



FILED

09-19-07
04:59 PM

1 ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
2 JILL N. WILLIS, Bar No. 200121
BEST BEST & KRIEGER LLP
3 3750 University Avenue, P.O. Box 1028
Riverside, California 92502
4 Telephone: (951) 686-1450, Fax: (951) 686-3083
Attorneys for Defendant City of Santa Maria

5 SCOTT S. SLATER, Bar No. 117317
6 ROBERT J. SAPERSTEIN, Bar No. 166051
STEPHANIE OSLER HASTINGS, Bar No. 186716
7 HATCH & PARENT, A LAW CORPORATION
21 E. Carrillo Street
8 Santa Barbara, California 93101
Telephone: (805) 963-700, Fax: (805) 965-4333
9 Attorneys for Defendants, Cross-Complainants and Cross-Defendants Golden
State Water Company, Rural Water Company and Oak-Glen Partnership

10 JAMES L. MARKMAN, Bar No. 43536
11 STEVEN R. ORR, Bar No. 136615
RICHARDS, WATSON & GERSHON
12 1 Civic Center Circle, P.O. Box 1059
Brea, California 92822-1059
13 Telephone: (714) 990-0901, Fax: (714) 990-6230
Attorneys for Defendant Nipomo Community Services District

14 FREDERIC A. FUDACZ, Bar No. 50546
15 HENRY S. WEINSTOCK, Bar No. 89765
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
16 445 South Figueroa Street, 31st Floor
Los Angeles, California 90071
17 Telephone: (213) 612-7800
Facsimile: (213) 612-7801
18 Attorneys for Defendants City of Arroyo Grande, City of Grover Beach, City of
Pismo Beach, Oceano Community Services District

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SANTA CLARA

21 SANTA MARIA VALLEY WATER
22 CONSERVATION DISTRICT,

23 Plaintiff,

24 v.

25 CITY OF SANTA MARIA, et al.,

26 Defendants.

Santa Maria Groundwater Litigation

Case No. 1-97-CV770214
Judge: Honorable Jack Komar

**PUBLIC WATER SUPPLIERS' PHASE IV
CLOSING BRIEF**

Date: March 10, 2006
Time: 9:00 a.m.
Dept: 17C

27 AND RELATED CROSS-ACTIONS
28

RVPUBUWILLIS\709418.1

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 **I. INTRODUCTION**

2 The Public Water Suppliers' Phases III and IV evidence shows there are three separate
3 and distinct sources of supply at issue in the Basin: (1) Twitchell Augmentation; (2) State Water
4 Project Return Flows; and (3) Native Yield. The three sources should be allocated separately
5 under applicable law and to protect the Basin's water supply.
6

7 First, the City of Santa Maria and Golden State Water Company (together with the City of
8 Guadalupe) should be allocated a priority right to 80 percent of the augmented Basin yield
9 derived from the Twitchell Project. Second, the State Water Project Importers – The City,
10 Golden State and Guadalupe – should be granted a priority right to recapture State Water Project
11 return flows. Third, the Public Water Suppliers should be granted a right to Native Yield, based
12 on their claim of prescriptive rights to native Basin water prior to the completion of the Twitchell
13 Project and based upon Water Code sections 106, 106.5, 1005.1 and 1005.2.

14 **II. NO LEGAL PRESUMPTION EXISTS WHICH IMPACTS THE COURT'S**
15 **DECISION ON THE RIGHTS TO USE THE VARIOUS SOURCES OF WATER**
16 **LOCATED WITHIN THE SANTA MARIA VALLEY GROUNDWATER BASIN**

17 During the Phase IV trial, the Wineman Group argued the existence of a presumption to
18 the effect that all groundwater in a basin is "percolating" and, therefore, is subject to the priority
19 claim of overlying producers. The argument then was made that any owner of land overlying the
20 Basin was presumed to have the right to pump all waters beneath that land, and that the Public
21 Water Suppliers were required to rebut that presumption to establish a right to pump State Water
22 Project return flows or the developed water from Twitchell Reservoir. This specious argument
23 also is stated on pages 1 and 2 of the Wineman Group Trial Brief on its first and second causes of
24 action where four cases are cited incorrectly in an attempt to establish the existence of the
25 presumption.

