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KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY *[Signature]* DEPUTY  
**ROWENA WALKER**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER  
CONSERVATION DISTRICT,

Plaintiff,

vs.

CITY OF SANTA MARIA, ET AL.,

Defendants.

**SANTA MARIA GROUNDWATER  
LITIGATION  
Lead Case No. 1-97-CV-770214**

(CONSOLIDATED FOR ALL  
PURPOSES)

[Consolidated With Case Numbers:  
CV 784900; CV 785509; CV 785522;  
CV 787150; CV 784921; CV 785511;  
CV 785396; CV 787151; CV 784926;  
CV 785515; CV 786791; CV 787152;  
1-05-CV-036410]

San Luis Obispo County Superior Court  
Case Nos. 990738 and 990739

AND RELATED CROSS-ACTIONS AND  
ACTIONS CONSOLIDATED FOR ALL  
PURPOSES

~~PROPOSED~~ PARTIAL  
STATEMENT OF DECISION RE  
TRIAL PHASE 4

This Partial Statement of Decision sets forth the court's disposition of the issues tried in Phase IV and responds to the legal and factual issues raised in the Public Water Producers', Land Owner Group (LOG) parties, and Wineman parties' respective requests for statement of decision.

This matter came on for further trial on February 27, 2006 on the respective cross complaints of the LOG and the Wineman parties (collectively, the Land Owners) on the one

1 hand and the Public Water Producers' cross complaints on the other.

2 The Land Owners withdrew at trial all causes of action except their Quiet Title causes  
3 of action. The withdrawn causes of action are therefore ordered dismissed. (Code of Civil  
4 Procedure § 581(d).) The Land Owner parties seek in the only remaining causes of action of  
5 their respective cross complaints to quiet title to the superior priority of their rights to extract  
6 and put to reasonable and beneficial use groundwater from the basin on the Land Owner  
7 properties.<sup>1</sup>

8 The Public Water Producers (referred to as the Purveyors in earlier phases of the trial),  
9 comprised of the City of Santa Maria, Golden State Water Company, Rural Water Company,  
10 the City of Guadalupe, the Northern Cities, and the Nipomo Community Services District, have  
11 each cross complained and seek declaratory relief in multiple causes of action. Essentially,  
12 these parties seek a declaration of their water rights from the Santa Maria Groundwater Basin,  
13 as that basin is defined in Phase II of this action (the basin) based on prescription, return flows  
14 from imported water, water salvaged from the Twitchell Reservoir, the Lopez Reservoir, and  
15 percolation ponds, and further seek a declaration that they are entitled to water salvaged by the  
16 Twitchell Reservoir pursuant to an agreement with the Plaintiff, the Santa Maria Valley Water  
17 Conservation District (District). (See Stipulation for Entry of Judgment dated June 30, 2006  
18 [Stipulation] entered into between the District, the Public Water Producers, and multiple other  
19 parties.)

20 Pursuant to agreement between the parties, the Land Owner parties presented their  
21 evidence regarding their cross complaints to quiet title first. The parties stipulated that, as of  
22 February 27, 2006, the commencement of this phase of the trial,<sup>2</sup> certain Land Owner parties  
23 were vested in fee simple in real property described in evidence presented by the Land Owner  
24 parties and admitted into evidence. (Phase IV Exhs. 2A and 2B.) The parties' stipulation does

25  
26 <sup>1</sup> Not all parties associated with the LOG have filed cross-complaints (some have filed complaints that were  
27 consolidated with the original complaint in this action; some are defendants to the Public Water Producers' cross-  
28 complaints only). Additionally, not all LOG parties who have filed cross-complaints (or alternatively, complaints)  
have asserted quiet title causes of action. The court's rulings with respect to the LOG quiet title cause of action  
pertain only to those LOG parties who have, in fact, filed a quiet title action, whether by cross-complaint or  
complaint.

<sup>2</sup> On February 28, 2006, the Public Water Providers stipulated to the fee title ownership of certain Wineman party  
parcels. On March 3, 2006, the Public Water Providers stipulated to the fee title ownership of certain LOG parcels.

1 not purport to apply to any other period of time, or to any parties or real property other than that  
2 specifically described in the admitted evidence.

3  
4 **PUBLIC WATER PRODUCERS' MOTION FOR JUDGMENT UNDER CCP 631.8**

5 At the close of the Land Owner parties' case, the Public Water Producers moved for  
6 judgment under Code of Civil Procedure Section 631.8. Thereafter, the Land Owner parties  
7 moved to amend the Quiet Title causes of action to conform to proof to allege ownership as of  
8 February 27, 2006 (the commencement of this phase of the trial) instead of the 1997 date as  
9 alleged in the original pleadings. The motion to amend was granted.

10 The motion under Code of Civil Procedure Section 631.8 deals with the central issue in  
11 the Land Owner parties' cross complaint. The evidence of legal title is undisputed based upon  
12 the parties' stipulation that title to the property in question is presently vested in certain Land  
13 Owner parties, as described above. The Public Water Producers claim a priority to ground  
14 water based upon prescription and other grounds. The Public Water Producers' claims  
15 constitute a "rival claim" to ground water and if proven would preclude finding that the Land  
16 Owners are entitled to a priority based upon their common law overlying rights without a  
17 quantification of such rights.

18 The court declines to use the quiet title remedy to quiet title to the water underlying the  
19 land of the Land Owner parties at this time. The court acknowledges that certain water rights  
20 are appurtenant to each of the parcels owned (as stipulated) by the Land Owner parties, but the  
21 court at this time cannot define what those rights are since every land owner in the basin has  
22 certain correlative rights to the basin's limited native supply, except as such rights may have  
23 been eroded by prescription or otherwise. The Land Owners failed to join the other land owners  
24 as cross-defendants.

25 Accordingly, while no party has raised a question or adverse claim as to legal title to  
26 that real property described in Exhibits 2A and 2B, there are outstanding issues relating to the  
27 extent to which overlying rights may have been lost by prescription and the District's allocation  
28 of the Twitchell yield pursuant to the Stipulation (some of which will be considered in the next  
phase of the trial), as well as the prior rights of certain parties to return flows, some or all of

1 which could affect the Land Owner parties' rights to use water in times of shortage. To quiet  
2 title to water rights at this time without quantification would be misleading. As the court  
3 explained in *Tulare Irrigation District v. Lindsay Strathmore Irrigation District* (1935) 3  
4 Cal.2d 489, 525-26, the trial court must fix the specific quantity for reasonable and beneficial  
5 use for each riparian, or in this case, overlying owner. (See also *Wright v. Goleta* (1985) 174  
6 Cal.App.3d. 74, 93 ["The trial court's solution was in keeping with its duty to fix the quantity  
7 required by each user for its actual reasonable use."] [citing *Tulare, supra*, at 524-529].)

