Motion for Dismissal of A06-02-026

Attachment 7

Exhibit 7

Partial Statement of Decision re Trial

Phase 4

Court E-File # LBE3B74C664D

File Date 1/8/07

http://www.sccomplex.org/cases/statistics.jsp?FormCaseId=VAE2661C98F

Pages = cover, 1 - 25

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER CONSERVATION DISTRICT,

Plaintiff,

vs.

CITY OF SANTA MARIA, ET AL.,

Defendants.

AND RELATED CROSS-ACTIONS AND ACTIONS CONSOLIDATED FOR ALL PURPOSES

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

(CONSOLIDATED FOR ALL PURPOSES)

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

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

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

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

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

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

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 The withdrawn causes of action are therefore ordered dismissed.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

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

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

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

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

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

PUBLIC WATER PRODUCERS' MOTION FOR JUDGMENT UNDER CCP 631.8

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

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

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

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

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

LAND OWNER PARTIES' MOTION FOR JUDGMENT

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

PRESCRIPTION

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

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

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

In its analysis of the claimed overdraft conditions presented during Phase III, the court included 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.

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

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

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

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

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

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

Adverse and Hostile Use

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

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

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

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

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

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

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

> Hydrographs of ground-water elevations in the study area illustrate that a substantial decline in ground-water levels, from historical high to historical low levels, occurred between 1945 and the late 1960's with a progressively greater decline inland from the coast....
>
> The decline ranged from approximately 20 to 40 feet near the coast, 70 feet near Orcutt, to as much as 100 feet further inland (in the area just east of downtown Santa Maria). (Phase III Exh. F-14, "Development of a Numerical Ground-Water Flow Model and Assessment of Ground-Water Basin Yield, Santa Maria Valley Ground-Water Basin" (March 2000) at 14.)

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

Open and Notorious Use

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

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

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

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

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

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

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

> My observations over the years indicate to me that we have a continuously diminishing water supply. Each period of years where we have plentiful rainfall the average water level rises considerably but not to the high point of previous years.
>
> During each period of years where we have drought conditions, the water level continuously recedes to lower and lower levels. <u>There is only one answer to this situation, and that is that eventually the area east of Santa Maria will be out of water excepting during years following heavy rainfall when perhaps the land can be irrigated for a year or so.</u> Each well in the valley is different, depending upon the sands and gravels penetrated by the wells. The overall picture, however, <u>indicates a continuously diminishing supply and eventual exhaustion of the supply</u>.

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

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

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

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

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

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

of prescription.[5] The court notes that none of the parties disputing the claims of the Public Water Producers have presented any evidence of lack of notice to rebut the inferences or notice to be drawn from the public water producers' uncontradicted circumstantial evidence.

Continuous and Uninterrupted Use and Use Under a Claim of Right

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

City of Santa Maria – 5100 acre feet a year;

Golden State – 1900 acre feet a year.

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

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

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

EFFECT OF SELF HELP

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

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

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

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

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

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

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

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

[6] The effect of prescription on any dormant overlying rights cannot be addressed until the extent of self help, if any, is determined.

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

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

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

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

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

TWITCHELL ENTITLEMENT

The Public Water Producers contend that the yield from Twitchell is a salvaged or developed water supply and therefore not part of the basin's native yield. The Public Water Producers rely on: (a) *Lindblom v. Round Valley Water Co*. (1918) 178 Cal. 450 for the proposition that water that has been appropriated up stream of a dam cannot be considered as part of a basin's native yield, (b) common law principles relating to public improvements financed by special assessments, (c) the fact that the urban lands within the District's assessment boundaries have paid for the greatest share of the costs associated with building and operating Twitchell over the past 40 years in support of their claim, and (d) the fact that the District has provided for the 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.

PAYMENT FOR TWITCHELL

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

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

bond costs for construction and maintenance of the dam. The Public Water Producers presented evidence that residents of the City of Santa Maria, as landowners within the District, have paid the major portion of the costs of the project. The Public Water Producers argue, therefore, that the Twitchell project yield must be distinguished from the basin's native supply because to do otherwise would effectively provide all overlying landowners throughout the basin, irrespective of whether they contributed to the costs of the project, with a priority right to the Twitchell yield when the basin is not in surplus. (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.) This result would unfairly penalize municipal landowners who rely on the City of Santa Maria for their water supply. As such, the Public Water Producers' theory would exclude the Twitchell yield from the basin's overall supply in determining overdraft, and would support prescription, according to this theory of entitlement.

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

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

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.

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

The water that is received and held in the reservoir by the dam is water that would otherwise find its way to 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. The License was issued so that all land within the District would benefit, including municipalities. The District was charged with assessing land owners, including residents within the urban areas, to repay the bonds. The basin is benefited because in addition to the normal river flow that percolates into the aquifer, the operation of the dam creates an additional supply of water that is stored and later released at times and in quantities that will increase percolation into the

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

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

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

LOPEZ RESERVOIR AND WATER RIGHTS IN NORTHERN CITIES AREA

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

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

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

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

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

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

CONTRACT RIGHTS

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

Neither the land owners nor the cities are intended beneficiaries of the contracts between the Bureau of Reclamation and the water agency or the conversation district – they are incidental beneficiaries. (*Orff et. al. v. United States* (2004) 358 F.3d 1137.) No city, land owner, public water producer, or other party has 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. The water introduced into the aquifer from Twitchell is certainly intended to benefit all who are within the place of use granted under the state water right License.

DEVELOPED WATER

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

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

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

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.[7]

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

[7] 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.

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

RETURN FLOWS

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

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

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

CONCLUSION

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 priority of rights to that current yield within the aquifer.

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

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

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

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

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

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

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

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

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

Dated: JAN – 8 2007

Hon. Jack Komar
Judge of the Superior Court