26 At trial, the Public Water Suppliers pointed out that the presumption that water is
27 percolating only distinguishes percolating water from water flowing in an underground stream
28 confined by a bed and banks. This distinction is a jurisdictional issue, not relevant to the Court's

1 allocation of the sources of existing water within the Basin. (See Water Code §§ 1200, *et seq.*)
2 That is, stream underflow may not be produced without a license or permit from the State Water
3 Resources Control Board. (*Id.*) The State Board has no permitting authority over production of
4 percolating groundwater.

5
6 The fact that the presumption in question does not concern priority claims to various
7 sources of supply is demonstrated by the cases inaccurately cited by the Wineman Group. The
8 first case cited, *Arroyo Ditch and Water Company v. E.J. Baldwin* (1909) 155 Cal. 280 applied
9 the subject presumption to support its holding that water pumped by a water company was not
10 subterranean stream water, and therefore was not subject to the claim of an upstream riparian
11 landowner.

12 Conversely, in *City of Los Angeles v. A.E. Pomeroy* (1899) 124 Cal. 597, water flowing
13 under property condemned by the City of Los Angeles was shown to be flowing in an
14 underground stream subject to Los Angeles' superior pueblo right. This rebuttal of the
15 presumption that underground water is percolating diminished the value of the land being
16 condemned. *City of Los Angeles v. Pomeroy* was reviewed by the U.S. Supreme Court in *Hooker*
17 *v. Los Angeles* (1903) 188 U.S. 314. That case also was cited by the Wineman Group even
18 though it does not even concern itself with the presumption under discussion.

19
20 *Hanson v. McCue* (1871) 42 Cal. 303, the final case cited by the Wineman Group,
21 concerned neighbors disputing the right to water. The outcome of the case was dictated by the
22 presumption that the water was percolating and was not flowing in an underground stream.

23 In summary, the Wineman Group's argument that there is a presumption that all water
24 percolating in a basin is subject to their overlying right simply does not exist. The existing
25 presumption that underground water is percolating as distinguished from flowing in an
26 underground stream is not relevant to the Court's determination of the relative priority rights to
27 the various sources of water within the Basin (native yield, SWP return flows, developed water
28 from Twitchell Project operations, etc.).

1 **III. RECENT CASE LAW REAFFIRMS THE PRINCIPLE THAT SALVAGED OR**
2 **DEVELOPED WATER IS NOT PART OF THE COMMON SUPPLY**

3 The Public Water Suppliers provided extensive briefing in both Phase III and Phase IV
4 that developed and salvaged water supplies such as water from the Twitchell and Lopez Projects
5 are not part of the common supply. The Public Water Suppliers relied, in part, on *Lindblom v.*
6 *Round Valley Water Company* (1918) 178 Cal. 450, in which the California Supreme Court
7 expressly excluded any riparian claim to stored water and limited the downstream user to natural
8 flow. (See City of Santa Maria's Phase III Brief at 38.)

9 Under the most recent decision addressing California water law, *State Water Resources*
10 *Control Board Cases*, 2006 Cal. App. LEXIS 171 at 123, Justice Robie, writing for the Third
11 District Court of Appeal relied on *Lindblom* and held that a riparian property owner (which is
12 analogous to an overlying property owner) cannot claim a right to salvaged or developed water
13 from a reservoir project:

14 In *Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450, our
15 Supreme Court explained that a downstream riparian user may not
16 claim any benefit from the storage of water by an upstream
17 appropriator. "[The riparian user] is not in a position to demand that
18 the [upstream appropriator] shall, by its artificial works, furnish a
19 constant flow of water in [the watercourse] throughout the year.
20 His only rights are those which he would have had under the natural
21 conditions existing before the dam was erected, subject to the
22 deduction of so much of the water as [the upstream appropriator]
23 has continuously applied to a beneficial use. In other words, he
24 cannot require the [upstream appropriator] to discharge any water
25 into the stream during those months in which there would be no
26 flow if no dam had ever been built."