8 The court will consider whether any further remedy under the Land Owners' Quiet Title  
9 claims is appropriate during the next phase of the trial.

#### 11 LAND OWNER PARTIES' MOTION FOR JUDGMENT

12 At the close of the Public Water Producers' case, the Land Owner parties moved for  
13 judgment on the prescriptive rights claims. The decision on the motion will be the same as the  
14 ultimate decision in this phase of the trial. The court declines to parse it in response to the  
15 motion.

#### 17 PRESCRIPTION

18 The court found in Phase III of the Trial that the Public Water Producers had not met  
19 the burden of proving that the basin was in hydrologic overdraft, as defined. The court in that  
20 phase defined overdraft as "extractions in excess of the safe yield of water from the aquifer,  
21 which over time will lead to a depletion of the water supply within a ground water basin as  
22 manifested by a *permanent lowering of the water table* (emphasis added)." (Partial Statement  
23 Of Decision Re Phase III Trial, p. 4.)<sup>3</sup> "Safe yield" is defined as "the maximum quantity of  
24 water which can be withdrawn annually from a groundwater supply under a given set of  
25 conditions without causing an undesirable result." An "undesirable result" is the "gradual

26  
27 <sup>3</sup> The Land Owner group requested clarification that the Phase IV ruling does not alter the Phase III tentative  
28 decision, which the Land Owner group refers to as "law of the case." The "law of the case" doctrine applies only to  
opinions rendered by the Supreme Court or a Court of Appeal. (*Lennane v. Franchise Tax Bd.* (1996) 51  
Cal.App.4<sup>th</sup> 1180, 1186; *Providence v. Valley Clerks Trust Fund* (1984) 163 Cal.App.3d 249, 256.) Further, a  
tentative decision can be modified or changed by the court anytime before entry of judgment. ([CRC 232\(a\)](#); see also  
[Horning v. Shilberg](#) (2005) 130 Cal.App.4<sup>th</sup> 197, 203.)

1 lowering of the ground water levels resulting eventually in depletion of the supply.” (*City of*  
2 *Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278 [citing *City of Pasadena v. City*  
3 *of Alhambra* (1949) 33 Cal.2d 908, at 929.].) A groundwater basin is in a state of surplus when  
4 the amount of water being extracted from it is less than the maximum that could be withdrawn  
5 without adverse effects on the basin’s long term supply. (*San Fernando, supra*, at 277.)  
6 “Overdraft commences whenever extractions increase, or the withdrawable maximum  
7 decreases, or both, to the point where the surplus ends.” (*Id.* at 278.)

8 In its analysis of the claimed overdraft conditions presented during Phase III, the court  
9 included all sources of water within the basin, including native ground water, so-called  
10 salvaged or developed water, imported water, and return flows from imported water.

11 Prior to the creation of the Twitchell project, there were clearly years in which the  
12 valley suffered drought conditions, with pumping exceeding recharge. The Twitchell project  
13 was developed and came on line in the 1960's for the purpose of redressing the basin’s supply  
14 shortages. It is clear that in years following the operation of the Twitchell project, with  
15 abundant precipitation, there was sufficient recharge to restore water levels in the basin to  
16 historic highs. Even if in some years there was greater pumping than recharge, such that water  
17 levels fell in those years and there was no surplus of water in the aquifer, the restoration of  
18 water levels to historic highs largely as a result of the addition of new water supplies in the  
19 basin (from Twitchell and Lopez Reservoirs and the State Water Project) meant that there was  
20 no apparent *permanent lowering of water levels in the basin*. By definition, during those years  
21 there was no surplus of water within the basin and there remained a risk that sufficient recharge  
22 would not continue to occur as population and agricultural use increased, especially if adequate  
23 maintenance on Twitchell was neglected such that its capacity was reduced along with a  
24 consequent reduction or elimination of the augmented annual recharge into the aquifer.

25 However, evidence of a *permanent lowering* may not be necessary to a finding of  
26 prescriptive rights acquired during overdraft. If there is no surplus of water, and if overdraft is  
27 defined as extractions exceeding recharge such that there is serious depletion of the water  
28 supply, as defined in *City of Barstow et al v. Mojave Water Agency, et al.*, (2000) 23 Cal.4th

1 1224, that may set in motion the prescriptive process because it creates the danger of permanent  
2 lowering and exhaustion of the supply. According to the California Supreme Court, “overdraft  
3 commences whenever extractions increase, or the withdrawable maximum decreases, or both,  
4 to the point where the surplus ends.” (*San Fernando, supra*, 14 Cal.3d at 282 [citing *Pasadena*,  
5 33 Cal.2d at 928-29.) “[A]n appropriative taking of water which is not surplus is wrongful and  
6 may ripen into a prescriptive right where the use is actual, open and notorious, hostile and  
7 adverse to the original owner, continuous and uninterrupted for the statutory period of five  
8 years, and under claim of right.” (*California Water Service Co. v. Edward Sidebothan & Son*  
9 (1964) 224 Cal.App.2d 715.) If a riparian owner has acquired rights by prescription in times of  
10 plentiful water, and reduces pumping to conserve during times of drought, the prescriptive  
11 owner loses nothing by virtue of that reduced pumping. And, the opposite should also be true  
12 so that where an upstream owner obtains prescriptive rights during periods of drought, merely  
13 because the river may in some future years have abundant water, the prescriptive owner should  
14 not lose those prescriptive rights during later years of drought following the years of  
15 abundance. These principles applicable to riparian rights may apply by analogy to ground  
16 water rights. (*Pasadena, supra*.) Prescription, as with adverse possession, is based upon the  
17 statute of limitations which bars an action to recover possession, or the right to possession,  
18 against a party who has acquired the right by wrongful conduct after a specified period of time.  
19 The right to recover having been barred by the statute of limitations, it remains barred to the  
20 previous holder of the right absent abandonment by the holder of the prescriptive right or some  
21 other legally sufficient act by the parties. (*Smith v. Hawkins* (1895) 110 Cal. 122; *Big Rock*  
22 *Mutual Water Co. v. Valyermo Ranch Co.* (1926) 78 Cal.App. 266.)

23 In this case, the evidence presented by the Public Water Producers shows that there  
24 were substantial periods of time extending over various periods of five or more continuous  
25 years between 1900 and the present time during which there was no surplus, temporary or  
26 otherwise, and the Public Water Producer parties continuously produced water from the  
27 aquifer. Though there was ultimately recharge during abundant precipitation and run off, the  
28 periods of depletion without surplus water exceeded the period of the statute of limitations  
multiple times.

