

APPENDIX B

**MEMORANDUM OF UNDERSTANDING,
COURT STIPULATION AND COURT JUDGMENT**

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

This MEMORANDUM OF UNDERSTANDING ("MOU") is dated and effective as of the 7th day of September, 2004, by and between the CITY OF SANTA MARIA (the "City"), a California municipal corporation, and NIPOMO COMMUNITY SERVICES DISTRICT ("NCSD"), an independent special district formed under and pursuant to Section 61000, *et seq.* of the California Government Code. City and NCSD are sometimes individually referred to herein as a "Party" and collectively as the "Parties". This MOU shall constitute the binding agreement of the Parties, subject to the terms, conditions and contingencies set forth herein.

RECITALS

This MOU is based on the following facts, understandings and intentions of the Parties:

A. NCSD provides water, sewer and solid waste service and limited street lighting and drainage service within the NCSD boundary, located in the southern portion of San Luis Obispo County. NCSD's major water supply is comprised of groundwater from the Nipomo Hydrologic Sub-Area of the greater Santa Maria Groundwater Basin (the "NHSA") as described in a draft report by SAIC entitled Water Resources Evaluation, Nipomo Mesa Management Area, and dated June 10, 2002. Due to current supply demands, NCSD needs to secure supplemental water supplies.

B. City serves water in the Santa Maria Valley, in northern Santa Barbara County. City has a contract with Central Coast Water Authority to receive water from the State Water Project ("SWP") and also pumps groundwater from the Santa Maria Basin. City has sufficient water resources, to meet the demands of its retail water customers and to meet NCSD's water supply needs.

C. NCSD seeks to acquire a supplemental water supply of up to three thousand (3,000) acre-feet per year to protect the NHSA from further degradation and to meet current needs and projected growth demands (the "Program"); and City is willing to sell to NCSD, on a wholesale long-term basis, the desired water supply (the "Supplemental Water").

D. The Parties desire to enter into a wholesale water supply agreement (the "Agreement") to formalize the terms and conditions by which City will provide the Supplemental Water to NCSD.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

E. As set forth below, City and NCSD each have established certain conditions precedent to the delivery of the Supplemental Water and desire to enter into this MOU to identify certain key terms and conditions that will be the subject of the Agreement and certain contingencies that must be satisfied prior to any delivery of the Supplemental Water.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, representations and other provisions contained herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1: GENERAL

1.1 Purpose.

(a) The purpose of this MOU is to acknowledge the agreement of the Parties with respect to certain basic terms and conditions of a proposed transaction, which basic terms and conditions shall form the basis upon which the Parties will negotiate in good faith the Agreement. With respect to the negotiation of the Agreement, this MOU is a statement of intent only and does not grant NCSD any rights in and to the Supplemental Water, nor shall the City have any obligation to NCSD to reserve or deliver the Supplemental Water until the Agreement has been executed by the Parties, provided, however, that the City acknowledges that this MOU represents the negotiations of the Parties with respect to the value of the Supplemental Water, which will be incorporated into the Agreement as the annual rate.

(b) Notwithstanding Subparagraph (a) above, this MOU further sets forth certain binding terms and conditions upon which the City agrees to reserve the right of NCSD to take delivery of certain Supplemental Water pending the negotiation of the Agreement and the satisfaction of certain contingencies set forth herein, as well as the allocation of certain costs and risks between the City and NCSD. These provisions are binding on the City and NCSD.

1.2 Wholesale Water Supply Agreement. The Agreement will supersede this MOU and will more specifically identify the Parties' rights and obligations regarding the delivery of water by City to NCSD. The terms of the Agreement shall not be limited by this MOU if, in the course of good faith negotiations, the Parties agree to modifications.

1.3 Contract Date. The Parties specifically recognize that the transaction contemplated by the Agreement is subject to review pursuant to California Public Resources Code Sections 21000, et seq. ("CEQA"). NCSD will serve as the CEQA lead agency and will make environmental determinations regarding the Project which includes the delivery of the Supplemental Water and the construction of facilities to deliver Supplemental Water from the interconnection to NCSD. Nothing contained in this MOU shall be construed to mean that NCSD will certify the environmental determinations, or will make such findings as may be

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

required to develop the Project. NCS D, as the CEQA lead agency, is responsible for determining whether the Project and the Project's environmental determinations comply with CEQA. It is the intent of both Parties that the Agreement shall be signed no later than thirty-five (35) days from the date NCS D certifies the environmental determinations and/or challenges, if any, are resolved regarding the Project. The actual date of execution by the last Party to sign the Agreement shall be considered the "Contract Date."