27 Thus, as recently as last month, the Court of Appeals affirmed that developed and salvaged water
28 supplies are not part of the native yield to which riparian or overlying landowners hold rights.

29 **IV. PHASE IV EVIDENCE ESTABLISHES THAT THE CITY AND GOLDEN STATE**
30 **(TOGETHER WITH THE CITY OF GUADALUPE) ARE ENTITLED TO**
31 **EIGHTY PERCENT OF THE TWITCHELL AUGMENTATION**

32 **A. The Twitchell Project Was Planned And Developed With The Intention Of**
33 **Supplying Water For Domestic, Municipal, And Industrial Consumptive**
34 **Purposes In Addition To Supplying Water For Irrigation**

1 Significant Phase IV evidence establishes that the Twitchell Project was planned and
2 developed with the intent to supply water for domestic and municipal purposes as well as for
3 irrigation. Examples from the historical documents submitted by the Public Water Suppliers
4 include the following:

5 • On March 25, 1946, the U.S. Bureau of Reclamation filed with the California
6 Department of Public Works, Division of Water Resources, Application Nos. 11343 and 11344 to
7 Appropriate Unappropriated Water. The "Supplement to Application No. 11343," which was
8 included with the application, stated that the "quantities applied for and indicated under (b) of this
9 application will be the same water applied for under Application 11344 *for municipal and*
10 *industrial purposes*" and that "water released from Vaquero Reservoir will contribute to ground
11 water to assist in maintaining a fresh water barrier to salt water encroachment in the areas along
12 the coastal plain." (Phase IV, Exh. E, State of California – Department of Public Works, Division
13 of Water Resources, Application No. 11343 to Appropriate Unappropriated Water, March 25,
14 1946 [emphasis added].)

15 • On March 25, 1946, the U.S. Bureau of Reclamation also filed with the California
16 Department of Public Works, Division of Water Resources, Application No. 11344 to
17 Appropriate Unappropriated Water. Under item 3 ("The use to which the water is to be applied")
18 Application No. 11344 stated "*municipal and industrial.*" The Application also stated that it was
19 "made for the *purpose of serving Santa Maria, Guadalupe, Orcutt, Betteravia, Sisquoc, and*
20 *Garey having a population of 20,000.*" (Emphasis added.) The "Supplement to Application
21 11344" explained that: "Water demands for municipal and industrial purposes will be supplied as
22 required to cities, towns, and other municipalities presently in existence or as may be created . . .
23 . ." (Phase IV, Exh. F, State of California – Department of Public Works, Division of Water
24 Resources, Application No. 11344 to Appropriate Unappropriated Water, March 25, 1946.)

25 • The Bureau's 1951 "Project Planning Report" stated that the Santa Maria Project
26
27
28

1 “would add sufficient water to the ground-water reservoir to overcome the present average annual
2 overdraft of 14,000 acre-feet, *provide for anticipated municipal and industrial growth*, and
3 provide enough additional yield to irrigate 3,000 acres of presently nonirrigated land *for 50*
4 *years.*” (Phase IV, Exh. H, p. 29, U.S. Bureau of Reclamation, “Santa Maria Project, Southern
5 Pacific Basin, Calif., Project Planning Report of November 1951,” contained in U.S. Congress,
6 House, *Letter from [the] Secretary of the Interior Transmitting A Report on the Santa Maria*
7 *Project, California, Pursuant to the Provisions of Section 9 (a) of the Reclamation Project Act of*
8 *1939 (53 Stat. 1187) H. Doc. 217, 83 Cong., 2 sess., July 29, 1953 [emphases added].)*

