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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden
State Water Company (U 133W) for an
Order pursuant to Public Utilities Code
Section 851 approving a Settlement in a
Water Rights Adjudication, and for an
Order Pursuant to Section 454 approving
the proposed Ratemaking Treatment of
the costs of the Adjudication and
Settlement

Application 06-02-026

**MOTION OF
GERALD TRIMBLE, RATE PAYER ACCOUNT #317879-5,
SEEKING DISMISSAL
OF THE APPLICATION OF GOLDEN STATES WATER COMPANY
FOR AN ORDER PURSUANT TO PUBLIC UTILITIES CODE
SECTION 851 APPROVING A SETTLEMENT IN A WATER
RIGHTS ADJUDICATION**

1 Pursuant to Rule 11.1 and 11.2 of the Commission's Rules of Practice and
2 Procedure, Gerald Trimble hereby moves for an order dismissing, with
3 prejudice, the application of Golden States Water Company (GSWC) for an
4 Order Pursuant to Public Utilities Code Section 851 approving a Settlement in
5 a Water Rights Adjudication (Stipulation).
6

7 Decision 07-05-041 dated May 24, 2007 orders, among other things, that
8 Application 06-02-026 remains open, phase 2 of the proceeding commences
9 as of May 24, 2007, and a separate scoping memo may be issued. This
10 decision does not state or imply that further action on this proceeding should
11 be halted because of the waiting for the pending developments concerning
12 the Court settlement agreement, the Nipomo pipeline or for any other reason.
13

14 This motion to dismiss is supported by statements of fact supported by
15 evidence from exhibits and is based on the following reasons:
16

17 1) The Stipulation fails to disclose the party responsible for the "allocation" of
18 the 10,000afy of groundwater right claimed by GSWC, a contractual
19 misrepresentation by omission. [\(§1 – 3\)](#) (Facts Section # - Statement #)
20

21 2) Within Superior Court pleading document # SD07172777DC¹, in direct
22 reference to the Stipulation, the GSWC et al. claimed party allocating the
23 groundwater [right]² is the District who has no groundwater rights either as an
24 overlying landowner or appropriator. [\(§1b\)](#)
25
26
27
28
29

30 ¹ Public Water Suppliers' Phase IV Closing Brief dated 3/10/06 (Exhibit 2)

² "Twitchell Yield" in the Stipulation is defined as groundwater, corrected herein to groundwater right. All groundwater in the Santa Maria Valley basin is the property of the State of California (Water Code Section 102) and the State is not a party to this Stipulation.

1 3) Within Superior Court pleading document # SEB719F349B7³, in direct
2 reference to the Stipulation, the GSWC claimed "authority" for the ground-
3 water [right] allocation, being applicable Water Code provisions and the
4 Twitchell SWRCB License⁴, is contrary to California Water Code §1200. [\(§1\)](#)
5

6 4) The implication by this claimed "authority" that water released from
7 Twitchell Reservoir back into the Cuyama River remains appropriated is
8 contrary to California Water Code §1202(d). [\(§1a\)](#)
9

10 5) The Court interprets "Twitchell Yield" to be **water within the reservoir**
11 contrary to the Stipulation definition of **groundwater**, profoundly undermining
12 any implication that the Court endorses the Stipulation "allocation". [\(§1c\)](#)
13

14 6) No water is or can be "delivered" from the **Twitchell Reservoir** rendering
15 its "allocation" of no value. [\(§1d\)](#)
16

17 7) The Court's considered opinion that Twitchell Reservoir is a source of
18 water for GSWC during a drought as partial justification of the Stipulation is
19 without merit. [\(§1e\)](#)
20

21 8) The stipulating overlying landowners have no capability of being the
22 "undisclosed party" allocating groundwater [rights] to GSWC et al. [\(§1f\)](#)
23

24 9) Stipulation approval by the Commission results in the forfeiture by GSWC
25 of its Court awarded prescriptive groundwater right, a valued property. [\(§2\)](#)
26
27
28

29 _____
30 ³ Public Water Suppliers' Opposition to the LOG and Wineman Group's Motion for Non-Suit on
Municipal Water Purveyors' Claim for Allocation of Twitchell Water dated 3/10/06 (exhibit 3)

⁴ GSWC court pleading "Brief" (exhibit 2) identifies pleading document "Opposition" (exhibit 3) as
this "authority" for the Stipulation allocation of groundwater.

1 10) The Stipulation restriction that a “severe water shortage condition” cannot
2 be declared during a drought places the aquifer at risk. [\(§2a-3\)](#)

3
4 11) A declaration of the Stipulation’s “severe water shortage condition”
5 terminates GSWC’s contractual right to pump native groundwater. [\(§2a-4\)](#)

6
7 12) The Stipulation, by omission, ignores the existence of the Water at
8 Common Law “no surplus” crisis to appropriators, such as GSWC. [\(§2a-2\)](#)

9
10 13) The Stipulation is ambiguous relating to groundwater rights. [\(§3\)](#)

11
12 14) Every GSWC Application claim, relating to the Stipulation, either has no
13 added benefit or is a disadvantage to the public. [\(§4\)](#)

14
15 15) Stipulation approval would include the wholesale approval of the projects
16 mandated therein, potentially including the inferred silt project with costs that
17 are unpredictable. [\(§5\)](#)

18
19 16) The Stipulation’s transfer of District obligations from its agricultural
20 electors to public rate payers is highly prejudiced. [\(§5a\)](#)

21
22
23 While each reason above directly references its relevant section of support
24 within each following set of parentheses, the whole of the presentation of
25 facts and evidence is as follows:
26

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30
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Exhibits/Attachments

Items 1 through 13 are exhibits.
Items 14 and 15 are attachments for reference convenience.

#	<u>Link</u>	<u>Title</u>	<u>File Date</u>
1	E9A360BA945C	Stipulation	6/23/05
2	SD07172777DC	Public Water Suppliers' Phase IV Closing Brief	3/07/06
3	SEB719F349B7	Public Water Suppliers' Opposition to the LOG and Wineman Group's Motion for Non-Suit on Municipal Water Purveyors' Claim for Allocation of Twitchell Water	3/07/06
4	B3D2B2296E6	Appendix F (of Stipulation)	8/31/05
5	SWRCB-WC1200	State Water Resources Control Board Information Pertaining to Water Rights in California	1990
6	P7E3B93E7146	Statement of Decision re Trial Phase 5	1/8/07
7	LBE3B74C664D	Partial Statement of Decision re Trial Phase 4	1/8/07
8	N3EB1276AB27	SMVWCD Notice of Execution and Filing of Stipulation Signature Pages	7/21/05
9	SWRCB10416	SWRCB License for Twitchell Project	12/23/74
10	Declare-R.Almy	Declaration of Robert Almy of SBCW Agency	12/05/05
11	SWRCB Order	SWRCB ORDER WR 2006-0011-EXEC	4/10/06
12	SBC-Report	2005 Santa Barbara County Groundwater Report, Santa Maria Basin Excerpt	3/28/06
13	Twitchell-Level	Twitchell Levels 1962 - 2000	--
14	Attachment 14	Santa Barbara County Water Agency Formation Statute	--
15	Attachment 15	Referenced California Water Codes and Regulation	--

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Overview

Phase 2 of this proceeding concerns a negotiated settlement agreement (Stipulation) between parties, exclusive of the public, under the guise of Court Authority, which constitutes an attempt to move the burden of basin and Twitchell obligations onto those who use 9% of the aquifer water.

The Court, while ordering the settlement meeting, was apparently not a direct participant in the creation of the Stipulation. An indication of the Court's insight into the Stipulation is most evident in the disparity of its definition of the term "Twitchell Yield" relative to that in the Stipulation. In the Stipulation it is groundwater, but to the Court it is reservoir water, leading to what appears as a concurrence with the "Twitchell Yield allocation". The Court with its assumption of reservoir water was not aware that, unlike Lake Lopez to the north, water deliveries can not be made from Twitchell.

The "Twitchell Yield allocation", of which the GSWC claimed 10,000afy is a part, appears intended to replace the Stipulation required forfeiture of the Court awarded prescriptive right. The Stipulation does not disclose the party allocating this so-called "Twitchell Yield", nor does it identify its source except by implication in its name, since its definition therein is simply "groundwater".

A GSWC et al. Superior Court brief⁵ states that the District is the party allocating the [right to] groundwater and refers to a second pleading document⁶ as the source of the authority for this "allocation". The logic in that second document is, in effect, that the District's appropriative right to water within Twitchell Reservoir continues with that water during its gated release back into the Cuyama River and subsequent percolation into the basin.

⁵ Public Water Suppliers' Phase IV Closing Brief dated 3/10/06 (Exhibit 2)

⁶ Public Water Suppliers' Opposition to the LOG and Wineman Group's Motion for Non-Suit on Municipal Water Purveyors' Claim for Allocation of Twitchell Water dated 3/10/06 (Exhibit 3)

1 The provided law and evidence exposes the fallacy that “Twitchell Yield”
2 groundwater remains appropriated or that the District has any right to
3 groundwater resulting from Twitchell.

4
5 During this Court proceeding interim rulings emerged which can benefit the
6 public. These rulings include the Court award of a prescriptive right to GSWC
7 and also Court rulings which contradict that Stipulation’s falsely assumed
8 authority to allocate rights to “Twitchell Yield” groundwater.

9
10 This prescriptive right to groundwater will be a critical item of property due to
11 a new phase, with basin adjudication, initiated by this Court case. This Court
12 has demonstrated during its proceedings a willingness to declare water at
13 common law “no surplus” conditions by doing so for the years of 1944-1951,
14 1953-1957, and 1959-1967.

15
16 Every effort has been made to make this motion concise, but the complexity
17 of this matter demands a reasonable answer. Over 8000 Court pleading
18 documents provided a history of each party’s actions and intent, but
19 fortunately very few were critical for the development of this motion.
20

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Summary of each Section of Facts with Evidence

1
2 [Section 1](#) uses the brief presented in phase 4 of the trial by GSWC et al.
3 wherein it discloses not only the party responsible for the Stipulation
4 allocation of 10,000afy of groundwater [right], but also points to the source of
5 the claimed authority. The claim that an SWRCB License and cited water
6 codes provide authority to allocate groundwater rights is discredited by Water
7 Code [§1200](#) (and Court rulings).
8

9
10 [Section 1a](#) discharges the erroneous perception that water, released from
11 Twitchell Reservoir back into the Cuyama River which then percolates into the
12 aquifer, remains appropriated water, with Water Code [§1202\(d\)](#) (and Court
13 rulings).
14

15 [Section 1b](#) shows the evidence that the District holds no groundwater right
16 based on being an overlying landowner or an appropriator.
17

18 [Section 1c](#) shows the Court acknowledges the authority of the District to
19 allocate water it (the Court) recognizes as “Twitchell Yield”, but that water is in
20 the reservoir and not the basin. The clarity of the Court’s intended meaning of
21 the term “Twitchell Yield” to be reservoir water is unmistakable as reinforced
22 by a paragraph by paragraph review of all Court rulings and statements.
23

24 [Section 1d](#) confirms that a Twitchell water release does not constitute
25 delivery, that no water deliveries can be made to GSWC et al. and an
26 SWRCB License is not even needed for the operation of Twitchell.
27

28
29 [Section 1e](#) provides evidence that the Court’s assumption that Twitchell
30 Reservoir has water during a drought is without merit.

1 [Section 1f](#) shows the landowners could not have been the Stipulation's
2 undisclosed party that divides/allots "Twitchell Yield" to provide any 10,000afy
3 groundwater right to GSWC.

4
5 [Section 2](#) shows that approval of the Stipulation results in the forfeiture of
6 Court ruled groundwater prescriptive right property, which, with the
7 commencement of basin adjudication, would be indispensable for a long term
8 uninterrupted supply of water to the public based on "no surplus" declarations
9 this Court has already made.

10
11 [Section 2a](#) discusses the Stipulation's created "severe water shortage
12 condition", the risk of the "drought exception" clause, the native water
13 restriction and its ignoring of the Common Law "no surplus" condition.

14
15 [Section 3](#) points out a Stipulation internal conflict concerning groundwater
16 rights statements in Paragraph IX and Paragraph III.

17
18 [Section 4](#) reviews GSWC application claimed benefits.

19
20 [Section 5](#) discusses implied Stipulation project approvals and Court influence.

