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**Motion for Dismissal of A06-02-026**

**Attachment 3**

**Exhibit 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**

**Court E-File # SEB719F349B7**

**File Date 3/07/06**

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17  
18 COUNTY OF SANTA CLARA

19 SANTA MAIA VALLEY WATER  
20 CONSERVATION DISTRICT,

21 Plaintiff,

22 v.

23 CITY OF SANTA MARIA, et al.,

24 Defendants.

25 AND RELATED CROSS-ACTIONS

**Santa Maria Groundwater Litigation**

Case No. 1-97-CV770214

Judge: Honorable Jack Komar

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

Date: March 10, 2006

Time: 9:00 a.m.

Dept: 17C

1 **I. INTRODUCTION**

2 It is important to note that only now do both the LOG and Wineman Group's concede that  
3 Twitchell Project water is a separate source of water governed by laws that are different from  
4 laws governing the native supply and the State Water Project returns flows. In the Wineman  
5 Group's Supplement to the Motion for Non-Suit, the Wineman Parties finally admit that  
6 Twitchell Project water is developed and salvaged water different from native yield. (Wineman  
7 Supplement at 2.) These belated concessions contrast sharply with LOG's and the Wineman  
8 Group's previous contentions and long-standing pleadings that Twitchell Project water is mere  
9 "ordinary groundwater." (LOG Brief re 1<sup>st</sup> and 2<sup>nd</sup> Causes of Action at 10-12.) Even though the  
10 LOG and Wineman parties concede Twitchell Project yield is not part of the Basin's common  
11 supply and hence, allocated separately from the native yield and State Water Project return flows,  
12 the LOG and Wineman parties are wrong on the applicable allocation law.

13  
14 Water rights associated with the Twitchell Project are governed not by federal law but by  
15 state law. Specifically, the Twitchell Project's water rights are governed by the License issued by  
16 the State Water Resources Control Board ("State Board"), and Twitchell Project operations are  
17 governed by the Santa Maria Valley Water Conservation District ("District"), the local agency  
18 charged with operating and maintaining the Twitchell Project.

19  
20 By signing the June 30, 2005 Stipulation with nearly 800 parties, the District contractually  
21 approved the allocation of the augmented yield from the operation of the Twitchell Project in a  
22 manner that is fair and reasonable for all parties. The District allocated the Twitchell Project  
23 yield as authorized by applicable Water Code provisions; and the contractual allocation is  
24 consistent with the terms and conditions of the State Board License.

25 Moreover, because the District, rather than the Bureau, is charged with Project operations,  
26 and because the District's contractual allocation does not alter the terms and conditions of the  
27 License, neither the Bureau nor the State is a necessary or indispensable party.

1 Finally, well-established law protects the ability of the Public Water Suppliers to protect  
2 the public's supply of water by raising claims to Twitchell Water on behalf of their customers, the  
3 many residents and businesses in the Santa Maria Valley who depend upon the Public Water  
4 Suppliers for a reliable supply of drinking water.

5 **II. STATE LAW GOVERNS THE ALLOCATION OF TWITCHELL YIELD**

6 For over 100 years, well-established law has dictated that water rights and the distribution  
7 of water in California is subject to state law. When Congress enacted the Reclamation Act (43  
8 U.S.C. Section 383) in 1902, Section 8 required the Bureau of Reclamation to defer to state law  
9 on the allocation of water rights:  
10

11 Nothing in this Act shall be construed as affecting or intended to  
12 affect or to in any way interfere with the laws of any State or  
13 Territory relating to the control, appropriation, use or distribution of  
14 water used in irrigation, or any vested right acquired thereunder,  
15 and the Secretary of the Interior, in carrying out the provisions of  
16 this Act, shall proceed in conformity with such laws, and nothing  
17 herein contained shall in any way affect any right of any State or  
18 the Federal Government or any landowner, appropriator, or user of  
19 water in, to, or from any interstate stream or the waters thereof....