9 • Following the authorizing legislation for the Santa Maria Project, in September
10 1955, the U.S. Bureau of Reclamation released its “Santa Maria Project, California, Definite Plan
11 Report.” Chapter III, entitled “Water Requirements,” stated:

12
13 The present municipal and industrial water use is about 7,500 acre-
14 feet per year. Based on the trend of past use of water for municipal
15 and industrial purposes in the Santa Maria Project service area and
16 an increasing population, the ultimate gross water requirement for
17 that use is expected to be 10,000 acre-feet per year. Any larger
18 increase in municipal and industrial water use will be offset by a
19 reduction in irrigation requirements as these uses will take over
20 irrigated lands. (pp. 28-29). (Phase IV, Exh. X, U.S. Bureau of
21 Reclamation, “Santa Maria Project, California, Definite Plan
22 Report,” Sept. 1955.)

23 • On December 23, 1974, the State Board granted to the U.S. Bureau of Reclamation
24 License No. 10416 for Diversion and Use of Water from the Santa Maria River for the Santa
25 Maria Project. The License stated that the purposes of the diversion and use were “irrigation,
26 *domestic, salinity control, municipal, industrial* and recreational uses.” (Emphasis added.) The
27 License added that the description of the lands or place of use was “recreational use at Twitchell
28 Reservoir, *domestic, municipal, industrial, salinity control*, and irrigation of 31,000 acres within a
gross irrigable area of 45,900 acres; all being within a gross area of 73,000 acres[.]” (Emphasis
added.) (Phase IV, Exh. DD, License for Diversion and Use of Water, License No. 10416, Dec.
23, 1974.)

1 These documents, together with the other historical documents submitted by the Public
2 Water Suppliers, clearly establish that Congress intended the Twitchell Project to provide water
3 for municipal and domestic purposes, in addition to irrigation.

4 **B. Phase III and IV Evidence Establishes That Twitchell Augments The Basin's**
5 **Supply**

6 **1. Twitchell Captures Water That Otherwise Would Have Wasted To**
7 **The Ocean**

8 The historical documents submitted by the Public Water Suppliers establish that Twitchell
9 Reservoir was designed, in part, as a conservation project that would capture flood flows that
10 previously wasted to the ocean and release those flows in a controlled manner so that they would
11 percolate into the Basin:

12 • The "Transmittal" section of the 1951 "Project Planning Report" stated that the water for
13 the Santa Maria Project would derive from flood flows normally going unused to the ocean.
14 After noting the declining groundwater levels in the Santa Maria Valley, the "Project Planning
15 Report" stated: "These conditions which hamper the continuation of stable development of the
16 valley economy can be removed *by conservation of floodwaters presently wasted to the ocean*
17 and by construction of works to control the floods." (Phase IV, Exh. H, p. 23 [emphasis added].)

18 • The "Project Planning Report" also stated:

19 The proposed construction consists essentially of a 214,000 acre-
20 foot reservoir on the Cuyama River and levee and channel
21 improvements in the Santa Maria Valley. The reservoir would
22 detain Cuyama River flows during periods of *waste flow to the*
23 *ocean*, and subsequently release the conserved water at rates equal
24 to, or less than, the percolation capacity of Santa Maria River
25 Channel. An average annual yield sufficient to overcome the
26 present overdraft and to irrigate an additional 3,000 acres for a
27 period of 50 years can be thus obtained. The project would be
28 unique in that all holdover storage would be maintained in the
ground-water reservoir. (Phase IV, Exh. H, p. 23). (Emphasis
added.)

Other historical documents submitted by the Public Water Suppliers provide further evidence that
the Twitchell Project was designed to salvage water that would otherwise waste to the ocean.

1 (Phase IV, Exhs. B, G, H [p. 23], I, K, O [pp. 2-3], P [p. 905], S [14249-14250], V, EE.)