1 An appropriative taking of non-surplus water may ripen into a prescriptive right where  
2 the use is actual, open and notorious, hostile and adverse to the original owner, continuous and  
3 uninterrupted for the statutory period of five years, and under a claim of right. (*San Fernando*,  
4 *supra*, at 282 [citing *Pasadena, supra*, at 926-927].) Generally, the conditions amounting to  
5 overdraft are sufficient to constitute adversity and also give rise to notice, but notice may occur  
6 short of overdraft as it is defined in the Phase III ruling. Upon completion of five years of  
7 adverse use, prescriptive title vests in the claimant. (*Pasadena, supra*, at 930-33.) A  
8 prescriptive water right is a permanent right to use water acquired when the elements for  
9 adverse use are met. The title is sufficient to bar any action for the recovery of that property  
10 and therefore is absolute. (Civ. Code § 1007; *Eden Township Water Dist. v. Hayward* (1933)  
11 218 Cal. 634, 640 [when the prescriptive period runs the right is vested].) At the end of the  
12 five-year period, the adverse claimant owns the property and may defend an action concerning  
13 the ownership of the property or bring an action to quiet title in the property. (Code Civ. Proc.  
14 § 761.020; see *Mings v. Compton City School Dist.* (1933) 129 Cal.App. 413.)

15 Moreover, any continuous five-year period of adverse use is sufficient to vest title in the  
16 adverse user, whether immediately preceding the filing of a complaint to enjoin the adverse use  
17 or otherwise. In *Pasadena, supra*, where falling water levels in the wells of the parties were  
18 observable between 1919 to 1937, when the complaint was filed, the court found that the  
19 prescriptive amount “was measured by the amount taken over a five-year period as to which  
20 there had been no cessation of use during any subsequent five-year period.” (*Pasadena, supra*,  
21 at 930, 933.) In *Lee v. Pacific Gas & Electric Co.* (1936) 7 Cal.2d 114, 120 the court found  
22 that prescriptive use “must be continuous and uninterrupted for a period of five years prior to  
23 the commencement of the action, not, however, necessarily next before the commencement of  
24 the action.” (emphasis added).

### 25 26 **Adverse and Hostile Use**

27 The prescriptive period begins when the elements of adverse use are present: “[t]he  
28 commencement of overdraft provides the element of adversity which makes the first party's



1 taking an invasion constituting a basis for injunctive relief to the other party.” (*San Fernando*,  
2 *supra*, at 282 [citing *Pasadena, supra*, at 926-927].) The Court in *Pasadena* also found actual  
3 adverse use began with the commencement of overdraft because each taking of water in excess  
4 of the safe yield was wrongful and injurious. (*Pasadena, supra*, at 929.)

5 Establishing adverse use does not require injury based upon the immediate inability to  
6 obtain water. (*Pasadena, supra*, at 929.) Adversity is present for purposes of prescription when  
7 overdraft in a basin begins and extractions exceed supply on an annual basis. Overdraft need  
8 not be current or cause any immediate signs or problems (*Tulare, supra*, 3 Cal.2d at 525, 529-  
9 530; Hutchins, *The Cal. Law of Water Rights*, pp. 498-500; 1 Rogers & Nichols, *Water For*  
10 *Cal.*, § 405, pp. 549-550; *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49  
11 Cal.App.3d 992, 998-999.)

12 As stated above, the evidence here indicates that there were substantial periods of time  
13 extending over various periods of five or more continuous years between 1900 and the present  
14 time during which there was no surplus, temporary or otherwise, and the Public Water Producer  
15 parties produced water from the aquifer. During the period before Twitchell was constructed,  
16 only the Basin’s native groundwater supplies were available. Dr. Williams testified in Phase  
17 IV that the inflow into the Basin, or the native groundwater, during this period was 60,000  
18 acre-feet per year. (Phase IV, Exh. F-10.) In computing this figure, Dr. Williams relied on  
19 actual data collected during previous studies of the Basin. Dr. Williams also consulted with  
20 other experts who have testified in this matter, including Mr. Foreman and Mr. Scalmanini.  
21 (Phase IV RT, p. 389:5-10; 389:23-390:11.) Dr. Williams’ native groundwater figure does not  
22 include ocean outflow. During Phase III, Mr. Foreman testified that based on historical  
23 conditions, a minimum of 8,000-10,000 acre-feet per year of outflow are necessary to guard  
24 against seawater intrusion. (Phase III RT, p. 748.) Mr. Scalmanini testified that significantly  
25 more water was actually discharging into the Ocean during this time. (See, e.g., Phase III Exh.  
26 F-14; RT 1862-1867.) Taking the lower ocean discharge number, the native groundwater less  
27 ocean outflow is 50,000 – 52,000 afy.

28 Both Mr. Scalmanini and Mr. Foreman produced in-depth analyses of Basin  
withdrawals dating from 1944 through and beyond the date the Twitchell and Lopez Projects



1 became operational. (See Phase III, Exh. 1-63 (Mr. Scalmanini’s Water Budget Summary – No  
2 Twitchell Scenario; see also, Phase III, Exh. A-123 (Mr. Foreman’s Water Budget Summary –  
3 No Twitchell Scenario.) In all years from 1944 through 1962 (and beyond) pumping  
4 substantially exceeded Dr. Williams’s native yield budget.

5  
6  
7 Further, the report prepared by Mr. Scalmanini shows falling water levels during the  
8 pre-Twitchell period:

9  
10 Hydrographs of ground-water elevations in the study area illustrate  
11 that a substantial decline in ground-water levels, from historical  
12 high to historical low levels, occurred between 1945 and the late  
13 1960’s with a progressively greater decline inland from the coast....

14 The decline ranged from approximately 20 to 40 feet near the  
15 coast, 70 feet near Orcutt, to as much as 100 feet further inland (in  
16 the area just east of downtown Santa Maria). (Phase III Exh. F-14,  
17 “Development of a Numerical Ground-Water Flow Model and  
18 Assessment of Ground-Water Basin Yield, Santa Maria Valley  
19 Ground-Water Basin” (March 2000) at 14.)

20 Thus, the undisputed Phase III and Phase IV evidence shows that the Basin was in  
21 overdraft and there was no surplus for more than the statutory period prior to the time Twitchell  
22 was constructed and in the years immediately after the construction of Twitchell. In particular,  
23 the Phase IV evidence, together with the Phase III evidence, indicates that the Basin was in  
24 overdraft without any surplus water (and water levels seriously declined) from at least 1944-  
25 1951, 1953-1957, and 1959-1967. Thus, the Public Water Producers have now met the burden  
26 of proving overdraft in excess of the statutory period for purposes of a claim for prescriptive  
27 rights.