21
22 [Section 5a](#) lists the Stipulation projects and the prejudiced financial terms.
23
24
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Facts with Evidence

Section 1

WATER CODE & LICENSE "AUTHORITY" IRRELEVANT FOR PERCOLATING GROUNDWATER

GSWC, in its Application, claims a Stipulation benefit of the right to 10,000afy of "groundwater yield from Twitchell Reservoir" during periods of water supply constraints.

Application, page 5, Section IV

The Stipulation accomplishes this goal by providing GSWC with the following benefits:

- *A right to pump GSWC's highest historical appropriative groundwater rights so that GSWC can meet current and anticipated future customer demands within the Santa Maria CSA;*
- *The right to 10,000 acre-feet per year of groundwater yield from Twitchell Reservoir to backup GSWC's right to pump from the Basin during periods of water-supply constraints;*

"Twitchell Yield" which is defined within the Stipulation as percolating groundwater [right]⁷ is quantified as 32,000afy.

Stipulation, page 6, line 3 (Exhibit 1)

41. *Twitchell Yield – The total amount of Groundwater allocated annually to the Twitchell Participants.*

Stipulation, page 2, line 24

7. *Groundwater - Twitchell Yield, Lopez Water, Return Flows, storm water percolation, Native Groundwater and all other recharge percolating within the Basin.*

Stipulation, page 12, line 8

Twitchell Yield is thirty-two thousand acre-feet per year ("afy").

The party purported to divide or allocate the "Twitchell Yield" [right] to GSWC et al. is not disclosed by the Stipulation.

Stipulation, page 12, line 9

(ii) *Division of Twitchell Yield. Twitchell Yield shall be divided as follows: 80% to Santa Maria, SCWC and Guadalupe, and 20% to the Overlying Owners within the District who are Stipulating Parties.*

⁷ "Twitchell Yield" in the Stipulation is defined as groundwater, corrected here to groundwater right. All groundwater in the Santa Maria Valley basin is the property of the State of California (Water Code Section 102) and the State is not a party to this Stipulation.

1 **Stipulation [Appendix F](#), page 2, Section 4.1 (Exhibit 4)**

2 4.1 Division. The Parties agree that the 80% of the 32,000 acre-feet of Twitchell Yield shall be
3 allocated as follows: Santa Maria 14,300 acre-feet, Guadalupe 1,300 acre-feet and SCWC
4 10,000 acre-feet. The Parties acknowledge that the remaining 20% of the Twitchell Yield (6,400
5 acre-feet) is allocated to the Overlying Owners within the District who are Stipulating Parties,
6 subject to the terms of the Stipulation. [Return to Reason 1](#)

7 **GSWC et al. constitute the parties responsible for Court pleading**
8 **document # SD07172777DC named *Public Water Suppliers' Phase IV***
9 ***Closing Brief*⁸, filed on 3/10/06 and this Brief identifies the District as**
10 **being the stipulating party allocating the “Twitchell Yield” to GSWC et**
11 **al. and refers to a second [document](#)⁹ relating the “statutory authority”**
12 **for such.**

13 **Public Water Suppliers' Phase IV Closing Brief, page 7, line 19 (Exhibit 2)**

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

20 **GSWC et al. constitute the parties responsible for the Court pleading**
21 **document # SEB719F349B7, named *Public Water Suppliers' Opposition***
22 ***to the 'LOG and Wineman Group's Motion for Non-suit on Municipal***
23 ***Water Purveyors' claim for Allocation of Twitchell Water*, filed on**
24 **3/10/06, herein referred to as this second document, which verifies that**
25 **its “augmented yield” is the Stipulation termed “Twitchell Yield” by**
26 **direct reference to the Stipulation page and subparagraph.**

27 **Public Water Suppliers' Opposition to the LOG and Wineman Motion, page 6, line 11**

28 *Among other things, the Stipulation specifically allocates the certain benefits associated with the*
29 *augmented yield derived through Twitchell Project operations to the City of Santa Maria, Golden*
30 *State Water Company (formerly known as Southern California Water Company), the City of*
Guadalupe and stipulating overlying property owners whose property lies within the boundaries of
the District. That contractual water right is transferable between stipulating parties and may be
carried over one year if not exercised. The annual contractual allocation is 32,000 acre feet
which is consistent with the Phase III trial evidence. (See Stipulation, pages 12-13, subparagraph
V.A.3(b).)

⁸ Public Water Suppliers' Phase IV Closing Brief dated 3/10/06 (Exhibit 2)

⁹ Public Water Suppliers' Opposition to the LOG and Wineman Group's Motion for Non-Suit on Municipal Water Purveyors' Claim for Allocation of Twitchell Water dated 3/10/06 (Exhibit 3)

1 **This second document claims that this allocation is contractually**
2 **approved by the District's signing of the Stipulation and is authorized by**
3 **Water Code provisions and consistent with the State Board License.**

4 **Public Water Suppliers' Opposition to the LOG and Wineman Motion, page 2, line 19**

5 *By signing the June 30, 2005 Stipulation with nearly 800 parties, the District contractually*
6 *approved the allocation of the augmented yield from the operation of the Twitchell Project in a*
7 *manner that is fair and reasonable for all parties. The District allocated the Twitchell Project yield*
8 *as authorized by applicable Water Code provisions; and the contractual allocation is consistent*
9 *with the terms and conditions of the State Board License.*

10 **Therein referenced¹⁰ Water Code [§§1260\(f\), 1628, 1675](#) and the State**
11 **Board [License](#) are not relevant for percolating groundwater pursuant to**
12 **Water Code [§1200](#). Referenced Water Code [§74526](#) relates only to**
13 **stored or appropriated water and Water Code [§§74501](#) and [74592](#) relate**
14 **only to District contracting capability. The referenced [23 C.C.R. §715](#)**
15 **refers to California Code of Regulations Map Requirements (?).**

16 **Water Code §1200**

17 *1200. Whenever the terms stream, lake or other body of water, or water occurs in relation to*
18 *applications to appropriate water or permits or licenses issued pursuant to such applications,*
19 *such term refers only to surface water, and to subterranean streams flowing through known and*
20 *definite channels.*

21 **The State Water Resources Control Board Information Manual**
22 **reinforces the interpretation that SWRCB jurisdiction excludes**
23 **percolating groundwater.**

24 **State Water Resources Control Board Information Pertaining to [Water Rights in California,](#)**
25 **1990, Page 10, Paragraph 2 (Exhibit 5)**

26 *The jurisdiction of the SWRCB to issue permits and licenses for appropriation of underground*
27 *water is limited by section 1200 of the California Water Code to "subterranean streams flowing*
28 *through known and definite channels".*

29 **Page 10, Paragraph 4**

30 *Underground water not flowing in a subterranean stream, such as water percolating through a*
ground water basin, is not subject to the SWRCB's jurisdiction.

¹⁰ Includes all Water Code references in that "second document", i.e., exhibit 3.

1 Water Code §1200 negates the relevance of any Water Code which
2 refers to applications to appropriate water, or permits or licenses
3 issued pursuant to such applications, when percolating groundwater
4 is at issue.
5

6
7 The claim in the second [document](#)¹¹ by GSWC et al., that the District
8 has authority to allocate any groundwater right, based upon cited
9 California Water Code provisions and/or State Water Resource
10 Control Board License has no merit since none of these are relevant
11 to percolating groundwater¹² per Water Code [§1200](#).
12

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30 ¹¹ Public Water Suppliers' Opposition to the LOG and Wineman Group's Motion for Non-Suit on
Municipal Water Purveyors' Claim for Allocation of Twitchell Water dated 3/10/06 (Exhibit 3)

¹² The Brief (Exhibit 2) on page 2, line 3, written by the same author, refutes his own claim where
he states *The State Board has no permitting authority over production of percolating groundwater.*

1 **Section 1a**

2 **RELEASED WATER FROM TWITCHELL IS NO LONGER APPROPRIATED**

3
4 **Water Code Section 1202(d) and the Court refute any claim that water**
5 **released from Twitchell Reservoir back into the Cuyama River remains**
6 **appropriated, i.e., it returns to being native water.**

7 **Water Code Section 1202(d)**

8 *1202. The following are hereby declared to constitute unappropriated water:*

9 *[(a),(b),(c) [omitted here]*

10 *(d) Water which having been appropriated or used flows back into a stream, lake or other body*
11 *of water.*

12 **Statement of Decision Phase 5, page 8, line 23 (Exhibit 6)**

13 *Twitchell water, once released for recharge, retains its character as native water.*

14 **Additional Court rulings affirm intent on this matter of released water**
15 **from Twitchell that ends up in the basin as follows:**

16 **Partial Statement of Decision Phase 4, page 24, line 10 (Exhibit 7)**

17 *The Twitchell yield is a part of the ground water yield for purposes of determining whether the*
18 *basin is in overdraft or whether there is or has been surplus water available for appropriator’s*
19 *use, whether it is defined as “native yield,” or salvaged or developed water. No party has*
20 *established any pre-Stipulation priority of rights to that current yield within the aquifer.*

21 **Partial Statement of Decision Phase 4, page 24, line 20**

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

26 **The Stipulation confirms that common law surface water rights are**
27 **unaltered since no changes exist therein.**

28 **Stipulation, page 7, line 27**

29 *Nothing in this Stipulation affects or otherwise alters common law riparian rights or any*
30 *surface water rights, unless expressly provided in this Stipulation.*

1 **Native water that percolates into the basin via stream channel infiltration**
2 **assumes the character of native groundwater.**

3 **Stipulation, page 3, line 21**

4 16. *Native Groundwater - Groundwater within the Basin, not derived from human inter-*
5 *vention, that replenishes the Basin through precipitation, stream channel infiltration, tributary*
6 *runoff, or other natural processes.*

7
8 Water released from Twitchell is no longer appropriated and
9 constitutes native water, and that native water which percolates into
10 the basin constitutes native groundwater. The Stipulation provides no
11 basis or reasoning that alters the status of Twitchell released water
12 that percolates into the aquifer that differs with its pre-Stipulation
13 status.

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15 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 4](#)

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1 **Section 1b**

2 **DISTRICT HAS NO OVERLYING OR APPROPRIATIVE RIGHTS TO**
3 **GROUNDWATER**

4
5 **The Stipulation, consistent with Water at Common Law, recognizes only**
6 **overlying landowners and appropriators as having native groundwater**
7 **rights.**

8 **Stipulation, page 7, line 1**

9 **A. Recognition of Priority of Overlying Rights**

10 *Except as expressly modified by the settlement agreement among the Northern Parties (Exhibit*
11 *“E”), all Overlying Owners that are also Stipulating Parties have a prior and paramount Overlying*
12 *Right, whether or not yet exercised.*

13 **Stipulation, page 4, line 16**

14 24. Overlying Right – *The appurtenant right of an Overlying Owner to use Native Ground-*
15 *water for overlying, reasonable and beneficial use.*

16 **Stipulation, page 7, line 9**

17 **C. Appropriative Rights**

18 *Consistent with the specific provisions governing each Management Area, the Stipulating Parties*
19 *owning and exercising Appropriative Rights have the right to the reasonable and beneficial use of*
20 *Native Groundwater that is surplus to the reasonable and beneficial uses of the Stipulating*
21 *Parties that are Overlying Owners. New appropriative uses shall be subordinate to existing*
22 *appropriations and shall be prioritized on a first in time, first in right basis.*

23 **Stipulation, page 2, line 14**

24 3. Appropriative Rights – *The right to use surplus Native Groundwater for reasonable and*
25 *beneficial use.*

26
27 **The District does not pump groundwater so it has no appropriative right**
28 **to native groundwater.**

29 **Stipulation, page 1, line 7**

30 *The District does not pump Groundwater from the Basin.*

The District does not own any land so it has no overlying landowner
right to native groundwater.

District provided Court pleading document lists NA for acreage as a signatory to Stipulation in
Santa Maria Valley Water Conservation District’s Notice of Execution and Filing of Settlement
Stipulation Signature Pages, Court Document Number [N3EB1276AB27](#) dated 7/21/05 (Exhibit 8)

1 **No evidence has been provided in the Stipulation or otherwise that the**
2 **District has acquired by purchase or other means any groundwater**
3 **right.**

4
5
6 While the District can appropriate river water within Twitchell
7 Reservoir, it has no appropriative or overlying right to groundwater
8 which can be exercised or allocated to GSWC.
9

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Section 1c

COURT'S ENDORSED "TWITCHELL YIELD ALLOCATION" RELATES TO RESERVOIR WATER AND NOT GROUNDWATER

The Court endorses the allocation of "Twitchell Yield" by the District, in trade for the financial support by GSWC et al., states it is equitable.