2 **2. Twitchell Provides 32,000 Acre-Feet Of Supplemental Recharge To**
3 **The Basin**

4 Undisputed Phase III evidence establishes that the average annual supplemental yield
5 created by the Twitchell Project is approximately 32,000 acre-feet per year:

6 The amount of supplemental recharge to the Valley due to the
7 Twitchell project operations is roughly estimated to be . . . 32,000
8 acre-feet per water year (af/wy), based on the net loss in streamflow
9 between the Sisquoc River Gauge near Garey and the Santa Maria
10 river gauge at Guadalupe (from pre- vs. post-Twitchell project
11 periods). (Phase III Exh. F-14 (Development of a Numerical
12 Ground-Water Flow Model and Assessment of Ground-Water
13 Basin Yield, Santa Maria Valley Ground-Water Basin, at 23).)

11 **3. Particular Parties Have Paid For Twitchell In The Past, And**
12 **Particular Parties Will Pay For Twitchell In The Future**

13 As further evidence that Twitchell is not part of the common supply, the Public Water
14 Suppliers provided testimony that the City's residents have paid for the majority of the costs of
15 building and operating the Twitchell Reservoir for the last 40 years. (RT 283-284; Phase IV,
16 Exhs. JJ, KK.) Now that the repayment period has ended, the City and Golden State have
17 committed to providing, at a minimum, \$500,000 to \$700,000 a year to repair and maintain the
18 Twitchell Reservoir in the future. (See Stipulation at D, 3.(b), p. 19.)

19 The Santa Maria Valley Water Conservation District has, pursuant to the Stipulation,
20 contractually allocated certain benefits associated with the augmented yield derived through
21 Twitchell Project operations to the City, Golden State, the City of Guadalupe, and stipulating
22 overlying property owners whose property lies within the boundaries of the District. The
23 District's statutory authority to allocate these benefits is discussed more fully in the Public Water
24 Suppliers' Opposition to LOG/Wineman Group's Motion For Non-Suit.

25 **V. THE CITY AND GOLDEN STATE HAVE THE RIGHT TO RECAPTURE**
26 **RETURN FLOWS FROM STATE WATER PROJECT WATER**

27 The Public Water Suppliers provided extensive briefing regarding the right of the State
28 Water Project Importers (the City and Golden State) to recapture return flows from State Water

1 Project water. (See Phase IV Trial Brief at 18-21.) Phase IV testimony by the City's Utility
2 Manager, Mr. Chisam, as well as undisputed expert testimony offered by Mr. Wagner establish
3 that the City's return flows net augment the basin in an amount equal to at least 65 percent of the
4 amount imported by the City on an annual basis. (RT 317, 324-25, 364-65.) Phase III and IV
5 testimony from Mr. Foreman establishes that Golden State's return flows net augment the Basin
6 on an annual basis. (RT 446-47.)

7 **VI. THE CITY AND GOLDEN STATE HAVE ESTABLISHED A PRESCRIPTIVE**
8 **RIGHT TO NATIVE WATER IN THE PERIOD IMMEDIATELY PRECEDING**
9 **THE OPERATION OF THE TWITCHELL PROJECT**

10 The City and Golden State have presented evidence sufficient to establish the predicates to
11 prescriptive water rights prior to the operation of the Twitchell Project. Prescriptive rights are
12 acquired by an adverse taking of water where the use is actual, open, and notorious; hostile and
13 adverse to the original owner; and continuous and uninterrupted for the statutory five year period,
14 under a claim of right. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d. 908, 926.)
15 Significant overdraft conditions existed prior to the operation of the Twitchell Project. These
16 conditions were widespread and well-known throughout the Basin. The City and Golden State
17 extracted groundwater continuously throughout this period, to the present date, thereby
18 establishing a claim for prescription based on their pumping during the "pre-Twitchell" period.