### 28 **Open and Notorious Use**

The party against whom a prescriptive right is sought must have either actual or  
constructive notice of the adverse taking. (*Bennet v. Lew* (1984) 151 Cal.App.3d 1177, 1184

1 ["The requisite elements for a prescriptive easement are designed to insure that the owner of  
2 the real property which is being encroached upon has actual or constructive notice of the  
3 adverse use." (emphasis added)]; *Kerr Land & Timber Co. v. Emmerson* (1969) 268  
4 Cal.App.2d 628, 634 ["It is settled that to establish rights by adverse use the owner must be  
5 notified in some way that the use is hostile and adverse but actual notice is not indispensable.  
6 Either the owner must have actual knowledge or the use must be so open, visible and notorious  
7 as to constitute reasonable notice."].) The standard for notice in groundwater basins is falling  
8 water levels or other relevant evidence such that pumpers can reasonably be charged with  
9 notice that there is a deficiency of water supply. (*Pasadena, supra*, at 930.) Thus, constructive  
10 notice of adverse conditions, by which a party "should reasonably be deemed to have received  
11 notice of the commencement of overdraft," is sufficient to establish prescriptive rights. (*San  
12 Fernando, supra*, at 283.)

13 The conditions of depleted water levels within the basin, during the drought years, were  
14 themselves well known, or should have been known, to all who used water within the basin. In  
15 short, the parties hereto and their predecessors in interest were on notice of the wide fluctuation  
16 in the water levels in the aquifer by virtue of the fluctuating well levels, the actions of political  
17 leaders, the Acts of Congress, and the public notoriety surrounding the need and the  
18 construction of the Twitchell project (as well as the Lopez project).<sup>4</sup> And there was ample  
19 notice that the municipalities and the water companies within the valley continued to pump  
20 during those times of drought just as the Land Owner parties may have continued to pump.

21 Specifically, written historical evidence offered in Phases III and IV confirms that the  
22 existence of overdraft prior to 1967 was well and widely known throughout the basin. Basin  
23 groundwater has been consumptively used since the late 1800's, with the first indication of

24  
25 <sup>4</sup> Numerous documents showing these facts were either judicially noticed or admitted into evidence over hearsay  
26 objections. Regardless of whether the documents are admissible under an exception to the hearsay rule, the court is  
27 relying on these documents not for the truth of the matter asserted, but to show actual or constructive notice of  
28 overdraft conditions before and during the time Twitchell was constructed. Thus, the documents are not being relied  
upon for hearsay purposes. (Cal. Code Evid. § 1200(a) ["'Hearsay evidence' is evidence of a statement that was  
made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter  
stated."].) Further, the court rejects LOG's argument that reports and studies shown to be "inaccurate" cannot be  
used to impart notice. Even if such documents were shown to be inaccurate (LOG has made no such showing),  
inaccuracy does not negate notice. It is the existence of these documents, and the notoriety of groundwater  
conditions in the community, that creates notice, not the accuracy or inaccuracy of the documents.

1 overdraft in the 1930's. (See Phase IV, Exh. X (Bureau of Reclamation, Santa Maria Project:  
2 Southern Pacific Basin, California, Project Planning Report, at 33-34 (Nov. 1951).) The  
3 Bureau of Reclamation reported that by 1936 groundwater levels had reached their lowest  
4 levels on record at the time. (*Id.*) By 1951, the Bureau reported a critical water shortage. (*Id.*)  
5 The Geological Survey of the Department of Interior reported that the perennial yield was  
6 being exceeded by approximately 12,000 AFY and that continued yearly overdrafts with no  
7 additional source of supply would result in a permanent depletion of storage and water levels  
8 far below their level in 1936. (*Id.*; See Phase III, Exh. F-7 [Worts, Geological Survey Water-  
9 Supply Paper 1000, Geology and Ground-Water Resources of the Santa Maria Valley Area,  
10 California, at 2, 129 (1951)].) The 1966 USGS report prepared in cooperation with the Santa  
11 Barbara County Water Agency reported an decrease in groundwater storage of 3,070,000 acre-  
12 feet in 1918 to 2,360,000 acre-feet in 1950, as well as an average annual decrease in storage of  
13 21,000 acre-feet between 1918-1959. (Phase III, Exh. F-9, G.A. Miller & R.E. Evenson,  
14 Utilization of Ground Water in the Santa Maria Valley Area, California, USGS Water-Supply  
15 Paper 1819-A (1966) at A7.)

16 Phase III evidence regarding testimony before Congress prior to the time the Twitchell  
17 Reservoir was constructed further shows that the decline in well levels and water in storage was  
18 clear to local water users. The District President, Leonald H. Adam, testified before Congress  
19 about the severity of the water supply problems in the area:

20  
21 My observations over the years indicate to me that we have a  
22 continuously diminishing water supply. Each period of years  
23 where we have plentiful rainfall the average water level rises  
24 considerably but not to the high point of previous years.

24 During each period of years where we have drought conditions, the  
25 water level continuously recedes to lower and lower levels. There  
26 is only one answer to this situation, and that is that eventually the  
27 area east of Santa Maria will be out of water excepting during  
28 years following heavy rainfall when perhaps the land can be  
irrigated for a year or so. Each well in the valley is different,  
depending upon the sands and gravels penetrated by the wells. The  
overall picture, however, indicates a continuously diminishing  
supply and eventual exhaustion of the supply.

1           This is obvious to those who are farming and irrigating the land  
2           and has been verified by every engineer who has studied the  
3           problem. The answer, of course, is not additional wells, but  
4           provisions for a supplemental water supply. (Phase III, Exhs. F-1  
5           and F-2, 1953 Hearings, p. 31, testimony of Leonald H. Adam,  
6           California, president, Santa Maria Valley Water Conservation  
7           District.) (emphasis added)

8           John Adam, a director of the Santa Maria Valley Water Conservation District testified  
9           that “All of the farmers who own or farm land west of Santa Maria are equally aware of the fact  
10           that we do have a water problem.” (*Id.* at 42 [emphasis added].) Mr. Adam then summarized  
11           the severity of the water supply problem:

12                                 Therefore, all of the water users that I have talked to are most  
13                                 concerned about their water situation and are quite aware of the  
14                                 fact that unless we recharge our underground reservoirs with  
15                                 additional and supplemental water we are going to reach a point  
16                                 where we cannot irrigate our land. No one knows when this time  
17                                 will come, but the situation appears to be inevitable at some future  
18                                 date unless we obtain an adequate supplemental water supply.  
19                                 (Phase III Exhs. F-1 and F-2, 1953 Hearings, p. 43, testimony of  
20                                 John F. Adam, California, director, Santa Maria Valley Water  
21                                 Conservation District.)

22           Further, un rebutted Phase III and Phase IV evidence indicates that landowners within  
23           the District were aware, or reasonably should have been aware, of the construction and  
24           operation of the Twitchell Project because assessments were levied by the District on  
25           landowners within the District for a period of 40 years. (Phase III Exh. F-15; Phase IV Exhs. JJ  
26           - LL.)

27           Lastly, as indicated above, undisputed evidence, including evidence presented by the  
28           District’s expert, Mr. Scalmanini, indicates that falling water levels were present during the  
pre-Twitchell period.