Statement of Decision Phase 5, Page 8, line 2

The stipulating parties have also agreed as between themselves to equitably divide the water produced by Twitchell that results in recharge to the aquifer. The recharge to the Basin from Twitchell to which the stipulating parties have agreed is 32,000 acre feet a year (hereafter, "Twitchell Yield"). The stipulating parties have agreed to allocate 80 percent of that recharge to the Public Water Producers who will pay for the ongoing maintenance and rehabilitation of the Twitchell Project and 20 percent to other parties to the stipulation whose lands are located within the boundaries of the Santa Maria Valley Water Conservation District ("District").

Statement of Decision Phase 5, Page 10, line 5

The stipulation does not deprive any non-stipulating party of water, does not modify the on-going operation of the Twitchell reservoir and dam, and merely provides a funding mechanism for the future operation and maintenance of the Twitchell project.

Statement of Decision Phase 5, page 11, line 2

The stipulation is a contract that is designed to provide for restoration and maintenance of the storage capacity of the reservoir and thereby ensure an adequate water supply for the entire valley.

What is important is that the Court interprets "Twitchell Yield" to be water in the Twitchell Reservoir rather than groundwater as defined in the Stipulation as is shown as follows:

The following excerpts from the Court's Phase 5 Statement of Decision rulings verify the meaning of its intent on what water it assumes is to be divided or allocated¹³.

The first paragraph below, where referring to the Stipulation allocation, initially tends to lead one to believe that the referenced water is

¹³ The last 9 pages of this subsection present a paragraph by paragraph examination of the intent of the Court when discussing reservoir water versus basin groundwater in its Decisions.

1 groundwater, consistent with the Stipulation, until the last sentence
2 where “stored Twitchell water” is referenced. While the “stored water”
3 terminology is not totally conclusive evidence of being water within the
4 reservoir, the immediately following paragraph provides a hint which
5 cannot be ignored, namely the sentence “*Twitchell water, once released*
6 *for recharge, retains its character as native water.*” Native water means
7 unappropriated water.

8 **Statement of Decision Phase 5, Page 8, line 1**

9 ***TWITCHELL ALLOCATION***

10 *The stipulating parties have also agreed as between themselves to equitably divide the water*
11 *produced by Twitchell that results in recharge to the aquifer. The recharge to the Basin from*
12 *Twitchell to which the stipulating parties have agreed is 32,000 acre feet a year (hereafter,*
13 *“Twitchell Yield”). The stipulating parties have agreed to allocate 80 percent of that recharge to*
14 *the Public Water Producers who will pay for the ongoing maintenance and rehabilitation of the*
15 *Twitchell Project and 20 percent to other parties to the stipulation whose lands are located within*
16 *the boundaries of the Santa Maria Valley Water Conservation District (“District”). The parties*
17 *thereto have so agreed. Those who are not parties to the stipulation, specifically the LOG and*
18 *Wineman parties, as well as the defaulting parties, are not bound by the Stipulation, and are not*
19 *required to assume its burdens. In the event of a drought and consequent water shortages, the*
20 *stipulating parties will have a basis to ask the court to enforce the settlement among themselves if*
21 *need be and to allocate stored Twitchell water in accordance with the stipulation.*

22 *Neither the LOG and Wineman parties, nor any other parties have a contractual right to any water*
23 *produced by Twitchell except as the District may be authorized to enter into such agreements for*
24 *the future operation of the project. Thus, enforcement of the Twitchell allocation prescribed by the*
25 *stipulation does not affect any rights, contractual or otherwise, of the nonstipulating parties.*
26 *Further, enforcement of the stipulation’s Twitchell allocation, as between the stipulating parties,*
27 *does not adversely affect the rights to native ground water of any nonstipulating parties. The*
28 *correlative rights of non-stipulating parties to native ground water will remain unaffected by the*
29 *stipulation, subject only to the court’s findings of the legal consequence of those prescriptive*
30 *rights held by some Public Water Producers and the court’s equitable jurisdiction. Twitchell water,*
once released for recharge, retains its character as native water. In the final judgment, the court
will exclude the non-stipulating parties from the allocation of the Twitchell project as imposed in
the stipulation. It would be premature for the court to order an allocation of water produced by
Twitchell as to parties who are not party to the stipulated agreement and there is no basis for
doing so.

**A far more conclusive indication of the Court’s intended meaning of
“Twitchell Yield” is contained in the following paragraph, also in this
Phase 5 Statement of Decision, where the highlighted sentences directly
connect it with the SWRCB License. This license relates exclusively to
surface water as Water Code [§1200](#) so states.**

1 **Statement of Decision Phase 5, Page 11, line 12**

2 *The District has, consistent with its authorizing authority, committed to allocating the Twitchell*
3 *Yield to those who will fund the improvements and remediation of the project necessary to*
4 *maintain the project's yield. The District's contractual agreement to permit certain parties to pay*
5 *for the on-going operation and management of the project, including any necessary*
6 *improvements to the project — a project that will continue to benefit the entire valley and all valley*
7 *parties — and to compensate those parties for their financial commitments, is entirely consistent*
8 *with the District's statutory authorities. The stipulation's allocation of Twitchell Yield is also*
9 *consistent with the water rights license for the project. State Water Resources Control Board*
10 *License No. 10416 authorizes the Bureau of Reclamation to appropriate water flowing in the*
11 *Cuyama River for irrigation, domestic, salinity control, municipal, industrial and recreational uses.*
12 *The stipulation allocates the project water for municipal, domestic, and irrigation uses, consistent*
13 *with the license. The stipulation provides for necessary improvements to the project to permit the*
14 *continuation of the benefits of the project for all District lands and equitably allocates the Twitchell*
15 *Yield in times of shortage based on the parties' respective contributions to the continuing*
16 *operation and maintenance of the project. (Settlement Stipulation, V.A.3.b.ii., V.D.3.c.)*

17 **It must be assumed that the Court wasn't aware that Twitchell Reservoir**
18 **water is not and cannot be “delivered” to GSWC et al. as [Subsection 1d](#)**
19 **shows.**

20 **Thus, the Court's statements regarding the possible Stipulation**
21 **allocation of water to GSWC et al. relate only to Twitchell Reservoir**
22 **water, which is physically not deliverable for reasons including a lack of**
23 **infrastructure and the fact that Twitchell Reservoir is dry¹⁴ much of the**
24 **time, especially during droughts.**

25 This distinction between the Court's interpretation of “Twitchell Yield”
26 being reservoir water and the Stipulation's definition being
27 groundwater is critical in understanding the Court's rulings and
28 statements relative to its endorsement of the Stipulation. The Court
29 does not endorse the Stipulation's allocation of groundwater!

30 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 5](#)

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¹⁴ See Section 1e of this motion.

1 **Detailed Review of the Court's Interpretation of the term**
2 **"Twitchell Yield"**

3
4 **The Santa Clara Superior Court in Case CV770214 used "Twitchell**
5 **Yield" in its statements, but the meaning is different from that defined in**
6 **the Stipulation.**

7
8 **The Court's rulings have consistently avoided the use of the term**
9 **"Twitchell yield" when referring to percolating groundwater resulting**
10 **from Twitchell released water. The Court is consistent. When it uses**
11 **the term "Twitchell Yield" it refers to water within the reservoir.**
12 **Within some rulings the Court simply recites from a document, such as**
13 **the Stipulation, in which case it is using the terminology therein, and the**
14 **meaning the Court is reading into those terms or phrases can never be**
15 **proven except by examining the Court's own usage of such.**

16
17 **It is reasonable to expect consistency on the Court's interpretation and**
18 **use of important terms and phrases throughout the duration of the trial.**
19 **In specific instances where clarity fails to appear then reliance must be**
20 **placed on the preponderance of usage where clarity does exist.**

21
22 **Indications of Court discussions that refer to surface water include**
23 **references to:**

- 24
25 **1) California Water Code Sections that relate to permits or licenses as**
26 **so stated by Water Code [§1200](#);**
27 **2) "Stored, owned, controlled or appropriated" water such as is referred**
28 **to by Water Code [§74526](#);**
29 **3) Water rights authorized by a SWRCB License per Water Code [§1200](#);**
30 **4) "Native water" which means unappropriated water; and**
5) "Unappropriated" water as defined by Water Code [§1202](#).

1 The following excerpts include the Court’s references to: 1) water within
2 the Twitchell Reservoir, often referenced as “Twitchell yield” and; 2) the
3 groundwater within the basin released from Twitchell, which is never
4 referred to as “Twitchell Yield”:

5 *Statement of Decision Phase 5 References*-----

6 The first 4 sentences of the first paragraph below are a recitation of the
7 terms of the Stipulation by the Court and the last sentence in this
8 paragraph provides the clue to the Court’s meaning of the allocated
9 quantity, namely “*stored Twitchell water*”, i.e., water stored in the
10 reservoir.

11
12 In the third from last sentence of the second paragraph the phrase
13 “*Twitchell water, once released for recharge, retains its character as*
14 *native water*” also provides a key to the intended meaning of the water
15 that is allocated being that in the reservoir consistent with the first
16 paragraph.

17 **Statement of Decision Phase 5, Page 8, line 1**

18 ***TWITCHELL ALLOCATION***

19 *The stipulating parties have also agreed as between themselves to equitably divide the water*
20 *produced by Twitchell that results in recharge to the aquifer. The recharge to the Basin from*
21 *Twitchell to which the stipulating parties have agreed is 32,000 acre feet a year (hereafter,*
22 *“Twitchell Yield”). The stipulating parties have agreed to allocate 80 percent of that recharge to*
23 *the Public Water Producers who will pay for the ongoing maintenance and rehabilitation of the*
24 *Twitchell Project and 20 percent to other parties to the stipulation whose lands are located within*
25 *the boundaries of the Santa Maria Valley Water Conservation District (“District”). The parties*
26 *thereto have so agreed. Those who are not parties to the stipulation, specifically the LOG and*
27 *Wineman parties, as well as the defaulting parties, are not bound by the Stipulation, and are not*
28 *required to assume its burdens. In the event of a drought and consequent water shortages, the*
29 *stipulating parties will have a basis to ask the court to enforce the settlement among themselves if*
30 *need be and to allocate stored Twitchell water in accordance with the stipulation.*

Neither the LOG and Wineman parties, nor any other parties have a contractual right to any water produced by Twitchell except as the District may be authorized to enter into such agreements for the future operation of the project. Thus, enforcement of the Twitchell allocation prescribed by the stipulation does not affect any rights, contractual or otherwise, of the nonstipulating parties. Further, enforcement of the stipulation’s Twitchell allocation, as between the stipulating parties, does not adversely affect the rights to native ground water of any nonstipulating parties. The correlative rights of non-stipulating parties to native ground water will remain unaffected by the stipulation, subject only to the court’s findings of the legal consequence of those prescriptive rights held by some Public Water Producers and the court’s equitable jurisdiction. *Twitchell water, once released for recharge, retains its character as native water.* In the final judgment, the court will exclude the non-stipulating parties from the allocation of the Twitchell project as imposed in

1 the stipulation. It would be premature for the court to order an allocation of water produced by
2 Twitchell as to parties who are not party to the stipulated agreement and there is no basis for
3 doing so.