19 Given the Basin management practices embodied in the Stipulation, the City and Golden
20 State acknowledge that the quantification of their prescriptive rights is currently not necessary. In
21 other words, the physical solution agreed upon by the vast majority of the parties in this litigation
22 should preserve the long-term integrity of Basin supplies such that no water shortage conditions
23 should develop within the Basin. Thus, the determination of the relative priorities to native yield
24 as between the non-stipulating landowners and the City and Golden State may never become
25 relevant. Rather, the City and Golden State propose that the Court reserve for future
26 determination the quantification of the prescriptive rights that vested as a result of the overdraft
27 conditions present prior to the operation of the Twitchell Project.

1 **A. Evidence Demonstrates That the Basin Was in Overdraft for at Least Five**
2 **Consecutive Years Before the Twitchell Project**

3 Based on the evidence offered in Phases III and IV, the predicates of prescriptive water
4 rights have been established dating from the period immediately before the Twitchell Project.
5 The prescriptive period for groundwater rights must consist of five consecutive years of
6 overdraft¹ prior to the filing of the complaint. (*City of Los Angeles v. City of San Fernando*
7 (1975) 14 Cal.3d 199, 283-84; *Pasadena*, 33 Cal.2d at 930-33; *Yorba v. Anaheim Union Water*
8 *Co.* (1935) 41 Cal.2d 265, 270;² Code Civ. Proc. § 318.) Upon completion of five years of
9 adverse use, prescriptive title vests in the claimant. (*Pasadena*, 33 Cal.2d at 930-33.) Any
10 continuous five-year period of adverse use is sufficient to vest title in the adverse user, whether
11 immediately preceding the filing of a complaint to enjoin the adverse use or otherwise.
12 (*Pasadena*, 33 Cal.2d at 930-33 (upholding the trial court's determination that water pumped
13 from the groundwater basin exceeded the basin's safe yield during the period 1913-14 to 1933-34,
14 but not in two of the three years immediately preceding the filing of the complaint); *Lee v. Pacific*
15 *Gas & Elec. Co.* (1936) 7 Cal.2d 114, 120 ("It must be continuous and uninterrupted for a period
16 of five years prior to the commencement of the action, not, however, necessarily next before the
17 commencement of the action."))

18 Only the Basin's native groundwater supplies are relevant to this prescriptive rights claim
19 dating back to this "pre-developed water" period. Dr. Williams testified that the Basin's native
20 yield during this period was 60,000 acre-feet per year. (Phase IV, Exhibit F-10.) Both Mr.
21 Scalmanini and Mr. Foreman produced in-depth analyses of Basin withdrawals dating from 1944
22 through and beyond the date the Twitchell and Lopez Projects became operational. (See Phase
23

24 ¹ Overdraft was extensively briefed in Phase III. Simply stated, "overdraft" is defined as follows:

25 Overdraft commences whenever extractions increase, or the withdrawable
26 maximum decreases, or both, to the point where the surplus ends.
 (*San Fernando*, 14 Cal.3d at 282, citing *Pasadena*, 33 Cal.2d at 928-29.)

27 ² "It is true that ordinarily the filing of an action, either by the person asserting a prescriptive right, or by
28 the person against whom the statute of limitations is running, will interrupt the running of the prescriptive
period, and the statute will be tolled while the action is actively pending."

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

5
6 This overdraft is one of the predicates to establishing prescriptive rights. The
7 commencement of overdraft provides the element of adversity necessary to establish a
8 prescriptive rights claim. "[A]n appropriative taking of water which is not surplus is wrongful
9 and may ripen into a prescriptive right where the use is actual, open and notorious, hostile and
10 adverse to the original owner, continuous and uninterrupted for the statutory period of five years,
11 and under a claim of right." (*Pasadena*, 33 Cal.2d at 926-27; *San Fernando*, 14 Cal.3d at 282-
12 83.) "The commencement of overdraft provides the element of adversity which makes the first
13 party's taking an invasion constituting a basis for injunctive relief to the other party." (*San*
14 *Fernando*, 14 Cal.3d at 282.)³