                               Collectively, these facts establish actual or constructive notice of adversity for purposes

1 of prescription.<sup>5</sup> The court notes that none of the parties disputing the claims of the Public  
2 Water Producers have presented any evidence of lack of notice to rebut the inferences or notice  
3 to be drawn from the public water producers' uncontradicted circumstantial evidence.

4 **Continuous and Uninterrupted Use and Use Under a Claim of Right**

5 The adverse use must be continuous and uninterrupted for the five-year prescriptive  
6 period. Undisputed Phase III and IV evidence shows that years of overdraft, or "no surplus"  
7 existed from at least 1944-1951, 1953-1957, and 1959-1967, when Twitchell began to produce  
8 an augmentation to the water in the aquifer, and the Public Water Producers within the basin  
9 pumped regular quantities of water from the aquifer, as follows:

10 City of Santa Maria – 5100 acre feet a year;

11 Golden State – 1900 acre feet a year.

12 These numbers are not based on averages but are instead the lowest continuous amount  
13 of water pumped by the City and Golden State, respectively, during five consecutive years of  
14 overdraft.

15 Further, as the primary local retail water suppliers to thousands of residents, the City  
16 and Golden State always openly claimed such water as their own.

17 These conclusions are unrebutted by any party and are therefore conclusively found to  
18 be true.

19 **EFFECT OF SELF HELP**

20 If the overlying owner continues to pump and make reasonable and beneficial use of the  
21 water underlying the land at the same time that the appropriator (prospective prescriptive right  
22 holder) is pumping from non-surplus water, the overlying owner has not been deprived of the  
23 present use of any water. An overlying owner preserves his rights, and limits the appropriator's  
24 ability to obtain a prescriptive acquisition of water rights as against an owner who continues to  
25 pump the full reasonable and beneficial use amounts of water in the face of an adverse  
26

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27 <sup>5</sup> The above evidence demonstrates that notice of adversity was present on a Basin-wide basis. The court rejects the  
28 LOG's assertion that notice must be proven on a parcel-by-parcel basis. Neither *Pasadena* nor *San Fernando*  
require notice on a parcel-by-parcel basis. Further, the court is unaware of any California case addressing  
prescriptive rights to groundwater that requires such a showing.

1 appropriate use (referred to as self help). (*San Fernando, supra; Pasadena, supra.*)

2 There has been no evidence presented to the court that any of the Land Owner parties  
3 currently before the court or that the parties to this litigation, ceased or reduced pumping or  
4 otherwise failed to exercise overlying rights during the years when there was no surplus and  
5 when pumping may have exceeded recharge within the basin. In fact, evidence of lowering  
6 water levels in time of drought may be some evidence of exactly the opposite. There also is no  
7 evidence of the type of appropriators' mutual prescription resulting in the proportionate  
8 reduction in pumping in *Pasadena, supra*, as it has been characterized as between appropriators  
9 in *Hi-Desert County Water District v. Blue Skies Country Club* (1994) 23 Cal.App.4th 1723.

10 However, there is clearly evidence that during these years of "no surplus," from 1957 to  
11 1967, when Twitchell began to produce an augmentation to the water in the aquifer, the Public  
12 Water Producers within the basin pumped regular quantities of water from the aquifer, in the  
13 quantities identified above.

14 The court finds that even after the Twitchell augmentation began, there have been  
15 periods in excess of the statute of limitations during which there has been no surplus in the  
16 basin and that the Public Water Producers have continued to produce water from the aquifer. It  
17 is important for the parties who claim an undiminished right to an overlying right, or any other  
18 appropriators of water, to establish their own individual pumping activity during those years to  
19 avoid the implications from that use.<sup>6</sup> The Supreme Court in *Tulare, supra*, 3 Cal. 2d at 535,  
20 held that overlying owners have the burden to prove the quantity of water they need for  
21 reasonable and beneficial use.

22 The court will hear evidence of the Land Owners' pumping activity in the next phase of  
23 the trial, in addition to considering the issues relating to a physical solution as requested by the  
24 parties.

25 Even if the Land Owner parties prove that they pumped during these years, their self  
26 help would not necessarily fully interrupt prescription. The doctrine of so-called "self help"  
27 originated in *Pasadena, supra*. In that case the Supreme Court drew on the early California

28 <sup>6</sup> The effect of prescription on any dormant overlying rights cannot be addressed until the extent of self help, if any,  
is determined.

1 case of *Smith v. Hampshire* (1906) 4 Cal.App. 8, where appellant had for ten years used a ditch  
2 on respondents' land adversely. However, respondents had for six years jointly used the ditch  
3 adversely to appellant. It was held that both had rights to the ditch. Although respondents  
4 could not acquire a prescriptive right on their own land they could prevent appellant's claim of  
5 exclusive right by establishing their own claim of right against appellant. In the groundwater  
6 context, *Pasadena* rejected the proposition that a water user's rights are not invaded if he  
7 continues to receive the quantity of water to which he is entitled (*Id.* at 931.) It found cases  
8 involving adverse use of flowing surface water inapplicable because they do not deal with the  
9 problem of gradual depletion of water stored in a basin or lake. Injury in flowing water cases  
10 immediately deprives users of water, and the language in the opinions does not apply to an  
11 invasion of rights in a stored supply of water. (*Pasadena, supra*, at 931 [citations omitted].)

12 In a groundwater basin where overpumping is gradually depleting the supply, *Pasadena*  
13 held that overlying owners can prevent a prescriptive right from usurping their full overlying  
14 right by "self-help" pumping. If a landowner engages in self-help, it prevents a prescriptor  
15 from completely taking the landowner's overlying right. (*Pasadena, supra*, at 931.)

16 The *Pasadena* court applied what is known as mutual prescription and reduced both the  
17 prescriptors and self-help pumpers proportionately. (*Pasadena, supra*, at 933.) Subsequently  
18 the Supreme Court in *San Fernando* clearly established that "self help" only partially interrupts  
19 the prescriptive right. On remand it ordered that the private defendants could show overlying  
20 rights to native ground water for reasonable beneficial use on their overlying land, subject to  
21 any prescriptive rights. If appropriators proved a prescriptive right, its effect would be to give  
22 to the prescriptor either enough water to make the ratio of the prescriptive right to the  
23 remaining rights of the private defendant in a time of shortage as favorable to the prescriptor as  
24 it was throughout the prescriptive period or the amount of the prescriptive taking, whichever is  
25 less. (*San Fernando, supra*, at 292-93 [citations omitted].)

