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

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**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 99073

**STATEMENT OF DECISION RE
TRIAL PHASE 5**

Following the presentation of testimony from witnesses and the admission of exhibits in Phase V of this matter, the parties submitted written arguments. The matter having been submitted, the court now renders its statement of decision.¹

The issues for decision include whether the Land Owner Group ("LOG") parties and Wineman Group ("Wineman") parties are entitled to any relief on their Quiet Title actions,² what

¹ This statement is based on the evidence and arguments from all phases of the trial which were ruled to be admissible in subsequent phases.

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1 rights the Public Water Producers³ may have as a result of the court's finding of prescription,
2 whether the rights of the LOG and Wineman parties are reduced as a result of any prescriptive
3 rights, whether any LOG and Wineman parties exercised "self-help," whether the court should
4 make orders in equity by way of a physical solution and declaratory relief as requested by the
5 Public Water Producers, and whether the court should enter a single judgment or a separate
6 judgment on the stipulation of the settling parties.

7 **QUIET TITLE**

8 The LOG and Wineman parties moved to dismiss all of their causes of action other than
9 their actions to Quiet Title to their water rights appurtenant to their various properties. The
10 evidence and stipulations of the parties on their quiet title claims established current legal title to
11 the real property. There was no evidence presented defining the reasonable and beneficial use of
12 the groundwater underlying their land or any evidence quantifying their water production,
13 historically or otherwise. Evidence was presented to establish that in the valley aquifer as a
14 whole there was no decline in the total quantity of pumping from the aquifer during the many
15 drought years in which pumping greatly exceeded recharge of the aquifer, during which there
16 was the court finds that there was no surplus of water.

17 In the Phase IV trial, the court concluded that the Public Water Producers had
18 appropriated water in specified annual amounts during periods of overdraft exceeding the period
19 of the statute of limitations and that such pumping was under claim of right and was open,
20 notorious and hostile to the rights of all water producers in the Santa Maria Valley, who were on
21 notice of the appropriation. The court quantified the combined water production so found as
22 7000 acre feet a year. The effect of that adverse appropriation on the LOG and Wineman
23 parties' rights cannot be determined without evidence of the extent of the LOG and Wineman
24 parties' (and all other water producers) water rights within this single basin aquifer. Thus, while
25

26 ² The LOG and Wineman parties do not include any of the parties who entered into a Stipulation
following the trial in Phase III and who did not participate in Trial Phases IV and V.

27 ³ The Public Water Producers are the City of Santa Maria, Golden State Water Company, Rural
28 Water Company, the "Northern Cities" (including the Cities of Arroyo Grande, Pismo Beach,
Grover Beach, and Oceano Community Services District), and the Nipomo Community Services
District.

1 the evidence presented is sufficient to establish legal title to the property, there was no evidence
2 that would permit the court to quiet title to, or quantify, the LOG parties' water rights in light of
3 the claim of prescription and the absence of evidence of the reasonable and beneficial water
4 rights of the LOG and Wineman parties and the relationship that their rights bear to all other
5 rights to pump water from this single basin aquifer (including application of the concept of self
6 help as discussed below).

7 In sum, the quiet title remedy is unavailable because the court cannot ascertain the extent
8 of the rights claimed by the LOG and Wineman parties without that evidence. The court will
9 address the basic issues, however, with regard to the declaratory relief actions brought by the
10 Public Water Producers.

11 **PRESCRIPTION**

12 The City of Santa Maria has established a prescriptive right to 5100 acre feet a year and
13 the Golden State Water Company has established a prescriptive right to 1900 acre feet a year
14 based upon continuous appropriation during times of overdraft exceeding the period of the
15 statute of limitations. Those rights are usufructuary and are correlative to the same extent that an
16 overlying owner's rights are correlative. The Public Water Producers who established
17 prescriptive rights are entitled to those specific quantities of water in the Basin, the same as any
18 overlying landowner, so long as there is sufficient water in the aquifer. They also have a priority
19 over other appropriators in those circumstances, just as an overlying owner has a priority over
20 appropriators when there is no surplus. In times of future shortages and overdraft, the rights of all
21 parties are subject to further adjudication to preserve the integrity of the aquifer and the rights of
22 the various parties at issue.