15 **B. Evidence Shows That The Existing Overdraft Was Widely Known During**
16 **The Pre-Twitchell Period**

17 Written historical evidence offered in Phases III and IV confirms that the existence of
18 overdraft prior to 1962 was well and widely known throughout the Basin. Basin groundwater has
19 been consumptively used since the late 1800's, with the first indication of overdraft in the 1930's.
20 (See Phase IV, Exhibit X (Bureau of Reclamation, Santa Maria Project: Southern Pacific Basin,
21 California, Project Planning Report, at 33-34 (Nov. 1951).) The Bureau of Reclamation reported
22 that by 1936 groundwater levels had reached their lowest levels on record at the time. (*Id.*) A
23 wet period from 1937 to 1943 allowed about half of the prior depletion to be restored. (*Id.*)
24

25 ³ Thus on the commencement of overdraft there is no surplus available for the acquisition
26 or enlargement of appropriative rights. Instead, appropriations of water in excess of
27 surplus then invade senior basin rights, creating the element of adversity against those
rights prerequisite to their owners becoming entitled to an injunction and thus to the
running of any prescriptive period against them.

28 (*San Fernando*, 14 Cal.3d at 282, *citing Pasadena*, 33 Cal.2d at 928-29.)

1 From 1944 on, however, expanded use continued and groundwater levels began to decline
2 once again. (*Id.*) By 1951, the Bureau reported a critical water shortage, where deep wells that
3 once produced 1,000 gallons per minute, produced less than 250 gallons per minute. (*Id.*) By
4 1960, experts resoundingly agreed that the Basin was and had been in a state of overdraft of a
5 substantial magnitude. For example, in 1951, the Bureau of Reclamation reported that the total
6 pumping exceeded the safe yield by approximately 14,000 acre-feet per year. Similarly, the
7 Geological Survey of the Department of Interior reported that the perennial yield was being
8 exceeded by approximately 12,000 AFY and that continued yearly overdrafts with no additional
9 source of supply would result in a permanent depletion of storage and water levels far below their
10 level in 1936. (*Id.*; See Phase III, Exhibit F-7 [Worts, Geological Survey Water-Supply Paper
11 1000, Geology and Ground-Water Resources of the Santa Maria Valley Area, California, at 2,
12 129 (1951)].) The 1966 USGS report prepared in cooperation with the Santa Barbara County
13 Water Agency reported an decrease in groundwater storage of 3,070,000 acre-feet in 1918 to
14 2,360,000 acre-feet in 1950, as well as an average annual decrease in storage of 21,000 acre-feet
15 between 1918-1959. (Phase III, Exhibit F-9, G.A. Miller & R.E. Evenson, Utilization of Ground
16 Water in the Santa Maria Valley Area, California; USGS Water-Supply Paper 1819-A (1966) at
17 A7.) In 1976, after Twitchell became fully operational, the Toups Corporation published a report
18 identifying a “net depletion of water from the Santa Maria groundwater basin that averaged
19 slightly less than 7,000 acre-feet per year during the years 1935 through 1972, or 253,000 acre-
20 feet for the entire 38 year period.” (Phase III, Exh. F-11, Toups Corporation, Santa Maria Valley
21 Water Resources Study (1976) at 66.)

22 Phase III evidence regarding testimony before Congress prior to the time the Twitchell
23 Reservoir was constructed further shows that the decline in well levels and water in storage was
24 clear to local water users. The District President, Leonald H. Adam, testified about the severity
25 of the water supply problems in the area:
26

27 For example, when I first started irrigating in 1929, the water level
28 in the first well I drilled was between 55 and 60 feet. In 1950 the

1 water level in this well had dropped to 90 feet, and in 1951 had
2 dropped to 120 feet. Since the heavy flow in the river in 1952 the
3 water level has risen to 47 feet and has remained at about this level
4 since that time. However, the next period of drought there is no
5 doubt that the water level in this well will go considerably below
6 the 120-foot water level which existed in 1951.

