

Photographic Image May be
Poor Due To Condition Of
Original Document.

1 RICHARDS, WATSON & GERSHON
2 A Professional Corporation
3 JAMES L. MARKMAN (43536)
4 STEVEN R. ORR (136615)
5 GABRIEL K. COY (198019)
6 1 Civic Center Circle
7 Post Office Box 1059
8 Brea, California 92822-1059
9 (714) 990-0901

FILED
93 MAR 25 PM 1:57
STEPHEN L. WINE
COUNTY CLERK
SANTA CLARA COUNTY
BY _____ DEPUTY

6 Attorneys for Defendant, Cross-Defendant
7 and Cross-Complainant, NIPOMO COMMUNITY
8 SERVICES DISTRICT

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

12 SANTA MARIA VALLEY WATER) Case No. CV 770214
13 CONSERVATION DISTRICT, a public)
14 entity,) VERIFIED CROSS-COMPLAINT OF
15 Plaintiff,) NIPOMO COMMUNITY SERVICES
16 vs.) DISTRICT FOR DECLARATORY
17) AND INJUNCTIVE RELIEF, FOR THE
18) IMPOSITION OF A PHYSICAL
19) SOLUTION AND FOR THE
20) ADJUDICATION OF WATER
21) RIGHTS
22)

19 NIPOMO COMMUNITY SERVICES DISTRICT,) Complaint Filed:
20 a community services district,) July 14, 1997
21 Cross-Complainant,) Trial date: None Set
22 vs.)

23 SANTA MARIA VALLEY WATER)
24 CONSERVATION DISTRICT, a public entity;)
25 CITY OF SANTA MARIA, a municipal)
26 corporation; CITY OF GUADALUPE, a)
27 municipal corporation; SOUTHERN)
28 CALIFORNIA WATER COMPANY, a)
California corporation; RICHARD E. ADAM,)
an individual; APIO LAND COMPANY, an)
entity of unknown form; BANKERS TRUST)
COMPANY OF CALIFORNIA, an entity of)
unknown form, as trustee of THE EUGENE)
RENE LEROY TRUST; BETTERAVIA)

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1836176

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

(For Declaratory Relief - Prescriptive and
Appropriative Water Rights.)

1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure Sections 526 and 1060. Venue in this Court is proper upon special assignment from the Judicial Counsel.

2. The SANTA MARIA VALLEY GROUNDWATER BASIN ("the BASIN" hereinafter) constitutes an underground storage reservoir from which water is produced by water users and suppliers in San Luis Obispo and Santa Barbara Counties, California, including areas commonly referred to as the Santa Maria Valley, the Orcutt Uplands, the Sisquoc Plain and the Nipomo Mesa. The protection and conservation of the BASIN as a water bearing resource is vitally important to the health, safety and welfare of the persons to whom NIPOMO serves water. For this reason, NIPOMO brings this Cross-complaint to promote and protect the general welfare of its water users and to serve a public purpose.

3. NIPOMO is a public entity, a community services district organized and operating pursuant to the provisions of California Government Code Sections 61000, et seq. and located in the County of San Luis Obispo, California. NIPOMO produces water from the BASIN utilizing reasonable methods and provides that water to numerous persons for reasonable and beneficial municipal and domestic purposes.

4. Cross-defendant SANTA MARIA VALLEY WATER CONSERVATION DISTRICT ("CONSERVATION DISTRICT" hereinafter) is a public agency located within Santa Barbara and San Luis Obispo Counties organized and operating pursuant to the provisions of California Water Code Sections 74000, et seq.

5. Cross-defendants CITY OF SANTA MARIA ("SANTA MARIA" hereinafter) and CITY OF GUADALUPE ("GUADALUPE" hereinafter) are municipal

///

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW
1836176

1 corporations located in the County of Santa Barbara which produce water from the
2 BASIN.

3 6. Cross-defendant SOUTHERN CALIFORNIA WATER COMPANY ("SO
4 CAL" hereinafter) is an investor owned public utility subject to the jurisdiction of the
5 Public Utilities Commission of the State of California which produces water from the
6 BASIN.