23 The Public Water Producers ask the court to allocate the prescriptive rights obtained by
24 the City of Santa Maria and the Golden State Water Company against only the LOG and
25 Wineman parties. The evidence establishes that the water appropriated by the Public Water
26 Producers was not water to which only the Land Owner and Wineman parties have rights.
27 Because all rights to water within a single basin aquifer are correlative, all rights within the
28 Basin may be affected by the acquisition of prescriptive rights by a party who appropriates. The

1 evidence establishes that overall pumping by all water producers (overlying owners as well as
2 appropriators) continued without reduction during the periods of severe drought, resulting in
3 serious depletion of water in the aquifer. Prescriptive rights acquired during those periods
4 therefore must be measured against the rights of all water producers pumping from the aquifer as
5 a whole and not just against the LOG and Wineman parties. While the Public Water Producers
6 and the other parties to the stipulation have agreed that the Public Water Producers will not assert
7 prescriptive rights against the stipulating land owners (who did not participate in Phases IV and
8 V of the trial), any claims against the LOG and Wineman parties must be based on the ratio that
9 their reasonable and beneficial use bears to the reasonable and beneficial use of all water
10 producers in the aquifer. While the water rights of the parties to the stipulation may not be
11 actually affected by the Public Water Producers' prescriptive rights because they did not
12 participate in Phases IV and V by stipulation, and further because of what is essentially a waiver
13 of those rights by the purveyors, those who were defaulted, or did not stipulate, or who appeared
14 in opposition (the LOG and Wineman parties) in Phases IV and V of the trial will only be
15 proportionately affected in proportion to the whole- an amount presumably almost small enough
16 to be de minimus given the size of the valley and annual pumping of water within the valley.

17 **SELF-HELP**

18 The LOG and Wineman parties ask the court to find that they exercised self-help during
19 the applicable prescriptive periods, and that the Public Water Producers have therefore not
20 acquired any prescriptive rights. The LOG and Wineman parties argue that the exercise of self-
21 help negates one or more of the elements of prescription and has the same effect as an injunction
22 that stops the running of the statute of limitations.

23 The doctrine of "self-help" is a concept that has been used to describe the actions of
24 overlying land owners in circumstances where an appropriator has claimed prescriptive rights at
25 the same time that an overlying owner has continued to pump but has not sought legal action to
26 enjoin the appropriator. Unquestionably, there is a legal consequence to the continuous pumping
27 from the aquifer by both the appropriator and the overlying land owner during times of overdraft.

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1 (See *Hi-Desert Country Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th
2 1723, 1730-1732.)

3 The party asserting prescription must prove the elements of prescription. The land owner
4 mitigates the effect of prescription by evidence of so called "self-help." Perhaps traditional
5 common law principles best describe it. See analogously, *Smith v. New Hampshire* (1906) 4
6 Cal.App. 8, where a party obtained a prescriptive easement in a ditch to carry water across the
7 land of another but the fee owner also used the ditch during the period of prescription to
8 concurrently transport water. As a consequence, the court held that the prescriptive easement
9 was non-exclusive and the servient tenement retained the right to also use the easement. The
10 analogy is far from perfect but is somewhat useful as authority for the proposition that the
11 exercise of self-help mitigates but does not prevent the adverse party from obtaining prescriptive
12 rights.

13 With respect to the pumping of groundwater during periods of overdraft, an overlying
14 owner retains its original rights less any amount lost to prescription. (See *City of Los Angeles v.*
15 *City of San Fernando* (1975) 14 Cal.3d 199, 294 [overlying owners entitled to a priority as to
16 their reasonable and beneficial use, "less any amounts lost by prescription from the . . . native
17 ground water"].) During overdraft, if an overlying owner and an appropriator continuously and
18 concurrently pump water, the appropriator may obtain prescriptive rights while the overlying
19 owner may limit the effect of prescription by the overlying owner's "self help" pumping. (See
20 *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 930-932.) Specifically, if all parties
21 with a right to pump from the single basin aquifer continue to pump their full reasonable and
22 beneficial use during periods of overdraft, an appropriator who pumps during that period may
23 obtain prescriptive rights by analogy to the reasoning in *Smith v. New Hampshire, supra*. The
24 appropriator is pumping water to which all overlying owners would otherwise have a right, since
25 it is not out of surplus. By that *reasoning*, the land owner cannot prevent prescription but may
26 mitigate the loss of rights by continuing to pump, thereby retaining the right to continue to take
27 some water in the future, *i.e.*, that amount pumped concurrently with the appropriator.