...

6 Most of the ranchers in the east end of the valley had had to
7 construct reservoirs in order to keep the maximum amount of land
8 under irrigation. Many of these wells had an original capacity of
9 800 gallons per minute, sufficient to normally irrigate 80 acres.
10 During 1948, 1949, 1950, and 1951 the capacity of these wells went
11 down to approximately an average of 200 gallons per minute.
12 (Phase III, Exhs. F-1 and F-2, 1953 Hearings, pp. 30-31, testimony
13 of Leonard H. Adam, California, president, Santa Maria Valley
14 Water Conservation District.)

11 Mr. Adam's testimony supports the Bureau's findings that there was a long-term decline in water
12 in storage in the Basin:

13 My observations over the years indicate to me that we have a
14 continuously diminishing water supply. Each period of years where
15 we have plentiful rainfall the average water level rises considerably
16 but not to the high point of previous years.

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

21 This is obvious to those who are farming and irrigating the land and
22 has been verified by every engineer who has studied the problem.
23 The answer, of course, is not additional wells, but provisions for a
24 supplemental water supply. (*Id.*, p. 31, emphasis added.)

23 Finally, Mr. Adam stated:

25 It is my belief that the situation in the Santa Maria area is critical,
26 both from the standpoint of obtaining a supplemental water supply
27 to keep the land under irrigation and also to protect it from floods.
28 (*Id.* at 32, emphasis added.)

John Adam, a director of the Santa Maria Valley Water Conservation District testified that

1 “All of the farmers who own or farm land west of Santa Maria are equally aware of the fact that
2 we do have a water problem.” (*Id.* at 42, emphasis added.) Mr. Adam then summarized the
3 severity of the water supply problem:

4 Our experience indicates that we have a gradual lowering of the
5 water table and when we do have years of substantial flow in the
6 rivers our water table is not helped materially. We do not have
7 large fluctuations in water tables, but our water table is constantly
8 receding. We do not know how long our water supply will last, but
9 we do know that our water reservoir diminishes more rapidly the
10 deeper it goes.

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

21 The above described evidence demonstrates that the Basin had been in a state of overdraft
22 for many years prior to the construction of the Twitchell Project. The Public Water Suppliers’
23 groundwater pumping during this period establishes the predicates of prescriptive rights (an
24 adverse taking of water where the use is actual, open, and notorious; hostile and adverse to the
25 original owner; and continuous and uninterrupted for the statutory five year period, under a claim
26 of right (*City of Pasadena, supra*, 33 Cal.2d. at 926).

27 **C. The City And Golden State’s Right To Native Water Is Supported By The**
28 **Water Code**

29 The City’s and Golden State’s priority right to native supplies is also consistent with
30 Water Code sections 1005.1 and 1005.2, which provide that a pumper maintains a right to
31 groundwater if it ceases using such water because of use of water from an alternative nontributary
32 source, and with Water Code section 106, which provides that use of water for domestic purposes
33 is “the highest use of water” in the State. (Cal. Water Code § 106.)

34 However, as noted above, with the implementation of the Stipulation, the Public Water
35 Suppliers suggest that the quantification of these prescriptive rights may be reserved for a future


1 period, only if and when they may become relevant – that is, during severe water shortage
2 conditions.

3 **VII. CONCLUSION**

4 For the foregoing reasons, the Public Water Suppliers request that the Court grant the
5 relief requested herein.

6 Dated: March 7, 2006

BEST BEST & KRIEGER LLP

8 By: 

9 ERIC L. GARNER
10 JEFFREY V. DUNN
11 JILL N. WILLIS
12 Attorneys for Defendant
13 CITY OF SANTA MARIA

14 LAW OFFICES OF
15 BEST BEST & KRIEGER LLP
16 3750 UNIVERSITY AVENUE
17 P.O. BOX 1028
18 RIVERSIDE, CALIFORNIA 92502