4 **In this next paragraph the key to the definition of the “allocated water”**
5 **is made obvious by the reference to the “license”, which has to be the**
6 **SWRCB license that is relevant only to surface water and not**
7 **percolating basin water.**

8 **Statement of Decision Phase 5, page 10, line 1**

9 *The Land Owners also contend the District cannot enter into such a contract (the stipulation)*
10 *because the District lacks authority to allocate Twitchell Water to the parties who will pay for it in*
11 *the future. The stipulation allocates water rights only among those parties who are party to it. The*
12 *objecting, non-stipulating parties are not parties to the stipulation and are unaffected by it. The*
13 *stipulation does not deprive any non-stipulating party of water, does not modify the on-going*
14 *operation of the Twitchell reservoir and dam, and merely provides a funding mechanism for the*
15 *future operation and maintenance of the Twitchell project. So long as the District uses the water*
16 *for the general purposes prescribed by its contract with the Santa Barbara County Water Agency,*
17 *and properly exercises its statutory powers in that regard for the public good within the District, it*
18 *may regulate and allocate the Twitchell Water consistent with its contract and under the terms of*
19 *the License. Thus, the District does have the right to provide by contract (the settlement*
20 *stipulation) for the ongoing maintenance and operation of the Twitchell project, and in doing so, to*
21 *carry out its contractual duties arising out of the contract between the U.S. Department of the*
22 *Interior (Bureau of Reclamation) and the Santa Barbara County Water Agency and, in turn, the*
23 *contract between the Santa Barbara County Water Agency and the District.*

24 **The following paragraph includes the phrase “Twitchell Yield” three**
25 **times but then cites as authority the SWRCB License, which again is**
26 **strictly related to surface water, thereby implying the allocation of water**
27 **within the reservoir:**

28 **Statement of Decision Phase 5, Page 11, line 12**

29 *The District has, consistent with its authorizing authority, committed to allocating the Twitchell*
30 *Yield to those who will fund the improvements and remediation of the project necessary to*
maintain the project’s yield. The District’s contractual agreement to permit certain parties to pay
for the on-going operation and management of the project, including any necessary
improvements to the project — a project that will continue to benefit the entire valley and all valley
parties — and to compensate those parties for their financial commitments, is entirely consistent
with the District’s statutory authorities. The stipulation’s allocation of Twitchell Yield is also
consistent with the water rights license for the project. State Water Resources Control Board
License No. 10416 authorizes the Bureau of Reclamation to appropriate water flowing in the
Cuyama River for irrigation, domestic, salinity control, municipal, industrial and recreational uses.
The stipulation allocates the project water for municipal, domestic, and irrigation uses, consistent
with the license. The stipulation provides for necessary improvements to the project to permit the
continuation of the benefits of the project for all District lands and equitably allocates the Twitchell
Yield in times of shortage based on the parties’ respective contributions to the continuing
operation and maintenance of the project. (Settlement Stipulation, V.A.3.b.ii., V.D.3.c.)

1 **The following paragraph refers to allocation of “Twitchell water” which**
2 **even in the Stipulation has the definition of being water in the reservoir.**

3 **Statement of Decision Phase 5, page 12, line 21**

4 *The court intends to enter a single judgment consistent with this Statement of Decision,*
5 *incorporating the settlement stipulation as to the stipulating parties. All parties (stipulating and*
6 *non-stipulating) shall participate in, and be bound by, the Management Area Monitoring Program*
7 *described in the settlement stipulation to ensure the integrity of the aquifer. The allocation of*
8 *Twitchell water and certain costs and duties shall be only as to those stipulating parties.*

9 *Partial Statement of Decision Phase 4 References-----*

10 **In the following paragraph the Court refers to the basin yield attributed**
11 **to Twitchell with the term “water salvaged from/by the Twitchell**
12 **Reservoir” appearing to clearly discern from his references to that**
13 **within the reservoir.**

14 **Partial Statement of Decision Phase 4, page 2, line 8**

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

27 **The following sentence simply refers to the words contained in the**
28 **Stipulation about “Twitchell Yield”:**

29 **Partial Statement of Decision Phase 4, Page 3, line 25**

30 *Accordingly, while no party has raised a question or adverse claim as to legal title to that real*
property described in Exhibits 2A and 2B, there are outstanding issues relating to the extent to
which overlying rights may have been lost by prescription and the District’s allocation 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 which could
affect the Land Owner parties’ rights to use water in times of shortage.

1 **Again referring to basin groundwater resulting from Twitchell in the**
2 **following paragraph the term “so-called salvaged or developed water” is**
3 **used.**

4 **Partial Statement of Decision Phase 4, page 5, line 8**

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

7 **Once more referring to basin groundwater resulting from Twitchell in**
8 **the following paragraph the term “Twitchell augmentation” is used.**

9 **Partial Statement of Decision Phase 4, page 14, line 14**

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

18 **The following paragraph is a Court recital of a purveyors’ Brief for**
19 **Phase 4 and not the expressions of the Court showing its intent:**

20 **Partial Statement of Decision Phase 4, Page 16, line 8**

21 ***TWITCHELL ENTITLEMENT***

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

The following paragraph provides no clue relating any intended
meaning of “Twitchell yield” since it is a repeat of the Water Producers
words:

Partial Statement of Decision Phase 4, page 16, line 23

The Public Water Producers’ contention that the Twitchell yield is not part of the basin’s native
supply and therefore that the Land Owners, as overlying owners, have no prior right to the
Twitchell yield is based, in part, on the theory that the urban lands within the District’s

1 assessment boundaries have, over the life of the project, contributed more to its cost than other
2 in-District landowners, including the Land Owner parties whose property resides within the District
3 boundaries.

4 **Below, after quoting the Water Producer’s argument using the terms**
5 **“Twitchell yield”, the Court refers to the groundwater resulting from**
6 **Twitchell as “the salvaged or developed water” and “part of the ground**
7 **water yield” clearly separating its nomenclature from that of “Twitchell**
8 **Yield” used by the producers.**

9 **Partial Statement of Decision Phase 4, page 16, line 29**

10 *All properties within the District were specially assessed by the District to repay the bond costs for*
11 *construction and maintenance of the dam. The Public Water Producers presented evidence that*
12 *residents of the City of Santa Maria, as landowners within the District, have paid the major portion*
13 *of the costs of the project. The Public Water Producers argue, therefore, that the Twitchell project*
14 *yield must be distinguished from the basin’s native supply because to do otherwise would*
15 *effectively provide all overlying landowners throughout the basin, irrespective of whether they*
16 *contributed to the costs of the project, with a priority right to the Twitchell yield when the basin is*
17 *not in surplus. (At common law, appropriators are permitted to take only that which is surplus to*
18 *the demands of overlying owners, unless prescriptive rights have been acquired.) This result*
19 *would unfairly penalize municipal landowners who rely on the City of Santa Maria for their water*
20 *supply. As such, the Public Water Producers’ theory would exclude the Twitchell yield from the*
21 *basin’s overall supply in determining overdraft, and would support prescription, according to this*
22 *theory of entitlement. If, on the other hand, the salvaged or developed water is available for all*
23 *users in the basin, it should be counted as part of the ground water yield to determine whether or*
24 *not there is an overdraft. The answer to this issue requires some discussion of the history of the*
25 *development of the project.*

26 **In the following paragraph the Court again uses the term “salvage”**
27 **when referring to water accessible by users outside the District which**
28 **has to mean basin water.**

29 **Partial Statement of Decision Phase 4, page 17, line 29**

30 *The District is not coextensive with the Santa Maria Valley area, or the basin as a whole, and*
water users outside the District also benefit from the project’s salvage or conservation operations.
The License that was issued, subject to the right of the U.S. Government to use the project for
flood control and the satisfaction of existing water rights, among others, was for the right of the
Santa Barbara County Water Agency, on behalf of the District, and District land owners, to have
the perpetual right to use all the water generated by the Twitchell Dam and Reservoir. The
License must be read in conjunction with 43 U.S.C. Section 372 which limits the water that is
produced by the dam to be used for beneficial purposes appurtenant to land.

In the following paragraph the Court, in referring to basin groundwater
resulting from Twitchell, uses the terms “augments the basin” and
“augmented supply the project provides”, again not using the “Twitchell
yield” term:

1 **Partial Statement of Decision Phase 4, page 19, line 1**

2 *Without the dam, that water would otherwise be lost to ocean outflow. The District's undisputed*
3 *evidence establishes that the project net augments the basin, on average, by 32,000 acre feet of*
4 *water a year. This is water that would otherwise flow to the ocean. Wherever a person may reside*
5 *within the District – urban or rural, farmer, industrial, or city dweller, there is a material benefit*
6 *derived from the augmented supply the project provides by way of ensuring higher water levels in*
7 *the wells throughout ...*

8 **The clarity in the following paragraph, where the Court uses the terms**
9 **“water produced by Twitchell” to refer to reservoir water and “water**
10 **introduced into the aquifer” to mean the basin groundwater resulting**
11 **from Twitchell, illustrates the effort the Court is using to avoid the**
12 **ambiguity of the “Twitchell Yield” term.**

13 **Partial Statement of Decision Phase 4, page 21, line 15**

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

21 **The last sentence of the first following paragraph cites the authority of**
22 **the SWRCB License, which is strictly related to surface water, thereby**
23 **implying the allocation of that water within the reservoir. The footnote**
24 **on “License” refers to Water Code §74526 which also relates to stored,**
25 **controlled, owned or appropriated surface water and not percolating**
26 **groundwater.**

27 **Partial Statement of Decision Phase 4, page 22, line 13**

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

¹⁵ *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 *In fact, the District has entered into such a contract with certain of the parties (the Stipulation)*
2 *which allocates the Twitchell yield in times of shortage to those parties who have agreed to pay*
3 *the costs of remediating the siltation or sedimentation of the reservoir that has resulted in a*
4 *substantial loss of storage capacity necessary to maintain the project's long-term average annual*
5 *yield. The court has approved that Stipulation as to the parties who have executed it. The*
6 *question of the legal integrity of the District's allocation of the Twitchell yield by way of the*
7 *Stipulation, preferring one basin user over another in times of shortage, is reserved until the next*
8 *phase of the trial. Additionally, in Phase V of these proceedings, the court will consider proposals*
9 *for a physical solution to address the wide fluctuations in yield within the valley as well as its*
10 *power to order a physical solution at the present time.*

11 **In the Phase 4 Statement of Decision Conclusion the “Twitchell Yield”**
12 **on the first line of the following paragraph appears to mean**
13 **groundwater, but when the remainder of the sentence is taken into**
14 **account the replacement of the “is a” with “becomes” at the end of the**
15 **first line clarifies the whole sentence to show that the “Twitchell Yield”**
16 **actually means reservoir water. The subsequent sentence to it clarifies**
17 **this since it uses the phrase “that current yield” to further relate to that**
18 **water’s status when in the aquifer.**

19 **In sentence 5, in referring to water within the basin, the Court again**
20 **avoids using the Stipulation’s term “Twitchell Yield” and uses “yield**
21 **made available by the Twitchell project”.**

22 **In sentence 6 the reference to the “contractual authority” as well as**
23 **“prior to the water being introduced into the aquifer” confirms**
24 **discussion of water in the reservoir.**

25 **In the next to last sentence in the below paragraph the term “augmented**
26 **yield” is used rather than the Stipulation’s “Twitchell Yield” to refer to**
27 **that water in the basin resulting from the Twitchell project.**

28 **Partial Statement of Decision Phase 4, Page 24, line 8**

29 ***CONCLUSION***

30 *The Land Owner parties’ Motion to amend to conform to proof is granted. The Twitchell yield is a*
part of the ground water yield for purposes of determining whether the basin is in overdraft or
whether there is or has been surplus water available for appropriator’s use, whether it is defined
as “native yield,” or salvaged or developed water. No party has established any pre-Stipulation

1 *priority of rights to that current yield within the aquifer. The Santa Maria Valley Water*
2 *Conservation District's enabling legislation authorizes it to enter into contracts to manage and*
3 *operate the dam for all the purposes set forth in that legislation and the District's contract with the*
4 *Santa Barbara County Water Agency (consistent with the contract between the Bureau of*
5 *Reclamation contract with the Santa Barbara County Water Agency). During times of surplus, the*
6 *yield made available by the Twitchell project is available to all basin users. During times of*
7 *shortage, prior to the water being introduced into the aquifer, rights to the supply may be limited*
8 *in accordance with the statutory and contractual authority of the District, and in accordance with*
9 *equitable and common law water rights principles. It is undisputed that the Twitchell project is*
10 *losing storage capacity due to the progressive infiltration of sediment and silt and that the process*
11 *of siltation and associated loss of storage capacity could eventually negate the benefits of the*
12 *project. The project provides, on average, 32,000 acre feet per year of water to the basin that*
13 *otherwise would waste to the ocean. Unless the siltation process is reversed, the **augmented***
14 *supply made available to the basin by Twitchell may be lost in whole or in part, there by putting*
15 *the basin at risk of permanent overdraft. Maintenance of Twitchell and cessation and reversal of*
16 *the siltation build-up is crucial to the continued health of the ground water supply in the Santa*
17 *Maria water basin.*

18
19 In summary, the Court uses the term “Twitchell yield” only when
20 referring to water within Twitchell Reservoir, and can only be
21 assumed to interpret it likewise when reciting from the Stipulation.
22 When referring to water in the basin which originates from Twitchell,
23 quite different terminology, while not always the same, is used and
24 usually¹⁶ includes a word related to “salvaged” or “augmented”.