20 In 1978, the United States Supreme Court, in *California v. United States* (1978) 438 U.S.  
21 645, 672 reaffirmed the paramount role of state law with respect to water allocation and the use of  
22 water in federal reclamation projects:

23 [states] may impose any condition on the "control, appropriation,  
24 use, or distribution of water" through a federal reclamation project  
25 that is not inconsistent with clear congressional directives regarding  
26 the project.

27 Section 8 cannot be read to require the Secretary to comply with  
28 state law only when it becomes necessary to purchase or condemn  
vested water rights. That section does, of course, provides for the  
protection of vested water rights, but it also requires the Secretary  
to comply with state law in the "control, appropriation, use or  
distribution of water." . . . . The legislative history of the  
Reclamation Act of 1902 makes it abundantly clear that Congress  
intended to defer to the substance, as well as the form, of state  
water law." (*Id.* at 674-675.)

1 Under the clear language of the Act’s Section 8 and *California v. United States*, state law  
2 determines the water rights associated with the Twitchell Project, Thus, arguments by both LOG  
3 and the Wineman Group to the contrary are inconsistent with the Reclamation Act and Supreme  
4 Court case law.<sup>4</sup>

5  
6 Moreover, clear Congressional intent indicates that Congress intended the benefits of the  
7 Twitchell Project to extend to both municipal and irrigation purposes:

8 [Vaquero reservoir] “would add sufficient water to the groundwater  
9 reservoir to overcome the present average annual overdraft of  
10 14,000 acre-feet, provide for anticipated municipal and industrial  
11 growth, and provide enough additional yield to irrigate 3,000 acres  
12 of presently non-irrigated lands for 50 years.” (Phase IV Exh. H,  
13 1951 Planning Report at 14, emphasis added.)

14 ...

15 Municipal uses are expected to increase gradually. Since any  
16 municipal growth would occupy presently irrigated lands and thus  
17 retire land from irrigation, little, if any, change in the over-all water  
18 require of the project would result from municipal expansion. (*Id.*  
19 at 39; Substantiating Material, Chapter IV, Water Supply.)

20 ...

21 “Therefore, while it is reasonable to assume that project water will  
22 be utilized for municipal and industrial purposes as well as for  
23 irrigation, there is no way of determining the amount which will be  
24 put to the various uses.” (Phase IV Exh. H, 1951 Planning Report  
25 at 77; Substantiating Material, Chapter X, Economic Analysis.)

26 The Bureau’s 1955 Definite Plan Report confirmed that Congress’ intent with respect to  
27 municipal uses:

28 [T]he present municipal and industrial water use is about 7,500  
acre-feet per year. Based on the trend of past use of water for  
municipal and industrial purposes in the Santa Maria Project service  
area and an increasing population, the ultimate gross water  
requirement for that use is expected to be 10,000 acre-feet per year.  
Any larger increase in municipal and industrial water use will be  
offset by a reduction in irrigation requirements as these uses will  
take over irrigated land. (Phase IV Exh. X.)

4 \_\_\_\_\_ 4 4

<sup>4</sup> In the *United States v. California State Water Resources Control Board* (1982) 694 F.2d 1171, the Ninth Circuit distinguished between allocation of project water, which is governed by state law, and project operations, which generally remain within the purview of the federal government. (*Id.* at 1182.) Here, however, the Bureau delegated, by contract, Twitchell Project operations to the District. (Phase IV Exhs. Y, Z.)

1 Congressional intent shows that water rights and associated benefits from Twitchell  
2 Project operations are to benefit both municipal and irrigation uses. There is no indication, that  
3 Congress intended federal law to apply to the allocation of Twitchell Project benefits, and thus  
4 state law applies to the allocation of Twitchell Project yield.

5 **III. THE STATE WATER RESOURCES CONTROL BOARD'S LICENSE GOVERNS**  
6 **THE APPROPRIATION OF TWITCHELL PROJECT YIELD**

7 The undisputed evidence in this case is that the water captured in the Twitchell Reservoir  
8 is surface water from the Cuyama River. As such, pursuant to California law, the Bureau filed an  
9 application, and ultimately obtained a license from, the State Board to appropriate the water in the  
10 Twitchell Reservoir, for subsequent augmented groundwater recharge and recapture. The State  
11 Board license designates the specific conditions controlling the use of the water. (See Cal. Water  
12 Code § 1260(f); 23 C.C.R. § 715.)