7 7. NIPOMO is informed and believes and based upon that information
8 and belief alleges that Cross-defendants CONSERVATION DISTRICT, SANTA
9 MARIA, GUADALUPE, SO CAL, Cross-defendants RICHARD E. ADAM, APIO LAND
10 COMPANY, BANKERS TRUST COMPANY OF CALIFORNIA AS TRUSTEE FOR THE
11 EUGENE RENE LEROY TRUST, BETTERAVIA PROPERTIES, BOREL BANK & TRUST
12 COMPANY AS TRUSTEE OF THE JEAN LEROY TRUST, KATHRYN W. DONOVAN,
13 MARETTI & MINETTI RANCH COMPANY, OSR ENTERPRISES, INC., DANIEL
14 PHELAN, RUTH MARIA PHELAN, ROBERT MONDAVI PROPERTIES, INC., SILVA IV,
15 A GENERAL PARTNERSHIP, SILVA V, A GENERAL PARTNERSHIP, SILVA VI, A
16 GENERAL PARTNERSHIP, EDWARD W. SILVA, HELEN E. SILVA, JAMES SHARER,
17 MANUAL SILVA, JR., CLIFFORD SOUZA, LUCILLE SOUZA, DEAN TEIXEIRA, ELSIE
18 TEIXEIRA, EVELYN M. TEIXEIRA, GLEN TEIXEIRA, J.C. TEIXEIRA, NORMAN
19 TEIXEIRA, TH LIMITED PARTNERSHIP, ARTHUR R. TOGNAZZINIA FAMILY FARMS,
20 KATHLEEN J. TOMPKINS, NICOLAS J. TOMPKINS, RUTHANNE S. TOMPKINS and
21 U.S. TRUST COMPANY OF CALIFORNIA, NA AS TRUSTEE OF THE VECCHIOLI
22 FAMILY TRUST and Cross-defendants DOES 4,001 through 5,000, inclusive, claim
23 some right, title or interest to the BASIN and/or the water contained therein and that
24 each such claim is adverse to NIPOMO's claims asserted herein. NIPOMO is
25 unaware of the true names and capacities of Cross-defendants DOES 4001 through
26 5000, inclusive, and therefore, sues those Cross-defendants by fictitious names and
27 NIPOMO will amend this Cross-complaint to reflect their true identities and
28 capacities once the same are ascertained.

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1836176

- 4 -

271

VERIFIED CROSS-COMPLAINT OF NIPOMO COMMUNITY SERVICES DISTRICT

1 8. NIPOMO is informed and believes and based upon that information
2 and belief alleges that the BASIN has been overdrafted for more than five (5)
3 consecutive years immediately prior to the commencement of this action, that,
4 during that period of time, total annual demands upon and water consumed from the
5 BASIN have exceeded, and do now exceed, the average annual supply of water to
6 the BASIN, that, concomitantly, there has been a progressive and general lowering
7 of BASIN water levels, the available supply of water contained in the BASIN has
8 been and is being gradually and increasingly depleted, and if demands upon the
9 water supplies contained in the BASIN are not limited, the BASIN will suffer adverse
10 effects including, but not limited to, seawater intrusion, increased pump lifts,
11 interference with well production, land subsidence, decreased water quality and,
12 eventually, exhaustion of the water supply.

13 9. Each Cross-defendant has, and is now, pumping water from the
14 BASIN or purports to represent parties who do so. NIPOMO is informed and
15 believes and based upon that information and belief alleges that said combined
16 extraction and consumption of water from the BASIN by Cross-defendants
17 constitutes a substantial portion of the annual production and consumption of water
18 from the BASIN, and that each Cross-defendant claims a right to continue to
19 produce BASIN water and threatens to increase its taking of BASIN water without
20 regard to the rights of NIPOMO in and to BASIN water. Cross-defendants'
21 extractions have contributed and continue to contribute to the lowering of BASIN
22 water tables and that extraction of water will contribute to the adverse effects to
23 the BASIN referred to in Paragraph 8 above. Cross-defendants continued and/or
24 increased extraction of BASIN water will result in a diminution, reduction and
25 impairment of the BASIN water supply and will deprive NIPOMO of BASIN water to
26 which it is entitled.