1.4 Term of MOU. This MOU shall be and remain in effect from the date first set forth above until the Contract Date, unless earlier terminated by the Parties as provided for in Section 1.5.

1.5 Termination of MOU.

(a) NCS D shall have the right to terminate its obligations under this MOU at any time without cause. To effect termination, NCS D shall provide written notice to the City as provided for in Section 9.6 hereof.

(b) In addition to any other termination right provided in this MOU, City shall have the right to terminate this Agreement if NCS D does not comply with the CEQA time schedule established in Section 5.1 (c). To effect termination, City shall provide written notice to NCS D as provided for in Section 9.6 hereof.

(c) Upon termination of this Agreement by either Party, neither Party shall have any further rights or obligations hereunder, except for the obligations set forth in Section 1.8 and Article 7, which shall survive the termination of this Agreement.

1.6 Reservation of Water. Upon execution of this MOU and until the Contract Date, and thereafter upon the closing of the acquisition of the Supplemental Water contemplated by this MOU, unless terminated, City will not enter into any agreement with any other corporation, government entity or other person with respect to the ownership, operation, rights or use of its water that would prevent City from (i) carrying out its obligations under this MOU; or (ii) delivering Supplemental Water to NCS D as contemplated by the Agreement. NCS D shall compensate City for the foregoing obligations to reserve water for NCS D as provided for in Section 3.1 of this MOU. Further, for the term of the Agreement, City shall not supply water to any other person or entity for use or distribution, in whole or in part, in the NHSA for a price or on any term or condition more favorable than that price and those terms and conditions provided for in the Agreement. The initial reservation payment of thirty seven thousand five hundred dollars (\$37,500) shall be paid upon execution of this MOU and shall be non-refundable to NCS D notwithstanding any termination of this MOU.

1.7 Cooperation. City agrees to provide the resources of City personnel to reasonably cooperate with and assist NCS D, without charge, in completing all necessary due diligence with respect to the calculation of anticipated supplemental water supplies and the identification of potential regulatory or environmental requirements or hurdles to the Agreement.

1.8 Indemnity under MOU.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

(a) NCS D agrees to indemnify and hold City harmless from any claims arising out of any action taken by NCS D with respect to implementation of this MOU, including any claims related to the construction of the interconnection. The foregoing indemnity obligations of NCS D shall be governed by the terms of Article 4, provided that the exclusion of regulatory claims in Section 4.1 shall not apply.

(b) City agrees to indemnify NCS D and to hold NCS D harmless from any claims arising out of any action taken by City with respect to implementation of this MOU, including any claims related to City's construction of any facilities necessary to implement the interconnection. The foregoing indemnity obligations of City shall be governed by the provisions of Article 4 hereof prescribing the conduct of the obligor whenever the same are reasonably applicable.

ARTICLE 2: PRINCIPAL TERMS OF AGREEMENT

2.1 Description. City will provide NCS D with wholesale water service from sources available to City's retail customers upon a mutually determined delivery schedule. In order to effectuate delivery of the Supplemental Water, the Parties acknowledge that certain infrastructure must be completed by NCS D. In exchange for payment of a reservation fee as provided for in Section 3.1 of this MOU, City will reserve for NCS D an exclusive right to the Supplemental Water until such time as NCS D has completed the necessary infrastructure and is able to take delivery of the Supplemental Water. Thereafter, City shall provide the Supplemental Water to NCS D as provided in the Agreement.

2.2 Term of Reservation. The "Reservation Term" shall commence on the actual date of execution by the last party to sign this MOU and shall continue until, and as long as, this MOU or the Agreement is not terminated as provided herein. The initial physical delivery of water ("Initial Delivery") to NCS D is anticipated by the Parties to occur on or before the expiration of two years subsequent to the Contract Date (the "Effective Date").

2.3 Term of Agreement. The term of the Agreement shall commence on the Effective Date and end on June 30, 2065 (the "Term"). Notwithstanding said Term, should the provisions applicable to City's extension of its contract for State Water Project water with the Central Coast Water Authority past June 30, 2035 render any term or terms of the Agreement substantially financially burdensome to City, the parties will then renegotiate the provisions of the Agreement in good faith and employ their best efforts to equitably amend the Agreement so that it remains in full force and effect during the entirety of the Term.

2.4 Early Termination of Agreement. NCS D shall have the right to terminate the Agreement (i) if City is found to be in material breach of its obligations to deliver the Supplemental Water as set forth in the Agreement; or (ii) upon five years' prior written notice to City.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

2.5 Right to Acquire Water. Subject to the terms and conditions of the Agreement, City hereby grants to NCS D the right to purchase and take delivery of Supplemental Water from City, beginning on the Effective Date and each year for the remainder of the Term of the Agreement. NCS D's right to acquire water from City shall not exceed a maximum of two hundred and fifty (250) acre-feet per month or four point two (4.2) cubic feet per second.

