on that basis alleges that cross-defendants contend that the Basin is in equilibrium and spilling into the Ocean and that there is no storage space in the Basin. The alleged lack of usable storage space in the Basin causes a loss and waste of Santa Maria's right to recover its return flows and to recharge the Basin. If cross-defendants' contentions are true, water levels in the Basin need to be lowered in order to prevent the waste of water and to increase the safe yield, to increase beneficial uses, and to permit the Basin to be operated conjunctively with the storage and return flows from imported SWP water.

57. If cross-defendants' contentions are true, Santa Maria alleges that cross-defendants have no rights to maintain current groundwater levels, and that cross-defendants can be required to endure some inconvenience and incur reasonable expense, including deepening their wells and pumping from greater depths, if necessary, in order to prevent waste and to permit the fullest use of the water resources of the State of California.

58. An actual controversy has arisen between Santa Maria and cross-defendants. Santa Maria alleges, on information and belief,

that cross-defendants dispute the contention of Santa Maria as described in the immediately preceding paragraphs.

59. Santa Maria desires a judicial determination as to the correctness of its contentions and seeks a declaration to this effect, and approval of its right to extract such quantities of water from the Basin as may be required to prevent waste from the Basin and to maximize the safe yield of the Basin.

PRAYER FOR RELIEF

WHEREFORE, the City of Santa Maria prays for judgment as follows:

1. Judicial declarations consistent with Santa Maria's contentions in paragraphs 11-14, 19-24, 25-31, 32-36, 36-41, 42-45, 46-49, 50-54, and 55-59, above;

2. For preliminary and permanent injunctions which prohibit cross-defendants from taking, wasting or failing to conserve water from the Basin in any manner which interferes with the rights of the City of Santa Maria to take water from or store water in the Basin to meet its reasonable present and future;

3. For prejudgment interest as permitted by law;

4. For attorney, appraisal and expert witness fees and costs incurred in this action; and

5. Such other relief as the court deems just and proper.

DATED: August 14, 1998.

BEST BEST & KRIEGER LLP

[ORIGINAL SIGNED]

By: _____
Michael T. Riddell
Eric L. Garner
Jeffrey V. Dunn
Attorneys for Defendant,
Cross-Complainant and
Petitioner
CITY OF SANTA MARIA

-17-

CROSS-COMPLAINT OF THE CITY OF SANTA MARIA

RVPUB\JVD\48213

7018