26 In dicta, *Hi-Desert, supra*, and *Mojave, supra*, discuss self-help. *Hi-Desert* is  
27 inapplicable here because it was based on a stipulated judgment that specifically recognized  
28 that "overlying rights have been prescribed except to the extent of such maximum annual self



1 help by production during the prescriptive period...” and the stipulated judgment provided a  
2 specific self-help amount. (*Hi-Desert, supra*, at 1732-1733.) Thus, *Hi-Desert* did not apply the  
3 *San Fernando* formula to determine prescriptive and self-help amounts because the parties had  
4 agreed to an alternate formula. Although *Mojave* cites *Hi-Desert*, it does so as dicta because  
5 prescription was not claimed in *Mojave* (*Mojave, supra*, at 1253-1254); thus, *Mojave* offers no  
6 reason to disregard the above-cited language of *San Fernando*.

7  
8 **TWITCHELL ENTITLEMENT**

9 The Public Water Producers contend that the yield from Twitchell is a salvaged or  
10 developed water supply and therefore not part of the basin’s native yield. The Public Water  
11 Producers rely on: (a) *Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450 for the  
12 proposition that water that has been appropriated up stream of a dam cannot be considered as  
13 part of a basin’s native yield, (b) common law principles relating to public improvements  
14 financed by special assessments, (c) the fact that the urban lands within the District’s  
15 assessment boundaries have paid for the greatest share of the costs associated with building and  
16 operating Twitchell over the past 40 years in support of their claim, and (d) the fact that the  
17 District has provided for the allocation of the Twitchell yield in the Stipulation. As such, the  
18 Public Water Producers argue further that the Land Owners have no rights in the Twitchell  
19 yield by virtue of their overlying status and thus that the Twitchell should not be included as  
20 water within the basin for purposes of determining overdraft or surplus.

21  
22 **PAYMENT FOR TWITCHELL**

23 The Public Water Producers’ contention that the Twitchell yield is not part of the  
24 basin’s native supply and therefore that the Land Owners, as overlying owners, have no prior  
25 right to the Twitchell yield is based, in part, on the theory that the urban lands within the  
26 District’s assessment boundaries have, over the life of the project, contributed more to its cost  
27 than other in-District landowners, including the Land Owner parties whose property resides  
28 within the District boundaries.

All properties within the District were specially assessed by the District to repay the

1 bond costs for construction and maintenance of the dam. The Public Water Producers  
2 presented evidence that residents of the City of Santa Maria, as landowners within the District,  
3 have paid the major portion of the costs of the project. The Public Water Producers argue,  
4 therefore, that the Twitchell project yield must be distinguished from the basin's native supply  
5 because to do otherwise would effectively provide all overlying landowners throughout the  
6 basin, irrespective of whether they contributed to the costs of the project, with a priority right to  
7 the Twitchell yield when the basin is not in surplus. (At common law, appropriators are  
8 permitted to take only that which is surplus to the demands of overlying owners, unless  
9 prescriptive rights have been acquired.) This result would unfairly penalize municipal  
10 landowners who rely on the City of Santa Maria for their water supply. As such, the Public  
11 Water Producers' theory would exclude the Twitchell yield from the basin's overall supply in  
12 determining overdraft, and would support prescription, according to this theory of entitlement.

13 If, on the other hand, the salvaged or developed water is available for all users in the  
14 basin, it should be counted as part of the ground water yield to determine whether or not there  
15 is an overdraft. The answer to this issue requires some discussion of the history of the  
16 development of the project.

17 The Twitchell Project is located on the Cuyama River about 6 miles upstream from its  
18 junction with the Sisquoc River. The construction of the dam and reservoir was authorized as  
19 the "Santa Maria Project" on September 3, 1954, by an act of Congress (Public Law 774, 83d  
20 Congress, ch. 1258, 2d session, 68 Stat. 1190). The U.S. Department of the Interior, Bureau of  
21 Reclamation, constructed the dam and reservoir. Water stored in and later released from the  
22 Twitchell Project is surface water appropriated under California law from the Cuyama River.  
23 To appropriate this water under state law, the Bureau was required to seek a permit from the  
24 California Department of Water Resources (Cal. Wat. Code §§ 1200 et seq.). The Bureau was  
25 issued a permit, which ultimately ripened into a License. The License authorizes the  
26 appropriation of the water for irrigation, domestic, salinity control, municipal, industrial, and  
27 recreational uses within a place of use that encompasses a portion of the basin, including the  
28 District. (Phase III Exh. 1-59.)

The District is not coextensive with the Santa Maria Valley area, or the basin as a

1 whole, and water users outside the District also benefit from the project's salvage or  
2 conservation operations. The License that was issued, subject to the right of the U.S.  
3 Government to use the project for flood control and the satisfaction of existing water rights,  
4 among others, was for the right of the Santa Barbara County Water Agency, on behalf of the  
5 District, and District land owners, to have the perpetual right to use all the water generated by  
6 the Twitchell Dam and Reservoir. The License must be read in conjunction with 43 U.S.C.  
7 Section 372 which limits the water that is produced by the dam to be used for beneficial  
8 purposes appurtenant to land.

9 But it is also clear that California water law controls and the license creates no new  
10 water rights other than the appropriative rights granted by California law to the Secretary of the  
11 Interior subject to the conditions in the license. As a lawful appropriator the Bureau of  
12 Reclamation under the authority of the Secretary of the Interior conferred rights on the Santa  
13 Barbara County Water Agency by contract. The Santa Barbara County Water Agency then  
14 contracted with the District to manage and operate the dam and the reservoir. There is no intent  
15 by the federal government to supplant state water rights law. (*California v. United States*  
16 (1978) 438 U.S. 645; *Klamath Irrigation District v. United States* (2005) 67 F. Cl. 504.)  
17 Further, any allocation of water by the District must be consistent with the purposes of the state  
18 License as well as the District's contract with the Santa Barbara County Water Agency.

19 The water that is received and held in the reservoir by the dam is water that would  
20 otherwise find its way to into the Santa Maria River and ultimately the ocean. To the point of  
21 entrapment by the dam, it is riparian water and subject to the rule of riparian rights. When the  
22 water is released it is released in amounts that will permit maximum percolation into the  
23 aquifer and land overlying the basin benefits from its percolation into the basin and use. The  
24 License was issued so that all land within the District would benefit, including municipalities.  
25 The District was charged with assessing land owners, including residents within the urban  
26 areas, to repay the bonds. The basin is benefited because in addition to the normal river flow  
27 that percolates into the aquifer, the operation of the dam creates an additional supply of water  
28 that is stored and later released at times and in quantities that will increase percolation into the

1 aquifer. Without the dam, that water would otherwise be lost to ocean outflow. The District's  
2 undisputed evidence establishes that the project net augments the basin, on average, by 32,000  
3 acre feet of water a year. This is water that would otherwise flow to the ocean.