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1 It would be a simple matter to determine the extent of prescriptive rights acquired and
2 overlying rights retained if there were only a small number of water producers and overlying
3 owners in a basin aquifer. It becomes more complex when there are a multitude of overlying
4 land owners and water producers, as in the Santa Maria valley. Here, because the appropriators
5 are pumping water belonging to the overlying owners, including not just the LOG and Wineman
6 parties, but all other parties with a prior right to pump in the valley, prescriptive rights would be
7 acquired against all such others pro rata.

8 The only parties adverse to the Public Water Producers in the fourth and fifth phases of
9 the trial are the LOG and Wineman parties. The Public Water Producers expressly relinquished
10 by the terms of the stipulation any claim of prescription against the other parties to the
11 stipulation. Without a quantification of the pumping history of the LOG and Wineman parties,
12 as well as of any other water producers, the court at this time cannot determine the effect that
13 prescription has on any such other water producer or party. And not having jurisdiction over the
14 other stipulating parties, or evidence from them, none of the information necessary to decide the
15 issue is available to the court. To be absolutely clear, no findings of prescription are made
16 against the stipulating parties but the court must look at all water rights in the aquifer to
17 determine what prescriptive rights would obtain against the non-stipulating parties.

18 In the event of water shortages in the Basin, it would be necessary for the court to
19 quantify all usufructuary rights, *and* equitably allocate pumping rights of each right holder over
20 whom the court has jurisdiction. Under those circumstances the court would be required to
21 recognize and take into consideration stipulated agreements, land owners' rights, prescriptive
22 rights, imported water rights, rights to stored water, and the right to return flows, among others.

23 **PHYSICAL SOLUTION**

24 The stipulating parties have agreed and requested that the court retain equitable
25 jurisdiction over the parties in this matter. There is a reasonable certainty that the Basin will
26 suffer water shortages in the future and that the court will be required to act in the future to
27 preserve the rights of the various parties to this litigation in the event that Twitchell is not
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1 renovated and restored. Even if Twitchell is restored, there is a possibility that such shortages
2 may occur.

3 Future water shortages may require the court to evaluate pumping rights and to quantify
4 the reasonable and beneficial uses of water which each party seeks to pump. The majority of the
5 property owners who produce water in the Basin have entered into a stipulation to settle their
6 interests in the case, and have stipulated with the Public Water Producers regarding both their
7 respective claimed rights and a purported physical solution to preserve the hydrologic health of
8 the aquifer. The stipulation, *inter alia*, provides for monitoring of water use. That data will be
9 available to the court in the event of a severe water shortage affecting the entire Basin if the court
10 is called upon to act. The LOG and Wineman parties are not parties to the stipulation and have
11 not agreed to participate in water monitoring. Nevertheless, these non-stipulating parties must
12 monitor their water production, maintain records thereof, and make the data available to the court
13 and its designee as required in view of the substantial likelihood of future water shortage, and so
14 that the court can ascertain the reasonable and beneficial use of water rights of all parties and the
15 effect of prescription on all overlying land owner water producers. Further, this information will
16 permit the parties to make optimal use of the Basin's water resources consistent with the dictates
17 of Article X, Section 2 of the California Constitution. All parties, including all non-stipulating
18 parties, must participate in the applicable Management Area Monitoring Program, described in
19 the settlement stipulation.

20 The court concludes a physical solution is necessary and appropriate to provide for future
21 exigencies and that the water management plan provided for in the stipulation is necessary and
22 appropriate and will provide an efficacious solution to the Basin's current and future problems.
23 Further, the water management plan contained in the stipulation, including the Management Area
24 Monitoring Program, does not impair or otherwise adversely affect the rights of the any parties
25 not signatory thereto. The court previously approved the water management plan and the
26 Settlement Stipulation by Order dated August 3, 2005. The court will incorporate the Stipulation
27 in its final judgment and require compliance by all settling parties with them.
28

1 **TWITCHELL ALLOCATION**

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

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

24 In the final judgment, the court will exclude the non-stipulating parties from the
25 allocation of the Twitchell project as imposed in the stipulation. It would be premature for the
26 court to order an allocation of water produced by Twitchell as to parties who are not party to the
27 stipulated agreement and there is no basis for doing so.

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1 The LOG and Wineman parties contend the court should not impose the management
2 plan on the parties in the exercise its equitable powers because the stipulation does not comply
3 with the California Environmental Quality Act, Cal. Pub. Resources Code § 21000 *et seq.*
4 (“CEQA”).