25 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 5](#)

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29 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 5](#)

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¹⁶ Two exceptions have been noted, namely “*water introduced into the aquifer from Twitchell*” and “*yield made available by the Twitchell project*” still are equally unambiguous.

1 **Section 1d**

2 **WATER IS NOT "DELIVERED" FROM TWITCHELL RESERVOIR**

3
4 **SWRCB License 10416 was obtained by USBR (Bureau of Reclamation)**
5 **to appropriate and use water at the Twitchell Project.**

6 SWRCB [License 10416](#) (Exhibit 9)

7
8 **No water from the Twitchell Reservoir is delivered to GSWC et al., by**
9 **pipe, truck or other similar means.**

10 **Santa Barbara County Water Agency, Robert Almy's [Declaration](#) (Exhibit 10)**

11 *5. The Agency does not deliver water under License 10416, Permit 10217, which is held by the*
12 *United States Department of the Interior, Bureau of Reclamation.*

13 *6. The only manner in which water has been taken under the USBR license is by water release*
14 *from the Project reservoir for the purposes of groundwater recharge to satisfy the prior vested*
rights of District and its landowners.

15 **Water release from Twitchell Reservoir back into the Cuyama River does**
16 **not constitute a delivery based on the Santa Barbara County Water**
17 **Agency Formation Statute [1945:1501:2780](#).**

18 **Excerpt from Santa Barbara Water Agency Enabling Statute 1945:1501:2785**

19 SEC. 5.1. The agency shall have the power to enter into con-
20 tracts with any member unit or with any district which thereby
21 becomes a member unit of the agency for any of the following
purposes:

22 1. The lease, purchase, or other acquisition by the agency of
any of the works of such member unit or district.

23 2. The construction of works by the agency for the conserva-
24 tion, regulation or transmission of water for the benefit of such
member unit.

25 3. The sale, lease or other disposition of water, water rights,
and water storage facilities or interests therein, by the agency
or by such member unit.

26 4. The operation of works and the delivery of water by the
agency or by such member unit.; provided:

27 (a) The works shall be operated in conformity with the
28 vested rights and appropriations of each of its member units
having an interest therein.

29 (b) There shall be delivered to each member unit all water
to which such member unit is entitled under the contract entered
into by the agency and such member unit.

30 (c) There shall not be delivered to any member unit more
water than the amount to which such member unit is entitled
under the contract entered into by the agency and such mem-

1 ber unit; provided that the release of water from any reservoir
2 in the amount required to satisfy any vested right shall not con-
3 stitute a delivery of water; provided further that any quantity
4 of water assigned under Section 5.6 or released under Section
5.7 by one member unit to another member unit shall be deliv-
ered to the latter.

5 **SWRCB states [License 10416](#) is not “used” based on the statements of**
6 **the Santa Barbara Water Agency which reflect the circumstances at the**
7 **Twitchell Project, and could be revoked to eliminate the payment of**
8 **fees.**

9 **[ORDER WR 2006-0011-EXEC](#), page 6, last ¶ (Exhibit 11)**

10 Santa Barbara also contends that no water is delivered from the Twitchell Project. This contention
11 is based on section 51-5.1 of the Santa Barbara County Water Agency Act, which provides in
12 relevant part: “There shall not be delivered to any member unit more water than the amount to
13 which such member unit is entitled under the contract entered into by [Santa Barbara] and such
14 member unit; provided that the release of water from any reservoir in the amount required to
15 satisfy any vested right shall not constitute a delivery of water” (Stats. 1945, ch. 1501, § 5.1,
16 p. 2785, West’s Ann. Wat.-Appen. (1999 ed.) § 51-5.1, subd. (c).) Santa Barbara asserts that all
17 of the water that is released from the Twitchell Project is released in order to satisfy the prior
18 vested rights of Santa Maria and its landowners and therefore no water is “delivered” from the
19 Project.

20 This contention lacks merit for several reasons. First, section 51-5.1 of the Santa Barbara County
21 Water Agency Act governs contracts between Santa Barbara and its member units. That section
22 has no bearing on the proper interpretation of Water Code section 1540. Second, as stated
23 above, Water Code section 1540 requires only that the person or entity to which a fee is allocated
24 hold a contract for the delivery of water from the United States; section 1540 does not require that
25 water actually be delivered pursuant to the contract. Third, Santa Barbara has not submitted any
26 evidence in support of its assertion that all of the water released from Twitchell Reservoir is
27 needed to satisfy prior rights, and therefore no water is ever delivered to Santa Maria under
28 License 10416. Moreover, if this assertion is correct, then License 10416 should be revoked for
29 non-use. Santa Barbara may request the USBR to request revocation of the license to avoid
30 payment of water right fees in the future.

23 The Court’s version of the “allocation”, being water from Twitchell
24 Reservoir, is of no value to GSWC since reservoir water cannot be
25 delivered to any party.

28 The release of water from Twitchell Reservoir does not constitute a
29 delivery or “use” of the appropriated water and as such the SWRCB
30 License is not even necessary for the operation of Twitchell Dam.

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Section 1e

COURT'S PERCEPTION OF TWITCHELL RESERVOIR DURING DROUGHTS

There is no doubt that the Twitchell Reservoir supplements Basin water over the long term. Twitchell is simply a means of capturing Cuyama River flow to the ocean to permit a slower release for percolation into the basin.

Partial Statement of Decision Phase 4, page 18, line 19

The water that is received and held in the reservoir by the dam is water that would otherwise find its way into the Santa Maria River and ultimately the ocean. To the point of entrapment by the dam, it is riparian water and subject to the rule of riparian rights. When the water is released it is released in amounts that will permit maximum percolation into the aquifer and land overlying the basin benefits from its percolation into the basin and use.

Compared to the aquifer Twitchell Reservoir is very small, less that a 9% of the capacity at its peak (less than 2% on average), and volatile due to its release rate, and during droughts is usually empty as indicated by the chart of daily [levels from 1962 to 2000](#)¹⁷.

The peak volume of water in the reservoir from 1962-2000 was about 190,000af (Exhibit 13) while from Exhibit 12 (pdf page 7) the aquifer volume varies from about 2 – 3 million af. During about 5 years of the drought of 1985 to 1992 the reservoir was dry (Exhibit 13).

This Court's false perception, that reservoir water exists during droughts, is reflected in its following statements:

Partial Statement of Decision Phase 4, page 22, line 13

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

Statement of Decision Phase 5, page 8, line 11

In the event of a drought and consequent water shortages, the stipulating parties will have a basis to ask the court to enforce the settlement among themselves if need be and to allocate stored Twitchell water in accordance with the stipulation.

¹⁷ Exhibit 13

1 **Statement of Decision Phase 5, page 11, line 23**

2 *The stipulation provides for necessary improvements to the project to permit the continuation of*
3 *the benefits of the project for all District lands and equitably allocates the Twitchell Yield in times*
4 *of shortage based on the parties' respective contributions to the continuing operation and*
5 *maintenance of the project. (Settlement Stipulation, V.A.3.b.ii., V.D.3.c.)*

6 The Court's perception of Twitchell Reservoir as a Stipulation created
7 "life saver" in times of drought or water shortage constitutes a severe
8 distortion of reality for the following reasons:
9

- 10 1) The reservoir is dry for almost all of any drought.
11 2) Water is not deliverable from the reservoir (§1d).
12 3) The Stipulation "allocation" is not water from the reservoir (§1c).

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14 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 7](#)

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1 **Section 1f**

2 **LANDOWNERS CANNOT DIVIDE/ALLOCATE RIGHT TO**
3 **“TWITCHELL YIELD”¹⁸**

4 **Overlying landowners can not convey rights to native groundwater**
5 **except during “severe water shortage conditions”, according to the**
6 **Stipulation.**

7 **Stipulation, page 11, line 17**

8 3) *Subject to Paragraph V(C)(2)(b)(vi), all Overlying Rights are appurtenant to the overlying land*
9 *and cannot be assigned or conveyed separate or apart from those lands.*

10 **Stipulation, page 17, line 16 Paragraph V(C) (2) (b) (vi)**

11 *(vi) During Severe Water Shortage Conditions, the Stipulating Parties may make agreements*
12 *for temporary transfer of rights to pump Native Groundwater, voluntary fallowing, or the*
13 *implementation of extraordinary conservation measures. Transfers of Native Groundwater must*
14 *benefit the Management Area and be approved by the Court.*

15 **During Severe Water Shortage Condition GSWC et al. are limited by the**
16 **Stipulation to using their so-called developed groundwater [right].**

17 **Stipulation, page 16, line 25**

18 *(ii) Upon the filing of the Annual Report, the Court shall hold a noticed hearing regarding the*
19 *existence and appropriate response to the Severe Water Shortage Conditions. If, after that*
20 *hearing, the Court finds that Severe Water Shortage Conditions exist in the Santa Maria Valley*
21 *Management Area, the Court shall first order all use of Groundwater to be limited to: (a) for*
22 *Guadalupe, Santa Maria and SCWC, their Developed Water; (b) entitled Stipulating Parties to*
23 *their New Developed Water; and (c) for the Overlying Owners, the Native Groundwater plus any*
24 *Developed Water to which individual Overlying Owners are entitled.*

25 **To argue that the so-called developed groundwater [right] can be**
26 **transferred by landowners¹⁹ to GSWC is to ignore the facts that only**
27 **stipulating landowners within the District have such, its amount is only**
28 **20% of that needed and that the “in District” landowners would be the**
29 **givers and receivers at the same time, i.e., an absurdity in concept.**

30 **Stipulation, page 12, line 24**

(iv) Transfer of Twitchell Yield. Twitchell Yield may be transferred, temporarily or
permanently, only between Stipulating Parties and the transfer market shall be as open and
competitive as practical. A memorandum of agreement summarizing each transfer shall be filed

¹⁸ This section was developed to cover all possibilities of the undisclosed allocating party.

¹⁹ Referring to the 20% of the Twitchell Developed water awarded the landowners.

1 *with the Court and provided to the TMA. Any such memorandum of agreement shall state the*
2 *Parties to the transfer, the amount of Twitchell Yield transferred, the price per acre-foot, and the*
3 *Party responsible for the financial obligation associated with the Twitchell Yield.*

4 Thus, Stipulation restrictions preclude the overlying landowners from
5 being that undisclosed party to accomplish the division or allocation
6 of the “Twitchell Yield” groundwater right to GSWC et al.
7
8

9 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 8](#)

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1 **Section 2**

2 **STIPULATION REQUIRES FORFEITURE OF PRESCRIPTIVE**
3 **GROUNDWATER RIGHT**

4 **Public Utilities Code Section 851 requires GSWC to obtain Commission**
5 **approval before it disposes of any property necessary for its service of**
6 **the public.**

7 **Public Utilities Code Section 851**

8 No public utility other than a common carrier by railroad
9 subject to Part I of the Interstate Commerce Act (49 U.S.C. Sec.
10 10101 et seq.) shall sell, lease, assign, mortgage, or otherwise
11 dispose of or encumber the whole or any part of its railroad, street
12 railroad, line, plant, system, or other property necessary or useful
13 in the performance of its duties to the public, or any franchise or
14 permit or any right thereunder, nor by any means whatsoever, directly
15 or indirectly, merge or consolidate its railroad, street railroad,
16 line, plant, system, or other property, or franchises or permits or
17 any part thereof, with any other public utility, without first having
18 either secured an order from the commission authorizing it to do so
19 for qualified transactions valued above five million dollars
20 (\$5,000,000), or for qualified transactions valued at five million
21 dollars (\$5,000,000) or less, filed an advice letter and obtained a
22 resolution from the commission authorizing it to do so.