13 Pursuant to California law, the State Board License exclusively governs and controls the  
14 storage and use of all Twitchell Project water. Twitchell Project water can only be used  
15 consistent with the terms of the License. (See Cal. Water Code §§ 1628, 1675.)

16  
17 The License provides that Twitchell Project water can be used for “irrigation, domestic,  
18 salinity control, municipal, industrial, and recreational uses.” The License also designates the  
19 place of use and states that the water is appurtenant to all the land upon which the water is applied  
20 to beneficial use. (Exh. DD.) The fact that the water is appurtenant to the land upon which the  
21 water is applied to beneficial use does not vest any individual municipal water supplier customer  
22 or landowner with any particular amount of water but means that a particular area (*i.e.*, the place  
23 of use designated in the license) is to benefit from the Project. Notably, the fact that a particular  
24 area was specifically identified to benefit from the Project clearly distinguishes the Project water  
25 from the entire Basin’s common supply of native yield.

26  
27 The License does not dictate the manner in which the water is to be allocated for the  
28 designated purposes of use. As discussed below, the District’s contractual commitment through

1 the Stipulation to allocate the benefits of Twitchell Project operations is consistent with the  
2 Project water rights License. Further, because the terms of the License are not altered, and  
3 because the District, rather than the Bureau is in charge of Project operations (Phase IV Exhs. Y,  
4 Z), neither the State nor the Bureau are necessary or indispensable parties.

5 **IV. THE SANTA MARIA VALLEY WATER CONSERVATION DISTRICT HAS**  
6 **CONTRACTUALLY ALLOCATED DEVELOPED SUPPLEMENTAL WATER**  
7 **MADE AVAILABLE BY THE OPERATION OF THE TWITCHELL**  
8 **RESERVOIR AND ANY CHALLENGE TO THAT ALLOCATION IS TIME**  
9 **BARRED**

10 More than five months ago, hundreds of parties including the District, five cities and two  
11 community services districts, entered into the Stipulation providing for monitoring and  
12 management of Santa Maria Valley Groundwater Basin's resources: State Water Project return  
13 flows, Twitchell and Lopez Project yield and native supply. Among other things, the Stipulation  
14 specifically allocates the certain benefits associated with the augmented yield derived through  
15 Twitchell Project operations to the City of Santa Maria, Golden State Water Company (formerly  
16 known as Southern California Water Company), the City of Guadalupe and stipulating overlying  
17 property owners whose property lies within the boundaries of the District. That contractual water  
18 right is transferable between stipulating parties and may be carried over one year if not exercised.  
19 The annual contractual allocation is 32,000 acre feet which is consistent with the Phase III trial  
20 evidence. (See Stipulation, pages 12-13, subparagraph V.A.3(b).)<sup>5</sup>

21 In turn, the Stipulation provides that the parties who receive augmented yield associated  
22 with Twitchell Project operations are responsible to fund Twitchell projects and maintenance to  
23 ensure the ongoing operational integrity of the reservoir. For the initial five years, the cost of that  
24 obligation is between \$500,000 to \$700,000 annually. (See Stipulation, pages 19-20,  
25 subparagraph B.3 and 4.)

26 The parties to the Stipulation have a substantial interest in its validity because they must  
27 depend upon the availability of the water and must have the assurance that their financial

28 <sup>6</sup> \_\_\_\_\_ 6 6  
<sup>5</sup> A stipulation in this context is considered a contract among the parties thereto and those parties may modify their  
water production rights by entering into such a contract. (City of Barstow v. City of Adelanto (2000) 23 Cal.4<sup>th</sup> 1224,  
1238-1239.)

1 obligations fund a dependable supply of water. The reliability and certainty of this supply has a  
2 direct impact on long-term financing, land use approvals, the construction of distribution  
3 facilities, and individual planning by many agricultural businesses that may depend on this  
4 supply.

