

UCS 5642

FILED

JAN - 8 2007

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER
CONSERVATION DISTRICT,

Plaintiff,

vs.

CITY OF SANTA MARIA, ET AL.,

Defendants.

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

(CONSOLIDATED FOR ALL
PURPOSES)

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

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

AND RELATED CROSS-ACTIONS AND
ACTIONS CONSOLIDATED FOR ALL
PURPOSES

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

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

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

In re Santa Maria Valley Groundwater Litigation
Santa Clara County Superior Court, Case No. 1-97-CV-770214
~~(Proposed)~~ Partial Statement of Decision re Trial Phase 4

7149 ✓

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

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 The withdrawn causes of action are therefore ordered dismissed.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

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

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

25 ¹ Not all parties associated with the LOG have filed cross-complaints (some have filed complaints that were
26 consolidated with the original complaint in this action; some are defendants to the Public Water Producers' cross-
27 complaints only). Additionally, not all LOG parties who have filed cross-complaints (or alternatively, complaints)
28 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.

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

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

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

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

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

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

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

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

10
11 **LAND OWNER PARTIES' MOTION FOR JUDGMENT**

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

16
17 **PRESCRIPTION**

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

26
27 ³ The Land Owner group requested clarification that the Phase IV ruling does not alter the Phase III tentative
28 decision, which the Land Owner group refers to as "law of the case." The "law of the case" doctrine applies only to
opinions rendered by the Supreme Court or a Court of Appeal. (*Lennane v. Franchise Tax Bd.* (1996) 51
Cal.App.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.)

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

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

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

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

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

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

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

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

25
26 **Adverse and Hostile Use**

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

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

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

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

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

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

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

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

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

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

28
Open and Notorious Use

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

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

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

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

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

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

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

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

25 During each period of years where we have drought conditions, the
26 water level continuously recedes to lower and lower levels. There
27 is only one answer to this situation, and that is that eventually the
28 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. Each well in the valley is different,
depending upon the sands and gravels penetrated by the wells. The
overall picture, however, indicates a continuously diminishing
supply and eventual exhaustion of the supply.

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

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

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

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

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

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

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

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

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

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

11 Golden State – 1900 acre feet a year.

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

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

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

19 **EFFECT OF SELF HELP**

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

27
28 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.

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

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

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

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

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

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

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

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

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

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

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

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

7
8 **TWITCHELL ENTITLEMENT**

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

21
22 **PAYMENT FOR TWITCHELL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 **CONTRACT RIGHTS**

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

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

23
24
25
26 **DEVELOPED WATER**

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

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

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

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

21 In fact, the District has entered into such a contract with certain of the parties (the
22 Stipulation) which allocates the Twitchell yield in times of shortage to those parties who have
23 agreed to pay the costs of remediating the siltation or sedimentation of the reservoir that has
24 resulted in a substantial loss of storage capacity necessary to maintain the project's long-term
25 average annual yield. The court has approved that Stipulation as to the parties who have
26 executed it. The question of the legal integrity of the District's allocation of the Twitchell yield
27

28 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.

1 by way of the Stipulation, preferring one basin user over another in times of shortage, is
2 reserved until the next phase of the trial. Additionally, in Phase V of these proceedings, the
3 court will consider proposals for a physical solution to address the wide fluctuations in yield
4 within the valley as well as its power to order a physical solution at the present time.
5

6 **RETURN FLOWS**

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

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

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

7
8 **CONCLUSION**

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

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

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

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

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

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

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

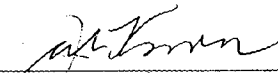
9 The Public Water Producers have established a continuous pumping history since
10 the early 1900s from ground water within the basin, as indicated: Santa Maria – 5100 acre
11 feet a year, Golden State – 1900 acre feet a year, and Northern Cities – 7300 acre-feet a
12 year.

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

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

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

23
24 Dated: JAN - 8 2007



Hon. Jack Komar
Judge of the Superior Court