27 ///

28 ///

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1836176

- 5 -

272

VERIFIED CROSS-COMPLAINT OF NIPOMO COMMUNITY SERVICES DISTRICT

1 10. NIPOMO is informed and believes and on that basis alleges that
2 there are conflicting claims of overlying, appropriative and prescriptive water rights
3 to the BASIN and/or its water among NIPOMO and Cross-defendants.

4 11. NIPOMO has acquired appropriative and prescriptive rights to
5 BASIN groundwater by virtue of NIPOMO's production of water from the BASIN.
6 For at least five (5) consecutive years immediately preceding the commencement of
7 this action, NIPOMO has produced water from the BASIN by reasonable extraction
8 means and/or has stored water in the BASIN and has used the BASIN and/or its
9 waters for reasonable and beneficial purposes, and has done so under a claim of
10 right in an actual, open, notorious, exclusive, continuous, uninterrupted, hostile and
11 adverse manner. Further, Cross-defendants, and each of them, had notice of said
12 production of water in that manner from the BASIN by NIPOMO.

13 12. NIPOMO asserts and contends that the right of any Cross-
14 defendant to continue to produce water from the BASIN and/or to increase its
15 production of water from the BASIN is subordinate to the rights of NIPOMO to do so
16 pursuant to NIPOMO's prescriptive and/or appropriative water rights.

17 13. NIPOMO is informed and believes and based upon that information
18 and belief alleges that an actual controversy has arisen between NIPOMO and Cross-
19 defendants, and each of them, in that Cross-defendants, and each of them, dispute
20 the assertions and contentions of NIPOMO set forth in paragraph 12 of this Cross-
21 complaint.

22 14. NIPOMO desires a judicial determination and declaration as to the
23 validity of its assertions and contentions set forth in paragraph 12 of this Cross-
24 complaint, the amount of BASIN water to which NIPOMO and each of the Cross-
25 defendants is entitled to produce from the BASIN and the priority and character of
26 each party's respective rights.

27 ///

28 ///

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1836176

- 6 -

273

VERIFIED CROSS-COMPLAINT OF NIPOMO COMMUNITY SERVICES DISTRICT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(For Declaratory and Injunctive Relief - Physical Solution)

15. NIPOMO realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 14, inclusive, of this Cross-complaint.

16. NIPOMO is informed and believes and on that basis alleges that Cross-defendants claim the right to take BASIN water in increased amounts without regard to the water rights of NIPOMO and that unless restrained by order of the Court, Cross-defendants will continue to take increasing amounts of BASIN water thereby causing irreparable damage and injury to the BASIN as a water bearing resource and, concomitantly, to NIPOMO and the persons to whom NIPOMO serves water, which damages and injuries cannot be redressed adequately by the award of money damages.

17. NIPOMO is informed and believes and on that basis alleges that due to the large and increasing amounts of BASIN water extracted by Cross-defendants, the amount of BASIN water available to NIPOMO has been reduced and that unless and until Cross-defendants and each of them are enjoined and restrained from continuing or increasing such water production from the BASIN, the aforementioned conditions of overdraft will continue and will become more severe and there will occur further depletion of BASIN ground water which will further permanently damage and ultimately destroy the BASIN as a water source.

18. In order to prevent irreparable injury to the BASIN and to NIPOMO and the persons to whom NIPOMO serves water, it is necessary that the Court, acting pursuant to its equitable prerogatives, determine, impose and retain continuing jurisdiction to enforce a physical solution upon the parties who produce water from the BASIN, taking into consideration in doing so any and all water rights of the parties established during trial, the relative legal priorities thereof, priorities established by and through legislative provisions, and all other relevant physical,

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1 climatic and equitable factors. The physical solution may include, but not be limited
2 to, injunctive limitations on water produced from, stored in and/or imported into or
3 exported from the BASIN, administrative monetary assessments to facilitate the
4 implementation of the physical solution and, if indicated, metering of and
5 assessments upon BASIN water extractions to pay for the purchase, and delivery of
6 supplemental water to relieve the demand for production of BASIN water and curtail
7 the condition of overdraft.