2.6 Minimum Delivery. NCS D agrees to acquire the following minimum quantity of Supplemental Water after initial water deliveries in the given periods (each period measuring twelve months) as follows:

Period	Quantity in AF
First	600
Second	685
Third	770
Fourth	855
Fifth	940
Sixth	1,025
Seventh	1,072
Eight	1,119
Ninth	1,166
Tenth	1,213
Eleventh thru 2035	1,260

2.7 Supply. City shall deliver the Supplemental Water to NCS D from sources used to provide water to City's retail customers.

2.8 Source Flexibility. During the term of the Agreement or any renewal, City may substitute or combine new or additional replacement sources of water for the source of Supplemental Water. Any substitute, combined or additional sources must be at least equal in deliverability, reliability, quality, pressure, and environmental impacts to the source being replaced.

2.9 Water Quality. City shall be responsible for ensuring that the quality of the Supplemental Water delivered to NCS D is of the same pressure and quality of water that City delivers to its residential customers and shall meet all federal, state, and local laws and regulations as amended from time to time. City agrees to indemnify and hold NCS D harmless from any claims arising out of any action taken by City with respect to water quality.

2.10 Delivery Mechanism. NCS D shall be responsible for constructing and operating an interconnection with City's retail distribution system. The location, plans and specifications of such connection shall be subject to prior approval by City, which approval shall not unreasonably be withheld or delayed. City shall provide easements on its property at no charge to NCS D and waive normal permit fees. NCS D shall also be responsible for obtaining any and

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

all regulatory and environmental permits, licenses or other approvals necessary to construct and operate the interconnection. City will deliver the Supplemental Water to NCSD at the interconnection upon a mutually agreeable delivery schedule, subject to the provisions of Section 2.5. NCSD assumes all responsibility for delivery of the water from the interconnection.

ARTICLE 3: PAYMENT PROVISIONS

3.1 Reservation Fee. In consideration for the City's reservation of water for NCSD as provided for in Sections 1.6 and 2.1 of this MOU and to reserve capacity within City's distribution system from the date of this MOU until the Effective Date, NCSD shall pay City a reservation fee (the "Reservation Fee") of seven hundred and fifty thousand dollars (\$750,000). The Reservation Fee will be paid in four installments as follows:

Installment	Amount
1) MOU Date	\$37,500
2) Contract Date: Final and Beyond Challenge	\$187,500
3) Completion of Construction	\$225,000
4) First 300 AF Delivered @ \$1,000/AF	\$300,000

The Reservation Fee is non-refundable. The Reservation Fee will be credited against the transaction and reduce the Annual Fixed Rate (as described in Section 3.2) at the rate of fifty dollars (\$50.00) per acre-foot for the first fifteen thousand (15,000) acre-feet of Supplemental Water purchased by NCSD. City has the right to terminate the Agreement if any of the installments under the Reservation Fee are not paid on or before the due date. City shall use the Reservation Fee to cover any costs incurred under this MOU and the Agreement.

3.2 Payment for Supplemental Water.

(a) NCSD shall pay City either an Annual Fixed Rate for the Supplemental Water in the amount of one thousand two hundred and fifty dollars (\$1,250.00) per acre-foot or an Annual Variable Rate in the amount of eight hundred and ninety five dollars (\$895.00) per acre-foot adjusted each year from Initial Delivery through the end of the Term by three percent (3.0%) annually. NCSD shall choose one such rate prior to accepting the initial delivery of Supplemental Water hereunder and that rate then shall apply for the entirety of the Term, provided that the parties agree to renegotiate the rates stated herein for the period commencing with the year 2036 through the end of the Term, consistent with Section 2.3.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

(b) For water remarketed by NCSD into NHSA, City shall charge either the Annual Fixed Rate or the Annual Variable Rate stated in subsection 3.2 (a) at the choice of the end user made prior to that end user accepting the initial delivery of Supplemental Water from NCSD. That rate shall then apply for the entirety of the Term, provided that the rate is subject to renegotiation for the period commencing with the year 2036 through the end of the Term, consistent with Section 2.3. NCSD shall measure and report all deliveries of Supplemental Water remarketed by it to end users on a quarterly basis consistent with the payments due pursuant to subsection 3.4.

3.3 Remarketing of Supplemental Water. NCSD shall be free to remarket the Supplemental Water to other parties who either use or serve water within the NHSA, without restriction as to price and terms.