17 **GSWC acknowledges that property is being disposed of in their citing of**
18 **the Public Utilities Code §851 in the caption for the proceeding of their**
19 **Application 06-02-026.**

20 **Application Caption of Proceeding A.06-02-026**

21 *In the Matter of the Application of Golden State Water Company (U 133 W) for an Order pursuant*
22 *to Public Utilities Code Section 851 approving a Settlement in a Water Rights Adjudication,*

23 **One critical property in question is the prescriptive right to groundwater**
24 **granted to GSWC by the Superior Court of Santa Clara in CV770214.**

25 **Statement of Decision Phase 5, page 3, line 12**

26 *The City of Santa Maria has established a prescriptive right to 5100 acre feet a year and the*
27 *Golden State Water Company has established a prescriptive right to 1900 acre feet a year based*
28 *upon continuous appropriation during times of overdraft exceeding the period of the statute of*
29 *limitations.*

1 **Stipulation approval explicitly requires that GSWC, as a stipulator,**
2 **forfeit any acquired prescriptive right to basin groundwater.**

3 **Stipulation, page 7, line 5**

4 Prescriptive Rights

5 *As to the Stipulating Parties, no Party has proved prescriptive rights to any Native Groundwater.*
6 *Future use by the Stipulating Parties will not be adverse and will not ripen into a prescriptive right*
7 *as between the Stipulating Parties.*

8 **This Court has shown it is not hesitate to declare “no surplus” periods,**
9 **since it did so in this Court case for prescriptive right rulings, using the**
10 **years of 1944-1951, 1953-1957, and 1959-1967.**

11 **Partial Statement of Decision Phase 4, page 9, line 17**

12 *Thus, the undisputed Phase III and Phase IV evidence shows that the Basin was in overdraft and*
13 *there was no surplus for more than the statutory period prior to the time Twitchell was constructed*
14 *and in the years immediately after the construction of Twitchell. In particular, the Phase IV*
15 *evidence, together with the Phase III evidence, indicates that the Basin was in overdraft without*
16 *any surplus water (and water levels seriously declined) from at least 1944- 1951, 1953-1957, and*
17 *1959-1967. Thus, the Public Water Producers have now met the burden of proving overdraft in*
18 *excess of the statutory period for purposes of a claim for prescriptive rights.*

19 That Court awarded GSWC prescriptive right must be retained for this
20 new and uncertain adjudication period if a public water supply is to be
21 assured during a “no surplus” water crisis by denying the approval of
22 the Stipulation, under this Public Utilities Code §851 mandated
23 review.

24 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 9](#)

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30 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 9](#)

Section 2a

"SEVERE WATER SHORTAGE CONDITION" FEIGNS THE COMMON LAW "NO SURPLUS" CRISIS

The Stipulation states it is consistent with common law water rights.

Stipulation, page 6, line 26

The terms and conditions of this Stipulation set forth a physical solution concerning Groundwater, SWP Water and Storage Space, consistent with common law water rights priorities.

The Stipulation avoids any mention of the common law "no surplus" of groundwater to the overlying landowner crisis condition, and defines its own "severe water shortage condition".

Stipulation, page 16, line 8

2. Severe Water Shortage Conditions and Response.

(a) Determination. Severe Water Shortage Conditions shall be found to exist when the Management Area Engineer, based on the results of the ongoing Monitoring Program, finds the following: 1) groundwater levels in the Management Area are in a condition of chronic decline over a period of not less than five Years; 2) the groundwater decline has not been caused by drought; 3) there has been a material increase in Groundwater use during the five-Year period; and 4) monitoring wells indicate that groundwater levels in the Santa Maria Valley Management Area are below the lowest recorded levels.

[Return to Reason 12](#)

By Stipulation definition this "severe water shortage condition" can not be declared during a drought.

Stipulation, page 16, line 12 (within same ¶ as immediately above)

2) the groundwater decline has not been caused by drought;

[Return to Reason 10](#)

According to the Stipulation an initial response by the Court to a "severe water shortage condition" shall be to eliminate GSWC's appropriative access to native groundwater and allow access only to so-called developed groundwater, the 10,000afy claimed by GSWS (which does not exist²⁰).

Stipulation, page 16, line 21

(ii) Upon the filing of the Annual Report, the Court shall hold a noticed hearing regarding the existence and appropriate response to the Severe Water Shortage Conditions. If, after that hearing, the Court finds that Severe Water Shortage Conditions exist in the Santa Maria Valley Management Area, the Court shall first order all use of Groundwater to be limited to: (a) for

²⁰ Except for about 250afy of return flow from State Water.

1 *Guadalupe, Santa Maria and SCWC, their Developed Water; (b) entitled Stipulating Parties to*
2 *their New Developed Water; and (c) for the Overlying Owners, the Native Groundwater plus any*
3 *Developed Water to which individual Overlying Owners are entitled.* [Return to Reason 11](#)

4 **Then, according to the Stipulation, if conditions deteriorate further, a**
5 **subsequent response by the Court would be to impose further limits on**
6 **groundwater use, possibly the “no surplus” limit.**

7 **Stipulation, page 17, line 9**

8 *(v) If the Court finds that Management Area conditions have deteriorated since it first*
9 *found Severe Water Shortage Conditions, the Court may impose further limitations on*
10 *Groundwater use. If the Court imposes further limitations on Groundwater use, a Stipulating*
11 *Party shall be exempt from those limitations to the extent: (a) the Stipulating Party can*
12 *demonstrate that it has already implemented limitations in its Groundwater use, equivalent to*
13 *those ordered by the Court; or (b) the Stipulating Party can demonstrate that further limitations*
14 *would not avoid or reduce the deteriorating conditions.*

15 **The Stipulation makes no pretense about the awarded 10,000afy [right]**
16 **to so-called developed groundwater not being inferior to the overlying**
17 **landowner use right in the event of a “no surplus” condition (even if**
18 **“Twitchell Yield” developed water did exist).**

19 **Stipulation, page 7, line 1**

20 *Recognition of Priority of Overlying Rights*

21 *Except as expressly modified by the settlement agreement among the Northern Parties (Exhibit*
22 *“E”), all Overlying Owners that are also Stipulating Parties have a prior and paramount Overlying*
23 *Right, whether or not yet exercised.*

24 **Stipulation, page 11, line 15**

25 1. *Overlying Rights.* *The Stipulating Parties who are Overlying Owners within the Santa*
26 *Maria Valley Management Area each have the prior and paramount right to use Native*
27 *Groundwater. Subject to Paragraph V(C)(2)(b)(vi), all Overlying Rights are appurtenant to the*
28 *overlying land and cannot be assigned or conveyed separate or apart from those lands.*

29 **During a Court declared period of common law “no surplus of**
30 **groundwater to overlying landowners” condition, GSWC could not**
legally pump water, with the Stipulation²¹.

Partial Statement of Decision Phase 4, page 17, line 7

At common law, appropriators are permitted to take only that which is surplus to the demands of
overlying owners, unless prescriptive rights have been acquired.

²¹ Except for ~250afy of return flows.

1 **With Stipulation denial the native groundwater [right] cutoff due to the**
2 **“severe water shortage condition” would evaporate and the Court ruled**
3 **prescriptive right would stand as protection during a "no surplus" crisis**
4 **allowing GSWC to continue to legally pump.**

5 **Statement of Decision Phase 5, page 3, line 16**

6 *The Public Water Producers who established prescriptive rights are entitled to those specific*
7 *quantities of water in the Basin, the same as any overlying landowner, so long as there is*
8 *sufficient water in the aquifer.*

9 **Statement of Decision Phase 5, page 3, line 15**

10 *Those [prescriptive] rights are usufructuary and are correlative to the same extent that an*
11 *overlying owner's rights are correlative.*

12 The Stipulation cuts GSWC off from access to native groundwater
13 during its created "severe water shortage condition".

14 The Stipulation claims to follow common law groundwater rights, yet
15 ignores the common law "no surplus" condition, and then
16 contractually removes the prescriptive right to leave GSWC with no
17 alternative to a water supply.
18

19 The Stipulation restricts the triggering of a "severe water shortage
20 condition" during a drought placing the aquifer at risk.
21

22 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 10](#) [Reason 11](#) [Reason 12](#)
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1 **Section 3**

2 **STIPULATION GROUNDWATER RIGHT CONFLICT**

3
4 **The Stipulation contains a sentence which states “rights to use**
5 **groundwater under this Stipulation shall have equal status” in**
6 **Paragraph IX.**

7 **Stipulation, page 30, line 1**

8 **IX. RESERVED JURISDICTION – ALL MANAGEMENT AREAS**

9 **A. Reserved Jurisdiction; Modifications, Cancellations, Amendments**

10 Jurisdiction, power and authority are retained by and reserved to the Court as set forth in
11 this Paragraph. Nothing in the Court's reserved jurisdiction shall authorize modification, cancella-
12 tion or amendment of the rights provided under Paragraphs III; V(A, E); VI(A, B, D); VII(2, 3);
VIII(A); IX(A, C); and X(A, D) of this Stipulation. Subject to this limitation, the Court shall make
such further or supplemental orders as may be necessary or appropriate regarding the following:

- 13 1. enforcement of this Stipulation;
- 14 2. claims regarding waste/unreasonable use of water;
- 15 3. disputes between Stipulating Parties across Management Area boundaries;
- 16 4. interpretation and enforcement of the judgment;
- 17 5. consider the content or implementation of a Monitoring Program;
- 18 6. consider the content, conclusions, or recommendations contained in an Annual Report;
- 19 7. consider Twitchell Project operations, including, but not limited to: i) the content of the Twitchell Project Manual; ii) TMA or District compliance with the Twitchell Project Manual; iii) decisions to implement Extraordinary Project Operations; or iv) the maintenance of Twitchell Yield;
- 20 8. claims of localized physical interference between the Stipulating Parties in exercising their rights pursuant to this Stipulation; provided, however, rights to use Groundwater under this Stipulation shall have equal status; and
- 21 9. modify, clarify, amend or amplify the judgment and the Northern Parties Settlement Agreement; Provided, however, that all of the foregoing shall be consistent with the spirit and intent of this Stipulation.

22
23
24 **Contrary to the above sentence paragraph III declares the level of rights**
25 **of overlying landowners as being paramount, implicitly declares**
26 **appropriative rights are inferior to overlying 3 rights (surplus necessary)**
27 **and further declares consistency with common law water right priorities.**
28 **The developed groundwater right is described, but no level of priority is**
29 **suggested during a “no surplus” condition.**
30

1 **Stipulation, page 6, line 25**

2 **III. DECLARATION OF RIGHTS -- ALL MANAGEMENT AREAS**

3 The terms and conditions of this Stipulation set forth a physical solution concerning
4 Groundwater, SWP Water and Storage Space, consistent with common law water rights priorities.

5 **A. Recognition of Priority of Overlying Rights**

6 Except as expressly modified by the settlement agreement among the Northern Parties
7 (Exhibit "E"), all Overlying Owners that are also Stipulating Parties have a prior and paramount
8 Overlying Right, whether or not yet exercised.

9 **B. Prescriptive Rights**

10 As to the Stipulating Parties, no Party has proved prescriptive rights to any Native
11 Groundwater. Future use by the Stipulating Parties will not be adverse and will not ripen into a
12 prescriptive right as between the Stipulating Parties.

13 **C. Appropriative Rights**

14 Consistent with the specific provisions governing each Management Area, the Stipulating
15 Parties owning and exercising Appropriative Rights have the right to the reasonable and bene-
16 ficial use of Native Groundwater that is surplus to the reasonable and beneficial uses of the
17 Stipulating Parties that are Overlying Owners. New appropriative uses shall be subordinate to
18 existing appropriations and shall be prioritized on a first in time, first in right basis.

19 **D. Developed Water Rights**

20 The Stipulating Parties owning Developed Water or New Developed Water have the right
21 to its reasonable and beneficial use, consistent with the specific provisions governing each
22 Management Area. The right to use Developed Water is a right to use commingled Groundwater
23 and is not limited to the corpus of that water.

24 **The rights declaration in paragraph III is apparently sufficiently**
25 **paramount that even Court changes are not allowed for such (among**
26 **other parts of the Stipulation) in Paragraph IX.**

27 **Stipulation, page 30, line 1**

28 **IX. RESERVED JURISDICTION – ALL MANAGEMENT AREAS**

29 **A. Reserved Jurisdiction; Modifications, Cancellations, Amendments**

30 Jurisdiction, power and authority are retained by and reserved to the Court as set forth in
this Paragraph. Nothing in the Court's reserved jurisdiction shall authorize modification, cancella-
tion or amendment of the rights provided under Paragraphs III; V(A, E); VI(A, B, D); VII(2, 3);
VIII(A); IX(A, C); and X(A, D) of this Stipulation. Subject to this limitation, the Court shall make
such further or supplemental orders as may be necessary or appropriate regarding the following:

The "equal status of rights" provision in Paragraph IX conflicts with
the "water right" priorities in Paragraph III.