8
9 WHEREFORE, NIPOMO COMMUNITY SERVICES DISTRICT prays for
10 judgment as against Cross-defendants, and each of them, on this Cross-complaint as
11 follows:

12 1. For judicial declarations consistent with NIPOMO COMMUNITY
13 SERVICES DISTRICT's allegations set forth in paragraphs 12 through 14 of this
14 Cross-complaint;

15 2. For preliminary and permanent injunctive relief including, but not
16 limited to, the imposition of a physical solution which protects the SANTA MARIA
17 VALLEY GROUND WATER BASIN from continued overdraft and eventual depletion
18 due to ground water production by Cross-defendants, and each of them, and which
19 prevents such groundwater production by Cross-defendants, and each of them, from
20 interfering with the rights of the NIPOMO COMMUNITY SERVICES DISTRICT to take
21 water from or store water in the BASIN to meet the reasonable and beneficial
22 present and future requirements of the persons to whom it serves water;

23 3. For attorneys' fees, expert witness fees and costs incurred in this
24 action; and

25
26 ///

27 ///

28 ///

RICHARDS,
WATSON &
GERSHON
ATTORNEYS AT LAW

1836176

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. For such other and further relief as the court deems just and proper.

DATED: March 23, 1999

RICHARDS, WATSON & GERSON
A Professional Corporation
JAMES L. MARKMAN
STEVEN R. ORR
GABRIEL K. COY

By: *James L. Markman*
JAMES L. MARKMAN
Attorneys for Defendant, Cross-Defendant
and Cross-Complainant,
NIPOMO COMMUNITY SERVICES
DISTRICT

RICHARDS,
WATSON &
GERSON
ATTORNEYS AT LAW

1836176

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I, the undersigned, say:


I have read the foregoing Cross-complaint and know its contents.

I am an officer and authorized agent of defendant, cross-defendant and cross-complainant Nipomo Community Services District in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in this Cross-complaint are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19 day of March, 1999.



Douglas Jones
General Manager

Photographic Image May be
Poor Due To Condition Of
Original Document.

PROOF OF SERVICE (1013A CCP)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

FILED
99 MAR 25 PM 1:58
STEPHEN J. LOVE
COUNTY CLERK
SANTA CLARA COUNTY
BY _____

I am a resident of the aforesaid county, I am over the age of eighteen years and not a party to the within action, my business address is 333 So. Hope Street, 38th Floor, Los Angeles, California 90071-1469.

On March 24, 1999, I served the within SUMMONS AND VERIFIED CROSS-COMPLAINT OF NIPOMO COMMUNITY SERVICES DISTRICT FOR DECLARATORY AND INJUNCTIVE RELIEF, FOR THE IMPOSITION OF A PHYSICAL SOLUTION AND FOR THE ADJUDICATION OF WATER RIGHTS on the interested parties in this action, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

X (BY MAIL) The envelope was mailed with postage thereon fully prepaid. I am "readily" familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on March 24, 1999 at Los Angeles, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Amy Manning _____

Amy Manning

Signature

SANTA MARIA VALLEY WATER CONSERVATION, et al. v. CITY OF SANTA MARIA, et al.