4           Wherever a person may reside within the District – urban or rural, farmer, industrial, or  
5 city dweller, there is a material benefit derived from the augmented supply the project provides  
6 by way of ensuring higher water levels in the wells throughout the District, reducing the need  
7 for and cost of imported water, preventing loss of aquifer storage space, and preventing ocean  
8 and salt water intrusion into the aquifer in times of diminished precipitation and potential  
9 overdraft. That was the specific intent of the Act of Congress, the state-issued water right  
10 License granted to the Secretary of the Interior, and the contract that ultimately vested  
11 responsibility in the District. The fact that any land owner, municipal or otherwise, was  
12 specially assessed with the costs of constructing and maintaining the Twitchell project does not  
13 confer a vested right or ownership interest in the improvement or entitle the land owner to a  
14 certain allocation of the improvement itself. (*Kalashian v. County of Fresno* (1973) 35  
15 Cal.App.3d 429, 433.)

16           Further, there is no prior or historic contract between the District and any land owner or  
17 municipality or public water producer within the District that would confer rights to any  
18 specific quantity of water prior to the commencement of this litigation. Each individual land  
19 owner is assessed on an equitable basis. No party can claim an entitlement to a specific quantity  
20 of water based on the amount of the assessment.

21  
22  
23 **LOPEZ RESERVOIR AND WATER RIGHTS IN NORTHERN CITIES AREA**

24           Because the Santa Maria groundwater basin extends beyond the boundaries of the  
25 Santa Maria Valley Water Conservation District, and the issues before the court also involve  
26 those other subareas of the basin, it is important to set forth the rights of the Northern Cities as  
27 against the non-settling landowners with regard to the Lopez Reservoir water and other water  
28 supplies in the Northern Cities Area Also, all subareas of the basin have been affected by  
insufficient recharge, and there is a risk of future overdraft if periods of drought occur and

1 coincide with increased consumption. The Lopez Reservoir was built in the late 1960's to cure  
2 declining groundwater levels and prevent seawater intrusion in the Northern Cities Area.

3 The Northern Cities and San Luis Obispo County's relationship to Lopez is similar to  
4 the Water Conservation District's relationship to Twitchell. The San Luis Obispo County  
5 Flood Control and Water Conservation District obtained Permit 12814 from the State Water  
6 Resources Control Board for the creation of the Lopez Reservoir and for appropriation of the  
7 waters of Arroyo Grande Creek for use in Zone 3 of the District (the "Northern Cities Area"),  
8 and it has the exclusive authority to manage Lopez Reservoir and the water it salvages and to  
9 sell its water supplies. (Wat. Code § 74526.) The Northern Cities and landowners in the  
10 Northern Cities Area funded construction and operation of Lopez by water purchase contracts  
11 and property tax assessments. The non-settling Land Owner parties did not claim or prove that  
12 they own any land in the Northern Cities Area or that they paid any money toward the  
13 construction or operation of the Lopez Reservoir. The Northern Cities have the right to use  
14 water salvaged by the Lopez Reservoir in accordance with the terms of their water purchase  
15 contracts and their Settlement Agreement with the San Luis Obispo County parties. As with  
16 Twitchell, water is impounded and stored in the reservoir during heavy precipitation and run  
17 off so as to avoid waste to the ocean and then is either piped directly to the Northern Cities or is  
18 released into the Arroyo Grande Creek to recharge the groundwater supply during the dry  
19 months. Approximately 5200 acre feet a year are piped directly to the Northern Cities, and  
20 return flows averaging 400 acre feet per year are generated by the Northern Cities' use of this  
21 water. In addition, approximately 300 acre feet per year are added to the aquifer as a result of  
22 the timed releases from the Lopez Reservoir into Arroyo Grande Creek.

23 The Northern Cities purchase and import an average of 1200 acre feet annually from the  
24 State Water project, which saves pumping from the aquifer. Their use of this imported water  
25 also augments the groundwater supply by approximately 100 acre feet per year of return flows.

26 The Northern Cities constructed six percolation ponds to capture runoff of rainfall and  
27 prevent it from wasting to the ocean. These percolation ponds augment the groundwater supply  
28 in the Northern Cities Area by approximately 100 acre feet per year.

1 The Court finds, based on common law, statutory, and contractual principles, that the  
2 supplemental water supplies produced or salvaged by the Northern Cities and the San Luis  
3 Obispo County Flood Control and Water Conservation District by the combination of the  
4 Lopez Reservoir, State Water Project imports, percolation ponds, and return flows equals  
5 approximately 7300 acre feet of water per year. That total is water to which the Northern Cities  
6 have a prior right, particularly during times of overdraft, should that occur in the future. The  
7 Land Owners failed to present any evidence that they have any overlying, appropriative, or  
8 other right to use these or any other water supplies in the Northern Cities Area.

9  
10 **CONTRACT RIGHTS**

11 The Bureau of Reclamation entered into a contract with the Santa Barbara County  
12 Water Agency which in turn entered into a contract with the District to manage and operate the  
13 dam and the reservoir. The Land Owner parties have claimed a right as a third party  
14 beneficiary to those contracts.

15 Neither the land owners nor the cities are intended beneficiaries of the contracts  
16 between the Bureau of Reclamation and the water agency or the conversation district – they are  
17 incidental beneficiaries. (*Orff et. al. v. United States* (2004) 358 F.3d 1137.) No city, land  
18 owner, public water producer, or other party has a contractual right to any water produced by  
19 Twitchell except as the District may be authorized to enter into such agreements for the future  
20 operation of the project. The water introduced into the aquifer from Twitchell is certainly  
21 intended to benefit all who are within the place of use granted under the state water right  
22 License.

23  
24  
25  
26 **DEVELOPED WATER**

27 The Public Water Producers contend that as to stored, appropriated water, downstream  
28 users have no rights to the water when it is released from a dam, citing *Lindblom v. Round*

1 *Valley Water Co.* (1918) 178 Cal. 450, a California Supreme Court case. There are significant  
2 and material factual differences between this case and the *Lindblom* case. *Lindblom* involved a  
3 case where the upstream riparian owner created a dam that resulted in prescriptive rights to all  
4 the water stored. When the downstream riparian owner was deprived of flow during the  
5 summer months, he could not require the dam owner to release water that the upstream  
6 appropriator had the exclusive right to use for beneficial purposes. To the contrary, in the  
7 instant case the appropriation was authorized by the State of California so as to benefit  
8 primarily an area larger than the District's political boundaries, but smaller than the entire  
9 Santa Maria Valley.

10 In *Lindblom* the appropriator was entitled to make any beneficial use of the water it  
11 chose to make of it. In this case, the Twitchell water must be used to benefit the Santa Maria  
12 Valley below by the terms of the License and the contracts.