5 The court is not imposing the entirety of the stipulation on non-stipulating parties. The
6 only portion of the stipulation that will be applied to non-stipulating parties is the monitoring
7 program. There is no contention that this portion of the stipulation implicates CEQA.

8 As to the stipulating parties, the court intends to enter a judgment containing the terms of
9 stipulation, which may thereafter be enforced by the court as to the stipulating parties. No
10 evidence has been presented that any person, including the LOG and Wineman parties, have
11 brought a direct challenge to any public agency based on the failure to comply with CEQA with
12 regard to the agency decisions to approve the stipulation. Assuming without deciding that the
13 approval of the stipulation by a governmental agency is a “project” within the meaning of the
14 CEQA statute, a challenge to such a decision must be made by initiating an action or proceeding
15 within 180 days of the approval of the project. The issue is not properly before this court. In
16 effect, the objecting parties are making a collateral attack on the decisions by various entities to
17 enter into the stipulation and completely ignoring the statutory procedure for obtaining an
18 adjudication regarding compliance with the statute. The Santa Maria Valley Water Conservation
19 District, which is the principal agency with authority over the Twitchell Reservoir and the
20 release of water to recharge the aquifer, entered into the stipulation in July of 2005
21 (approximately 18 months ago) and has not participated in these proceedings since that time.
22 There was no objection based upon CEQA at the time the stipulation was presented to the court
23 for approval, although the parties were present and appeared at the time.

24 The court declines to make any findings regarding any party’s duties or obligations under
25 CEQA with respect to the stipulation, the issue not having been presented to the court at the time
26 the request for approval of the stipulation was made and it is not otherwise properly before this
27 court.

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1 The Land Owners also contend the District cannot enter into such a contract (the
2 stipulation) because the District lacks authority to allocate Twitchell Water to the parties who
3 will pay for it in the future.

4 The stipulation allocates water rights only among those parties who are party to it. The
5 objecting, non-stipulating parties are not parties to the stipulation and are unaffected by it. The
6 stipulation does not deprive any non-stipulating party of water, does not modify the on-going
7 operation of the Twitchell reservoir and dam, and merely provides a funding mechanism for the
8 future operation and maintenance of the Twitchell project.

9 So long as the District uses the water for the general purposes prescribed by its contract
10 with the Santa Barbara County Water Agency, and properly exercises its statutory powers in that
11 regard for the public good within the District, it may regulate and allocate the Twitchell Water
12 consistent with its contract and under the terms of the License. Thus, the District does have the
13 right to provide by contract (the settlement stipulation) for the ongoing maintenance and
14 operation of the Twitchell project, and in doing so, to carry out its contractual duties arising out
15 of the contract between the U.S. Department of the Interior (Bureau of Reclamation) and the
16 Santa Barbara County Water Agency and, in turn, the contract between the Santa Barbara
17 County Water Agency and the District.

18 The District is a water conservation district organized under Water Code section 74000,
19 *et seq.* This enabling act authorizes the District to “make contracts and do all acts necessary for
20 the full exercise of its powers” (Cal. Wat. Code § 74501), including the maintenance, operation
21 and repair of the project (Cal. Wat. Code § 74523) and the acquisition or disposal of water
22 conserved by operation of the project (Cal. Wat. Code § 74592). It further provides that the
23 District “may sell, deliver, distribute, or otherwise dispose of any water that may be stored or
24 appropriated, owned, or controlled by the district.” (Cal. Wat. Code § 74526.)

25 The District’s contractual duties include the maintenance and operation of the dam and
26 reservoir for flood control purposes, and the enhancement of annual recharge of the aquifer, all
27 of which is for the benefit of all who are present within the District (and indirectly benefits
28 parties who are within the valley but outside the district boundaries, which are not coextensive

1 with the valley). The District has the power to enter into contracts to carry out those functions.
2 The stipulation is a contract that is designed to provide for restoration and maintenance of the
3 storage capacity of the reservoir and thereby ensure an adequate water supply for the entire
4 valley. That is a legitimate purpose and it benefits all parties here, including the Land Owner
5 parties. The District has assigned no operational authority for the project; the stipulation
6 expressly provides that the project "will continue to be governed by and subject to the terms and
7 conditions of the December 1955 agreement between the District and the Santa Barbara County
8 Water Agency and nothing in this Stipulation is intended to modify the rights or obligations
9 provided in that agreement." (Settlement Stipulation, at V.D.6.) The overwhelming majority of
10 the Basin's water producers have entered into the stipulation. The only parties who have not so
11 agreed and object are the LOG and Wineman parties and several defaulting parties.