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[Reason 13](#)

Section 4

GSWC CLAIMED BENEFITS OF THE STIPULATION

GSWC, in Application 06-02-026, claims eight (8) benefits that are accomplished by the Stipulation.

Application, page 5, Section IV

The Stipulation accomplishes this goal by providing GSWC with the following benefits:

- 1 - *A right to pump GSWC's highest historical appropriative groundwater rights so that GSWC can meet current and anticipated future customer demands within the Santa Maria CSA;*
- 2 - *The right to 10,000 acre-feet per year of groundwater yield from Twitchell Reservoir to backup GSWC's right to pump from the Basin during periods of water-supply constraints;*
- 3 - *The right to an appropriate share of SWP return flows associated with GSWC's SWP water;*
- 4 - *Ongoing court oversight in the form of a monitoring program and annual reports to the court in order to ensure the long-term integrity of Basin water resources;*
- 5 - *Division of the Basin's management into three regions (management areas), the Santa Maria Valley Management Area, the Nipomo Mesa Management Area, and the Northern Cities Management Area, so that a customized approach can be employed for each of the three regions, as appropriate;*
- 6 - *Equitable cost sharing of the ongoing monitoring and maintenance expenditures;*
- 7 - *Institution of a drought and water shortage management plan and allocation scheme that spreads equitably any severe water shortage-required cutbacks and therefore ensures that GSWC's customers will receive reliable amounts of water, even in times of shortage, at no increased cost; and*
- 8 - *Court retention of jurisdiction so that it may issue subsequent orders to protect and preserve the Basin water resources, as subsequent events prove necessary.*

The first claimed benefit by GSWC of the right to "current pumping levels" can only refer to an appropriative groundwater right during times of "surplus". This appropriative right is unaffected whether or not the Stipulation is approved, thus this claim of being an added benefit is unfounded.

Partial Statement of Decision Phase 4 page 22, line 13

The water from Twitchell augments the water within the basin. But during years when there is a surplus, all water users have the right to use the water as overlying owners or appropriators. The water commingles with all the other water when released from the reservoir.

1 **Partial Statement of Decision Phase 4 page 25, line 13**

2 *Undisputed evidence of the Public Water Producers' pumping in the basin since the early 1900s*
3 *supports the finding that the Public Water Producers have established a prior right to surplus*
4 *water in the basin as against any subsequent appropriators*

5 **The second, a GSWC claim to 10,000afy of groundwater right during**
6 **periods of water supply constraints, relies on erroneous perceptions**
7 **ignoring California Water Code §§[1202](#) (d) & [1200](#) and does not in reality**
8 **exist. Even if it did, under “no surplus” of water to overlying**
9 **landowners, the right to it would be inferior, i.e., an appropriative right,**
10 **and GSWC would have to cease pumping or be subject to damages**
11 **under the public-use doctrine²².**

12 See Section 1 and its subsections.

13 **For the third claimed benefit the Court awarded GSWC a right to SWP**
14 **return flows in its rulings, providing the same right as does the**
15 **Stipulation, thus this claim of being an added benefit is unfounded.**

16 **Partial Statement of Decision Phase 4, page 25, line 5**

17 *Those Public Water Producers who import State Water Project water to the basin have*
18 *established a prior right to the return flows generated from the use of that supply, to the event that*
19 *such imported water net augments the basin.*

20 **Relative to number four, Court groundwater monitoring provisions are**
21 **independently adopted by the Court. This claim is unfounded.**

22
23 **Statement of Decision Phase 5 page 7 line 11**

24 *Nevertheless, these non-stipulating parties must monitor their water production, maintain records*
25 *thereof, and make the data available to the court and its designee as required in view of the*
26 *substantial likelihood of future water shortage, and so that the court can ascertain the reasonable*
27 *and beneficial use of water rights of all parties and the effect of prescription on all overlying land*
28 *owner water producers. Further, this information will permit the parties to make optimal use of the*
29 *Basin's water resources consistent with the dictates of Article X, Section 2 of the California*
30 *Constitution. All parties, including all non-stipulating parties, must participate in the applicable*
Management Area Monitoring Program, described in the settlement stipulation.

²² An exception is in circumstances of public-use, but even then the public-users are subject to damages sustained from their continued pumping. The only relief public-use entails is that from injunctive interruption of their pumping. *Peabody v. City of Vallejo* (1935) 2 Cal. 2d 351,377; *Wright v. Goleta Water Dist.*, supra, 174 Cal.App.3d at 90. Reference: <http://motherlode.sierraclub.org>

1 **For benefit number five no evidence has been offered that the division**
2 **of the Basin's management into separate management areas provides**
3 **any significant advantage within the scope of this Commission**
4 **proceeding.**

5
6 **For benefit number six an "equitable cost sharing" claim is contrary to**
7 **what is described in the Stipulation. Rate payers use 9% of the water**
8 **and pay 80% (GSWC rate payers 31%) of the basin administration and**
9 **projects. For the public served by GSWC this claim is unrealistic.**

10 The Santa Barbara County Water Agency [estimate](#)²³ of basin total water usage is 125,000afy and
11 purveyor basin water usage is 11,000afy which is about 9% of the basin water. The
12 Stipulation burdens all rate payers with 80% (31% for GSWC) of the costs of administration and
13 projects²⁴.

14 **For number seven the GSWC claimed benefit of a drought/water**
15 **management plan appears to be missing. The word "drought" appears**
16 **only once in the Stipulation as relates to the Santa Maria Basin and that**
17 **is where it states that a "severe water shortage condition" cannot be**
18 **declared when there is a drought. This claimed benefit is not in the**
19 **Stipulation although the Court has related to this problem on its own.**

20
21 **Statement of Decision Phase 5, page 7 line 11**

22 *Nevertheless, these non-stipulating parties must monitor their water production, maintain records*
23 *thereof, and make the data available to the court and its designee as required in view of the*
24 *substantial likelihood of future water shortage, and so that the court can ascertain the reasonable*
25 *and beneficial use of water rights of all parties and the effect of prescription on all overlying land*
26 *owner water producers. Further, this information will permit the parties to make optimal use of the*
27 *Basin's water resources consistent with the dictates of Article X, Section 2 of the California*
28 *Constitution. All parties, including all non-stipulating parties, must participate in the applicable*
29 *Management Area Monitoring Program, described in the settlement stipulation.*

30

²³ 2005 Santa Barbara County Groundwater Report, Santa Maria Basin Excerpt, dated 3/28/06,
(Exhibit 12) pages 6 and 8.

²⁴ See Section 5a in this motion for Cost information references.

1 **The Court's retention of jurisdiction in aquifer adjudication is basic to**
2 **basin management and not dependent of the Stipulation.**

3 **Statement of Decision Phase 5, page 12 line 22**

4 *All parties (stipulating and non-stipulating) shall participate in, and be bound by, the Management*
5 *Area Monitoring Program described in the settlement stipulation to ensure the integrity of the*
6 *aquifer.*

7 **Statement of Decision Phase 5, page 7 line 3**

8 *Future water shortages may require the court to evaluate pumping rights and to quantify*
9 *the reasonable and beneficial uses of water which each party seeks to pump.*

10 None of the GSWC claimed benefits resulting from Stipulation
11 approval show any public interest advantage and in fact show a very
12 severe disadvantage to the public interest with the loss of the
13 prescriptive right and the assumption of the unpredictable financial
14 District obligations.

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17 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 14](#)

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29 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 14](#)
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1 **Section 5**
2 **IMPLICATIONS OF STIPULATION APPROVAL**
3

4 **The affect of the Stipulation's statement regarding the Utility being**
5 **under the Courts jurisdiction gives one pause to wonder what this might**
6 **“practically” entail.**

7 **Stipulation page 1, line 25**

8 6. This action presents an *inter se* adjudication of the claims alleged between and
9 among all Parties. This Court has jurisdiction over the subject matter of this action and over the
10 Parties herein.

11 **Approving the Stipulation appears to approve all projects explicitly**
12 **enumerated without any cost/value analysis as noted in [Subsection 5a](#).**

13
14 **The question about the projects simply alluded to in the Stipulation, but**
15 **not reasonably defined, such as the broad Twitchell improvements and**
16 **the silt problem present cause for uncertainty.**

17 **Stipulation, page 18, line 25**

18 (b) *The TMA will separately fund, administer, construct and manage any additional*
19 *Twitchell Project expenses or projects, including Capital Improvement Projects (see below) and*
20 *O&M, (Extraordinary Project Operations) consistent with the Twitchell Project Manual. The TMA*
21 *and the District will make reasonable efforts to work cooperatively to implement Extraordinary*
22 *Project Operations.*

23 (c) *Consistent with the provisions of this Paragraph V(D), the District and the TMA*
24 *shall be responsible for ensuring the ongoing operational integrity of the Twitchell Project and the*
25 *maintenance of the Twitchell Yield. The Stipulating Parties expect that this ongoing responsibility*
26 *may involve significant expenditures.*

27 **Stipulation, page 19, line 22**

28 (c) *The TMA shall be responsible for all the Extraordinary Project Operations.*

29 (d) *The TMA shall be responsible for developing proposals for Capital Improvement*
30 *Projects relating to the Twitchell Project. Capital Improvement Projects shall mean projects*
involving the expenditure of funds for the improvement or enhancement of the Twitchell Project,
but shall not include normal operation, maintenance or repair activities.

Both Court’s Partial Statement of Decisions (4 & 5) directly affirms the
Stipulation is the intended solution to the silt problem.

Partial Statement of Decision Phase 4, page 22, line 21

In fact, the District has entered into such a contract with certain of the parties (the

1 *Stipulation) which allocates the Twitchell yield in times of shortage to those parties who have*
2 *agreed to pay the costs of remediating the siltation or sedimentation of the reservoir that has*
3 *resulted in a substantial loss of storage capacity necessary to maintain the project's long-term*
4 *average annual yield. The court has approved that Stipulation as to the parties who have*
5 *executed it.*

4 **Partial Statement of Decision Phase 4, page 24, line 24**

5 *It is undisputed that the Twitchell project is losing storage capacity due to the progressive*
6 *infiltration of sediment and silt and that the process of siltation and associated loss of storage*
7 *capacity could eventually negate the benefits of the project. The project provides, on average,*
8 *32,000 acre feet per year of water to the basin that otherwise would waste to the ocean. Unless*
9 *the siltation process is reversed, the augmented supply made available to the basin by Twitchell*
10 *may be lost in whole or in part, thereby putting the basin at risk of permanen overdraft.*
11 *Maintenance of Twitchell and cessation and reversal of the siltation build-up is crucial to the*
12 *continued health of the ground water supply in the Santa Maria Water basin.*

10 **Statement of Decision Phase 5, page 6, line 25**

11 *.... There is a reasonable certainty that the Basin will suffer*
12 *water shortages in the future and that the court will be required to act in the future to preserve the*
13 *rights of the various parties to this litigation in the event that Twitchell is not renovated and*
14 *restored. Even if Twitchell is restored, there is a possibility that such shortages may occur.*

15 Approval of the Stipulation by the Commission would appear to
16 include all terms and projects defined therein. The “*maintenance of*
17 *the Twitchell Yield*” appears to be a reference to the silt problem in
18 the Stipulation that only seems to be clearly understood by the Court
19 as being a part of the Stipulation.

20 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#) [Reason 15](#)

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Section 5a
FINANCIAL EXPOSURE AND PREJUDICE

The Stipulation includes expenditures which are normally District obligations that GSWC expects to pass on to its customers. Basin rate payers who use 9% of the water²⁵ will pick up 80% of the Stipulation costs. GSWC rate payers will be obligated to over 31% of such costs.

Stipulation, page 20, line 6

(g) The cost of TMA-sponsored Extraordinary Project Operations and Capital Improvement Projects shall be divided among Twitchell Participants on the same basis as the allocation of their Twitchell Yield.