SCSC CASE #: CV 770214

<p>Kevin O'Brien, Esq. Steven Saxton, Esq. Scott Shapiro, Esq. Downey, Brand, Seymour & Rohwer 555 Capitol Mall, 10th Flr. Sacramento, CA 95814-4686 (916) 441-0131 (916) 441-4021 Fax</p> <p>Attorneys for SANTA MARIA VALLEY WATER CONSERVATION DISTRICT</p>	<p>Jeffrey Dunn, Esq. Eric Garner, Esq. Kevin Collins, Esq. Law Offices of Best, Best & Krieger 3750 University Ave., Ste. 400 P.O. Box 1028 Riverside, CA 92502-1028 (909) 686-1450 (909) 686-3083 Fax</p> <p>Attorneys for CITY OF SANTA MARIA</p>
<p>Robert Saperstein, Esq. Susan Chuberka, Esq. Hatch and Parent 21 E. Carrillo Street Santa Barbara, CA 93108 (805) 963-7000 (805) 965-4333 Fax</p> <p>Attorneys for SOUTHERN CALIFORNIA WATER COMPANY</p>	<p>Christopher Cheleden, Esq. Burke, Williams & Sorensen 611 W. Sixth St., Ste., 2500 Los Angeles, CA 90017-3102 (213) 236-0600 (213) 236-2700 Fax</p> <p>Attorneys for CITY OF GUADALUPE</p>
<p>Robert E. Dougherty, Esq. Covington & Crow 1131 W. Sixth St., Ste. 300 P.O. Box 1515 Ontario, CA 91762-1515 (909) 983-9393 (909) 391-6762 Fax</p> <p>Attorneys for RICHARD E. ADAM, NORMAN TEIXEIRA, EVELYN M. TEIXEIRA, DEAN TEIXEIRA, GLEN TEIXEIRA, J.C. TEIXEIRA, ELSIE TEIXEIRA, ARTHUR R. TOGNAZZINIA FAMILY FARMS, and U.S. TRUST COMPANY OF CALIFORNIA, NA. as TRUSTEE of the VECCHIOLI FAMILY TRUST</p>	<p>Barry H. Epstein, Esq. Law Offices of Barry H. Epstein One Market Plaza, Steuart Tower, 16th Flr. San Francisco, CA 94105 (415) 777-4848 (415) 777-9809 Fax</p> <p>Attorneys for RICHARD E. ADAM, NORMAN TEIXEIRA, EVELYN M. TEIXEIRA, DEAN TEIXEIRA, GLEN TEIXEIRA, J.C. TEIXEIRA, ELSIE TEIXEIRA, ARTHUR R. TOGNAZZINIA FAMILY FARMS, and U.S. TRUST COMPANY OF CALIFORNIA, NA. as TRUSTEE of the VECCHIOLI FAMILY TRUST</p>
<p>Steven J. Adamski, Esq. Sinsheimer, Schiebelhut & Baggett 1010 Peach Street P.O. Box 31 San Luis Obispo, CA 93406 (805) 541-2800 (805) 541-2802 Fax</p> <p>Attorneys for BANKERS TRUST COMPANY OF CALIFORNIA as TRUSTEE for the EUGENE RENE LeROY TRUST and BOREL BANK & TRUST COMPANY as TRUSTEE of the JEAN LeROY TRUST</p>	<p>Lawrence T. Sorensen, Esq. Mullen & Henzell, LLP 112 East Victoria Street P.O. Box 789 Santa Barbara, CA 93102-0789 (805) 966-1501 (805) 966-9204 Fax</p> <p>Attorneys for BETTERAVIA PROPERTIES, DANIEL PHELAN and RUTH MARIA PHELAN, SILVA IV, a California partnership, EDWARD W. SILVA, HELEN E. SILVA, SILVA V, a California partnership, SILVA VI, a California partnership, MANUAL SILVA, JR., APIO LAND COMPANY, KATHRYN W. DONOVAN, NICOLAS J. TOMPKINS, KATHLEEN J. TOMPKINS, RUTHANNE S. TOMPKINS, OSR ENTERPRISES, INC. CLIFFORD SOUZA, LUCILLE SOUZA, JAMES SHARER, MARETTI & MINETTI RANCH COMPANY, and TH LIMITED PARTNERSHIP</p>

<p>Scott Malm, Esq. Steinheimer, Riggio Haydel & Mordaunt 400 East Main Street Stockton, CA 95290 (209) 464-8732 (209) 464-9165 Fax</p> <p>Attorneys for ROBERT MONDAVI PROPERTIES, INC.</p>	<p>Jon S. Seitz, Esq. Shipsey & Seitz 1066 Palm San Luis Obispo, CA 93401 (805) 543-7272 (805) 543-7281 Fax</p> <p>District Legal Counsel for NIPOMO COMMUNITY SERVICES DISTRICT (Courtesy Copy Only)</p>