13 The water from Twitchell augments the water within the basin. But during years when  
14 there is a surplus, all water users have the right to use the water as overlying owners or  
15 appropriators. The water commingles with all the other water when released from the  
16 reservoir. However, during future times of shortage, if there is no surplus, or if there is an  
17 overdraft, so long as the District uses the water for the general purposes prescribed by its  
18 contract with the Santa Barbara County Water Agency, and properly exercises its statutory  
19 powers in that regard for the public good within the District, it may regulate and allocate the  
20 appropriated water consistent with its contract and under the terms of the License.<sup>7</sup>

21 In fact, the District has entered into such a contract with certain of the parties (the  
22 Stipulation) which allocates the Twitchell yield in times of shortage to those parties who have  
23 agreed to pay the costs of remediating the siltation or sedimentation of the reservoir that has  
24 resulted in a substantial loss of storage capacity necessary to maintain the project's long-term  
25 average annual yield. The court has approved that Stipulation as to the parties who have  
26 executed it. The question of the legal integrity of the District's allocation of the Twitchell yield

27 \_\_\_\_\_  
28 <sup>7</sup> The statutory authority of the District to enter into contracts to allocate and manage the benefits of the Twitchell  
project exist in its enabling legislation at Water Code sections 74501, 74526 and 74592. The District's contract with  
the Santa Barbara County Water Agency is consistent with this authority.



1 by way of the Stipulation, preferring one basin user over another in times of shortage, is  
2 reserved until the next phase of the trial. Additionally, in Phase V of these proceedings, the  
3 court will consider proposals for a physical solution to address the wide fluctuations in yield  
4 within the valley as well as its power to order a physical solution at the present time.

5  
6 **RETURN FLOWS**

7 A party, who has a prior right to specific sources of underground water, retains that  
8 right in times of overdraft, and in periods of shortage, that amount should not be spread  
9 generally among all producers within a basin to determine whether or not prescriptive rights  
10 have accrued. (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68.) Return flows  
11 from imported water fall into the category of water over which the importer has a prior right.  
12 (*San Fernando, supra.*) It is undisputed that certain Public Water Producers paid for and  
13 received water from the State Water Project, distributed it to their customers, recaptured it in  
14 waste water systems after initial use, and placed it in the aquifer by way of percolation ponds,  
15 or other comparable percolation methods. Those Public Water Producers, respectively, are  
16 entitled to the exclusive use of the return flows they generate from their deliveries of State  
17 Water Project water to the basin during periods of overdraft or in the absence of surplus  
18 underground water. Each Public Water Producer's right in this regard is an undivided right to a  
19 quantity of water in the commingled waters in the basin equal to the net amount by which the  
20 basin is augmented by such deliveries. Return flows cannot be counted as part of the native  
21 yield within the ground water basin when there is an overdraft or an absence of surplus, but  
22 otherwise would be available for any user. Unrebutted Phase IV testimony by the City's Utility  
23 Manager, Mr. Chisam, as well as undisputed expert testimony offered by Mr. Wagner establish  
24 that the City's return flows net augment the basin in an amount equal to at least 65 percent of  
25 the amount imported by the City on an annual basis. (RT 317, 324-25, 364-65.) Phase III and  
26 IV testimony from Mr. Foreman establishes that Golden State's return flows net augment the  
27 Basin on an annual basis. (RT 446-47.)

28 Land Owner parties argue that the State of California, not those Public Water Producers

1 who contract for the delivery of State Water Project water to the basin, is the importing entity  
2 and therefore entitled to any rights that might be associated with that importation. Nothing in  
3 the evidence presented (e.g., the State Water Project contracts themselves) nor the law (see *San*  
4 *Fernando, supra*, at 261 [awarding Glendale and Burbank prior rights to return flows  
5 attributable to their imported water deliveries, a portion of which included State Water Project  
6 deliveries]) supports this claim.

7  
8 **CONCLUSION**

9 The Land Owner parties' Motion to amend to conform to proof is granted.

10 The Twitchell yield is a part of the ground water yield for purposes of determining  
11 whether the basin is in overdraft or whether there is or has been surplus water available for  
12 appropriator's use, whether it is defined as "native yield," or salvaged or developed water. No  
13 party has established any pre-Stipulation priority of rights to that current yield within the  
14 aquifer.

15 The Santa Maria Valley Water Conservation District's enabling legislation authorizes it  
16 to enter into contracts to manage and operate the dam for all the purposes set forth in that  
17 legislation and the District's contract with the Santa Barbara County Water Agency (consistent  
18 with the contract between the Bureau of Reclamation contract with the Santa Barbara County  
19 Water Agency).

20 During times of surplus, the yield made available by the Twitchell project is available to  
21 all basin users. During times of shortage, prior to the water being introduced into the aquifer,  
22 rights to the supply may be limited in accordance with the statutory and contractual authority of  
23 the District, and in accordance with equitable and common law water rights principles.

24 It is undisputed that the Twitchell project is losing storage capacity due to the  
25 progressive infiltration of sediment and silt and that the process of siltation and associated loss  
26 of storage capacity could eventually negate the benefits of the project. The project provides, on  
27 average, 32,000 acre feet per year of water to the basin that otherwise would waste to the  
28 ocean. Unless the siltation process is reversed, the augmented supply made available to the

1 basin by Twitchell may be lost in whole or in part, thereby putting the basin at risk of  
2 permanent overdraft. Maintenance of Twitchell and cessation and reversal of the siltation  
3 build-up is crucial to the continued health of the ground water supply in the Santa Maria water  
4 basin

5 Those Public Water Producers who import State Water Project water to the basin have  
6 established a prior right to the return flows generated from the use of that supply, to the extent  
7 that such imported water net augments the basin. If those return flows are surplus to the needs  
8 of the Public Water Producers, they are available for all users.

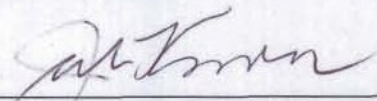
9 The Public Water Producers have established a continuous pumping history since  
10 the early 1900s from ground water within the basin, as indicated: Santa Maria – 5100 acre  
11 feet a year, Golden State – 1900 acre feet a year, and Northern Cities – 7300 acre-feet a  
12 year.

13 Undisputed evidence of the Public Water Producers' pumping in the basin since the  
14 early 1900s supports the finding that the Public Water Producers have established a prior  
15 right to surplus water in the basin as against any subsequent appropriators.

16 The Land Owner Group parties have the right to present evidence in Phase V that  
17 they have continuously pumped and fully exercised their usufructuary rights (or engaged in  
18 "self help") during all periods where no surplus existed.

19 The next and final phase will consider the Land Owner Group parties' quiet title  
20 cause of action, to the extent not fully and finally resolved by this decision, the self help  
21 issues, and the Public Water Producers' declaratory relief and physical solution causes of  
22 action. All remaining causes of action asserted by all parties to this action are dismissed.

23  
24 Dated: JAN - 8 2007

  
\_\_\_\_\_  
Hon. Jack Komar  
Judge of the Superior Court