12 The District has, consistent with its authorizing authority, committed to allocating the
13 Twitchell Yield to those who will fund the improvements and remediation of the project
14 necessary to maintain the project's yield. The District's contractual agreement to permit certain
15 parties to pay for the on-going operation and management of the project, including any necessary
16 improvements to the project — a project that will continue to benefit the entire valley and all
17 valley parties — and to compensate those parties for their financial commitments, is entirely
18 consistent with the District's statutory authorities.

19 The stipulation's allocation of Twitchell Yield is also consistent with the water rights
20 license for the project. State Water Resources Control Board License No. 10416 authorizes the
21 Bureau of Reclamation to appropriate water flowing in the Cuyama River for irrigation,
22 domestic, salinity control, municipal, industrial and recreational uses. The stipulation allocates
23 the project water for municipal, domestic, and irrigation uses, consistent with the license. The
24 stipulation provides for necessary improvements to the project to permit the continuation of the
25 benefits of the project for all District lands and equitably allocates the Twitchell Yield in times of
26 shortage based on the parties' respective contributions to the continuing operation and
27 maintenance of the project. (Settlement Stipulation, V.A.3.b.ii., V.D.3.c.)
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1 The Basin continues to be in jeopardy of overdraft in times of drought. Pumping has
2 increased with increases in population and irrigation. The Twitchell dam has ongoing and
3 increasingly serious accumulation of silt in the reservoir. The build up of silt in the reservoir
4 reduces the capacity of the reservoir to store water necessary to recharge the aquifer. To date,
5 the dam has lost substantial capacity to store water as a consequence of silt accumulation.
6 Increasing the capacity of the dam is a long range endeavor. If a lengthy period of drought
7 occurs before the dam capacity has been restored, pumping at current levels from the aquifer will
8 be reasonably certain to result in an overdraft.⁴ The agreement between the stipulating parties
9 offers some hope for the future of the Basin but it is not a guaranty even under the best of
10 circumstances. Even after the dam was completed, there was an overdraft in the Basin for the
11 years 1959 to 1967 before sufficient precipitation permitted the district to have full advantage of
12 the recharge capacity of the reservoir, in addition to extensive pre-Twitchell periods of overdraft
13 in the historic past. The area has experienced extreme variations in precipitation and run off
14 from the surrounding watershed, and drought years have historically been lengthy and severe.
15 The evidence before the court is that similar patterns may be expected to recur in the future.

16 **CONCLUSION**

17 Thus, this is a matter in equity and the court will therefore retain jurisdiction to carry out
18 and enforce its judgment as necessary, to implement the stipulation and physical solution, and to
19 protect the interests of all parties, the stipulating parties, the Land Owner parties, the Public
20 Water Producers, and the public generally.

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

27 _____
28 ⁴But for the construction of the Twitchell Reservoir, during historic periods of severe overdraft,
the aquifer was in serious jeopardy of loss of water storage capacity, sea water intrusion, and
water quality degradation.

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The prescriptive rights of the Public Water Producers shall be part of the judgment.

The Court will enter judgment for the cross-defendant Public Water Producers on the cross-complaints by LOG and Wineman parties for quiet title.

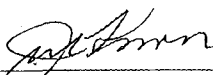
The court will find title to parcels of real property in the LOG and Wineman parties as part of the declaratory relief requested by the Public Water Producers but will deny quiet title to water rights for the reasons discussed above.

In the Northern Cities Area, the rights of the Northern Cities vis-à-vis the other settling parties are governed by the Settlement Stipulations, which the Court adopts as the physical solution among the settling parties. With respect to the non-settling Land Owners, a declaratory judgment will be entered in favor of the Northern Cities stating that: (a) the Northern Cities have a prior right to 7,300 acre feet of water per year in the Northern Cities Area; and (b) the non-settling parties have no overlying, appropriative, or other right to use any water supplies in the Northern Cities Area.

Judgments may also be entered against all defaulting parties.

The Purveyor parties are ordered to prepare a form of judgment consistent with the Statements of Decision for all phases of the trial and to submit the same to opposing counsel. A status conference is scheduled for February 13, 2007 at 10:00 a.m. Further hearings will be set to consider the form of judgment.

Dated: JAN - 8 2007



Judge of the Superior Court
JACK KOMAR