Stipulation, page 12, line 9

(ii) Division of Twitchell Yield. Twitchell Yield shall be divided as follows: 80% to Santa Maria, SCWC and Guadalupe, and 20% to the Overlying Owners within the District who are Stipulating Parties.

Stipulation Appendix F, page 2, Section 4.1

4.1 Division. The Parties agree that the 80% of the 32,000 acre-feet of Twitchell Yield shall be allocated as follows: Santa Maria 14,300 acre-feet, Guadalupe 1,300 acre-feet and SCWC 10,000 acre-feet. The Parties acknowledge that the remaining 20% of the Twitchell Yield (6,400 acre-feet) is allocated to the Overlying Owners within the District who are Stipulating Parties, subject to the terms of the Stipulation.

Financial obligations in the Stipulation include the following:

1) An annual budget of \$500,000 to \$700,000 management fee (GSWC's share is 31.25% or \$156,250 - \$218,750). Unused portion of this revenue shall be segregated into a reserve account, for future funding needs of the Twitchell Project.

Stipulation, page 19, line 5

. Within 120 days of the effective date of this Stipulation, and annually thereafter, the Twitchell Participants shall establish an operating budget for the TMA to fund its responsibilities set forth in this Stipulation. For the first five years following the PUC approval as provided below, the TMA's annual budget shall be established at an amount between \$500,000 to \$700,000. Following the initial budgeting period, the TMA shall set its budget in three- to five-year increments, as it deems necessary to meet its obligations to preserve the Twitchell Yield. Any unused revenues shall be segregated into a reserve account, for future funding needs of the Twitchell Project.

2) Funding of the Monitoring program (unknown amount)

²⁵ 2005 Santa Barbara County Water Agency Groundwater Report approved March 28, 2006, Santa Maria Basin Excerpt, (Exhibit 12) pages 6 & 8

1 **3) Cost of the Management Engineer (unknown amount)**

2 **4) Cost of the Annual Report (unknown amount)**

3 **Stipulation, page 15, line 20**

4 *4. Funding. The TMA shall pay for the Monitoring Program for the Santa Maria*
5 *Valley Management Area, which includes the cost of the Management Area Engineer and the*
6 *Annual Report. The cost of the Monitoring Program shall be divided among the Twitchell*
7 *Participants on the same basis as the allocation of their Twitchell Yield.*

8 **5) Cost of hiring a professional engineering consulting firm with expertise in dam**
9 **and reservoir operations acceptable to the District to develop an O&M manual**
10 **(Twitchell Project Manual) and provide capital recommendations for Twitchell**
11 **Dam.**

12 **Stipulation, page 18, line 5**

13 *(a) The TMA will hire and pay for a professional engineering consulting firm with*
14 *expertise in dam and reservoir operations and maintenance, acceptable to the District and the*
15 *TMA, to develop an integrated operation and maintenance procedure manual ("Twitchell Project*
16 *Manual") and provide recommendations for capital and maintenance projects that are consistent*
17 *with the Operational Parameters.*

18 **6) Capital projects to maximize basin recharge including, without limitation,**
19 **avoidance of impacts on recharge resulting from ongoing accumulation of silt.**

20 **Stipulation, page 18, line 25**

21 *(b) The TMA will separately fund, administer, construct and manage any additional*
22 *Twitchell Project expenses or projects, including Capital Improvement Projects (see below) and*
23 *O&M, (Extraordinary Project Operations) consistent with the Twitchell Project Manual. The TMA*
24 *and the District will make reasonable efforts to work cooperatively to implement Extraordinary*
25 *Project Operations.*

26 **Stipulation, page 19, line 2**

27 *(c) Consistent with the provisions of this Paragraph V(D), the District and the*
28 *TMA shall be responsible for ensuring the ongoing operational integrity of the Twitchell Project*
29 *and the maintenance of the Twitchell Yield. The Stipulating Parties expect that this ongoing*
30 *responsibility may involve significant expenditures.*

The last of the above projects involves the problem of 44,000af of silt
which, assuming 240 truckloads (32 yard truck) of removal per day for
365 days per year would require 50 years to complete the job. After that,
assuming the silt inflow continues at the same rate it would require 120
truckloads per day just to keep up.

Stipulation, page 19, line 2

(c) Consistent with the provisions of this Paragraph V(D), the District and the
TMA shall be responsible for ensuring the ongoing operational integrity of the Twitchell Project

1 and the maintenance of the Twitchell Yield. The Stipulating Parties expect that this ongoing
2 responsibility may involve significant expenditures.

3 **Partial Statement of Decision Phase 4, page 22, line 21**

4 *In fact, the District has entered into such a contract with certain of the parties (the*
5 *Stipulation) which allocates the Twitchell yield in times of shortage to those parties who have*
6 *agreed to pay the costs of remediating the siltation or sedimentation of the reservoir that has*
7 *resulted in a substantial loss of storage capacity necessary to maintain the project's long-term*
8 *average annual yield. The court has approved that Stipulation as to the parties who have*
9 *executed it.*

10 **The Court has strongly emphasized this silt removal project is**
11 **necessary.**

12 **Partial Statement of Decision Phase 4, page 24, line 24**

13 *It is undisputed that the Twitchell project is losing storage capacity due to the progressive*
14 *infiltration of sediment and silt and that the process of siltation and associated loss of storage*
15 *capacity could eventually negate the benefits of the project. The project provides, on average,*
16 *32,000 acre feet per year of water to the basin that otherwise would waste to the ocean. Unless*
17 *the siltation process is reversed, the augmented supply made available to the basin by Twitchell*
18 *may be lost in whole or in part, thereby putting the basin at risk of permanent[t] overdraft.*
19 *Maintenance of Twitchell and cessation and reversal of the siltation build-up is crucial to the*
20 *continued health of the ground water supply in the Santa Maria Water basin.*

21 There is no clarity on which listed items are included in the
22 established budget but it is clear that the comment "*The Stipulating*
23 *Parties expect that this ongoing responsibility may involve significant*
24 *expenditures*"²⁶ is an exclamation that some major items are not
25 included.

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29 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#)

30

²⁶ Stipulation page 19, line 4

Definitions

1 af - acre feet

2 afy – acre feet per year

3 aquifer - Santa Maria Valley groundwater basin or aquifer

4 augmented yield – groundwater resulting from water released from Twitchell

5 basin – Santa Maria Valley groundwater basin or aquifer

6 Brief - pleading document # [SD07172777DC](#)

7 Court - Santa Clara Superior Court relating to case CV770214

8 CPUC – California Public Utilities Commission

9 delivered water – water delivered in a controlled fashion as through pipes

10 developed groundwater – return flows from State Water and “Twitchell Yield”

11 District – Santa Maria Valley Water Conservation District

12 GSWC – Golden States Water Company

13 GSWC et al. – GSWC and Cities of Santa Maria and Guadalupe

14 filed – filed with the Court

15 Final Judgment – Proposed Final Judgment of 7/17/07 awaiting signature

16 landowners – all stipulating overlying landowners (for this motion)

17 “no surplus” – basin condition of insufficient groundwater beyond the
18 needs of overlying use by landowners

19 Opposition – Court pleading document # [SEB719F349B7](#)

20 overlying right – correlative overlying use right to groundwater

21 pleading document – pleading document of the Court

22 public water producers – purveyors including GSWC et al.

23 purveyors – water appropriators including GSWC and others

24 rate payers – rate payers served by GSWC and Cities unless qualified

25 released water – water returned to the river or stream through dam gates

26 return flows – used State Water percolated into the aquifer

27 silt – earthy matter washed into Twitchell reservoir

28 SMVWCD – Santa Maria Valley Water Conservation District

1 Stipulation – settlement agreement between parties in Santa Clara Court
2 case CV770214

3 surplus water– groundwater in surplus of the needs overlying landowners

4 SWP – State Water Project

5 SWRCB – State Water Resources Control Board [of California]

6 TMA – Twitchell Management Authority, alias, Santa Maria Valley Basin
7 Management Authority

8 Twitchell - Twitchell Project including dam and reservoir

9 “Twitchell Yield” – 32,000afy of groundwater [Stipulation definition]

10 Valley - Santa Maria Valley, generally referring to the area of the basin

11 10,000afy of groundwater – portion of the “Twitchell Yield”

12 [brackets] – indicates author’s inserted words for clarity or correction

13 *italics – infers quote from a referenced document*

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15 [Reasons](#) [Index](#) [Summaries](#) [Definitions](#) [Conclusion](#)

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Conclusion

This Stipulation is a contract which specifies an action by an undisclosed party, using a false claim of authority relative to unappropriated water. That authority is contrary to California Water Code Sections [1200](#) and [1202\(d\)](#).

The Stipulation strips the public of the protection of the usufructuary prescriptive right and saddles them with District obligations. It locks the public out of native groundwater for not only a “no surplus” condition but also for a new so called “severe water shortage condition”. Public Utilities Code §851 was intended to protect the public against such asset losses necessary for uninterrupted service.

The Stipulation’s dismissal of the drought condition in its water crisis response strategy is inexplicable and constitutes a potential threat to the aquifer.

The Court’s interpretation of “Twitchell Yield” being different from that in the Stipulation, its lack of knowledge that no water is “delivered” from Twitchell and its expectancy that the reservoir could have water during times of basin shortage illustrate what may have been omissions in party communication with the Superior Court.

The basin adjudication process will proceed with or without the Stipulation. The Court has already declared the monitoring provisions are to be independently adopted to manage the basin.

This Stipulation is a settlement without any additive redeeming attribute for the public, but even worse, it is replete with public risk and cost.

1 The contested issue of the claimed authority of the District to “allocate
2 groundwater”, as stated in Reason 3 and related in Section 1 of the facts and
3 evidence, is one of law and indisputable.

4
5 Defining and enforcement of existing groundwater rights is a proper subject of
6 basin adjudication. This Stipulation is an attempt to remove common law
7 rights, redefine the common law crisis, and shift fiscal burden.

8
9 For the above reasons, Trimble recommends that the Commission dismiss,
10 with prejudice, the Application request for approval of the Stipulation, referred
11 to as a Settlement in a Water Rights Adjudication pursuant to Public Utilities
12 Code Section 851.

13 **Verification**

14
15 I am the complainant in the above-entitled matter; the statements in the
16 foregoing document are true of my knowledge, except as to matters which are
17 therein stated on information and belief, and as to those matters, I believe
18 them to be true.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on October 23, 2007, at Santa Maria, California.

22
23 

24
25 Gerald Trimble
26 4586 Cameo Place
27 Santa Maria, CA 93455-4247
28 805-937-2518 (Phone)
29 jerryT@linkline.com

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1 APPENDIX A

2 **Notice of Availability**

3
4 **Title:**

5 MOTION OF GERALD TRIMBLE, RATEPAYER ACCOUNT #317879-5,
6 SEEKING DISMISSAL
7 OF THE APPLICATION OF GOLDEN STATES WATER COMPANY
8 FOR AN ORDER PURSUANT TO PUBLIC UTILITIES CODE
9 SECTION 851 APPROVING A SETTLEMENT IN A WATER
10 RIGHTS ADJUDICATION

11 **Contents:**

12 The Motion includes a single file in PDF/A format at the following link/URL.

13 **Link/URL**

14 <http://personal.linkline.com/trimble/Dismiss/Dismiss.pdf>

15 **Date available:**

16 10/23/07

17 **Name and contact information:**

18 Gerald Trimble

19 805-937-2518

20 jerryt@linkline.com

1
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5 **Certificate of Service**

6 I hereby certify that I have this day served a copy of the

7 MOTION OF GERALD TRIMBLE, RATEPAYER ACCOUNT #317879-5,
8 SEEKING DISMISSAL
9 OF THE APPLICATION OF GOLDEN STATES WATER COMPANY
10 FOR AN ORDER PURSUANT TO PUBLIC UTILITIES CODE
11 SECTION 851 APPROVING A SETTLEMENT IN A WATER
12 RIGHTS ADJUDICATION

13 on all known parties to A.06-02-026 by sending a Notice of Availability via electronic
14 mail and by mailing a properly addressed CDROM copy by first-class mail with postage
15 prepaid to each party named in the official service list without an electronic mail address.

16 Executed on October 23, 2007 at Santa Maria, California

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22 _____
23 Gerald Trimble
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SERVICE LIST for A0602026
Last Update from CPUC Web Site
on Oct-22-2007

All persons herein listed were served by
Notice of Availability -- filed 10/23/07.

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