5 The statutory authority of the Conservation District to enter into the Stipulation exists in  
6 its enabling legislation, Water Code sections 74501, 74526, and 74592:

7 Section 74501. A district may make contracts and do all acts  
8 necessary for the full exercise of its powers.

9 Section 74526. A district may sell, deliver, distribute, or otherwise  
10 dispose of any water that may be stored or appropriated, owned, or  
controlled by the district.

11 Section 74592. A district may enter into contracts with  
12 municipalities, water districts of any type or kind, counties, cities  
and counties, the State of California, or the United States, under  
13 such terms as may be mutually advantageous, for the acquisition or  
disposal of water or water rights or water storage facilities and  
14 rights, or any interest in such water, water rights, or water storage  
facilities and rights for any useful purpose.

15 The District's statutory power to use its authority to enter into contracts to allocate and  
16 control the benefits associated with Twitchell Project operations is clear. Moreover, it also is  
17 clear that Government Code Section 53511 and Code of Civil Procedure Sections 860 and 863  
18 now time bar any attempt to challenge the Stipulation.

19 Government Code Section 53511(b) provides that a local agency's public financing  
20 commitment may be validated through an *in rem* lawsuit filed by that public entity within sixty  
21 days of that entity's approval of the contract. The action must be filed pursuant to the provisions  
22 of Code of Civil Procedure Section 860 *et seq.* Further, if the public agency does not judicially  
23 validate such a contract, any interested person may challenge the contract, but only within the  
24 same sixty day period. (Code Civ Proc. § 863.)

25 In summary, the sixty-day statute of limitations bars any challenge to a contract by which  
26 a public entity makes a significant financial commitment upon which other parties must rely  
27 when they discharge their contractual obligations. The Stipulation - a contract which commits the  
28 benefits associated with Twitchell Project operations in exchange for significant financial



1 commitments from five cities and two community facilities districts is subject to the validation  
2 process and is now protected by its sixty day statute of limitations.

3 The Stipulation is similar to the validation of contracts between two irrigation districts in  
4 *Empire West Side Irrigation District v. Lovelace* (1970), 5 Cal.App.3d 911, 913. In that case, the  
5 validation process applied to a contract allocating water rights to each irrigation district as well as  
6 their storage and distribution systems. (See also *Graydon v. Pasadena Redevelopment Agency*  
7 (1980), 104 Cal.App.3d 631; 164 Cal.Rptr. 56 and *Meaney v. Sacramento Housing and*  
8 *Redevelopment Agency* (1993), 13 Cal.App.4th 566; 16 Cal. Rptr.2d 589.)

9 The District's authority to contractually allocate certain rights and benefits associated with  
10 Twitchell Project operations is authorized by the Water Conservation District Law of 1931  
11 (Water Code Section 74000, *et seq.*) and that any attempt to challenge that allocation is barred by  
12 Code of Civil Procedure Section 863.

13 **V. THE PUBLIC WATER SUPPLIERS HAVE STANDING TO ASSERT RIGHTS TO**  
14 **TWITCHELL WATER ON BEHALF OF THEIR CUSTOMERS**

15 Case law has repeatedly affirmed the propriety of governmental entities suing on behalf of  
16 their constituents to enforce or preserve an interest in water held by or for its constituents.  
17 (*Central Delta Water Agency v. State Water Resources Control Board* (1993) 17 Cal.App.4th  
18 621, 630; *Coachella Valley Water District v. Stevens* (1929) 206 Cal. 400; *Orange County Water*  
19 *Dist. v. Riverside* (1959) 173 Cal.App.2d 137; *Chino v. Superior Court* (1967) 255 Cal.App.2d  
20 747.) Generally speaking, the City's and Golden State's customers are only able to obtain the  
21 benefits associated with Twitchell Project operations through the infrastructure maintained by the  
22 City and Golden State for the benefit of their customers. Therefore, the City's and Golden State's  
23 efforts to secure these rights for the City's and Golden State's municipal and domestic purposes is  
24 inextricably tied to the rights of its citizens to make use of the same supply.

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**VI. CONCLUSION**

For the foregoing reasons, the Public Water Suppliers respectfully request that the Court deny the Motion for Non-Suit filed by the LOG and Wineman Group.

Dated: March 7, 2006

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