3.4 Payment Schedule. City shall bill NCSD on a quarterly basis in arrears for Supplemental Water delivered to NCSD's interconnection during the previous quarter. The amount payable by NCSD to City shall be based on the total quantity in acre-feet of Supplemental Water delivered during the quarter just ended multiplied by the then-current Annual Fixed Rate and Annual Variable Rate. The first invoice to NCSD will be dated within three months of the Initial Delivery and continue each calendar quarter (January 1, April 1, July 1, and October 1) through the end of the Term. The invoice shall apply to the previous quarter of actual Supplemental Water deliveries.

3.5 Construction, Regulatory/ Permit and Other Costs. NCSD shall be solely responsible for all costs related to the construction and operation of the interconnection with City's retail distribution system. NCSD shall also be solely responsible for all regulatory and/or permit compliance and costs with respect to the interconnection. Except as otherwise provided for in this Article 3, the Parties shall be responsible for their own fees and costs related to the completion of this MOU and the Agreement.

ARTICLE 4: DIVISION OF RISK RESPONSIBILITIES

4.1 Indemnity. NCSD, its successors and assigns, shall hold harmless, defend and indemnify City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "City Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against City Indemnified Parties as a result of (i) a breach of NCSD's obligations; or (ii) the conduct of NCSD's operations associated with the interconnection to City's retail distribution system and the subsequent delivery of Supplemental Water to NCSD's customers. Notwithstanding the foregoing, in no event shall NCSD be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence or the gross negligence or willful misconduct of City; (ii) any third party claim brought in connection with regulatory approvals; or (iii) any claim brought in connection with the quality of the Supplemental Water as provided in Section 2.3 above. This indemnification shall survive termination of the Agreement.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

4.2 Third Party Claims. Promptly following notice of any "Third Party Claim" for which City is indemnified hereunder, City shall notify NCSD of such claim in writing. NCSD shall have a period of thirty (30) days following the receipt of such notice to notify City of whether NCSD elects to assume the defense thereof. If NCSD so notifies City that it elects to assume the defense, NCSD thereafter shall defend (with counsel approved by City), indemnify and hold City harmless from and against, and shall reimburse City for, the Third Party Claim.

NCSD shall not consent to entry of judgment or enter into any settlement agreement, without the consent of City, which does not include a complete and unconditional release of City or which imposes injunctive or other equitable relief against City. City shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense.

If NCSD does not give the requisite notice, or fails to assume and diligently pursue the defense of such Third Party Claim, City may defend against such Third Party Claim in such manner as it may deem appropriate, at NCSD's expense, including without limitation settlement thereof on such terms as City may deem appropriate, and to pursue such remedies as may be available to City against NCSD. Notwithstanding the foregoing, City shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of NCSD, which does not include a complete and unconditional release of NCSD.

4.3 Force Majeure. If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, the City is prevented from delivering, in whole or in part, Supplemental Water to NCSD, as provided herein, then City may reduce delivery of Supplemental Water up to the same percentage the City reduces water delivery to its retail customers.

4.4 Suspension. The delivery of water may be suspended or curtailed during any period of public emergency or disaster that is declared by City. For the purposes of this MOU, a public emergency or disaster shall not include ordinary measures taken during periods of drought or water shortage. Should such a suspension or curtailment occur, the resulting deficit in water deliveries shall be offered to be offset by the City through excess water deliveries as soon as is practicable.

4.4 Notice of Claims. The Parties shall promptly notify each other within ten (10) days of City or NCSD becoming aware of: (1) any claims or suits brought against City or NCSD for which they seek indemnification from the other Party, (2) any Third Party Claims, and (3) any force majeure event. Any such notice shall conform to the requirements specified in Section 9.6 of this MOU.

ARTICLE 5: CONDITIONS PRECEDENT

5.1 Conditions Precedent. NCSD's obligation to consummate the transaction contemplated under this MOU and the Agreement (other than the payment of the Reservation

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

Fee on the MOU Date) will be subject to the satisfaction of the following conditions (the "Conditions Precedent").

(a) **General Feasibility.** City will deliver to NCS D, as soon as possible following the execution of this MOU, such further documents, plans, maps, studies, reports, records, permits, licenses and contracts relating to the Supplemental Water that NCS D may deem necessary or desirable in order to assess the viability and feasibility of the Supplemental Water for NCS D's intended use. NCS D will have until the proposed Contract Date to review and approve or disapprove the same.

Additionally, during the term of the MOU, NCS D shall investigate the costs and general feasibility of constructing and operating an interconnection with City's retail distribution system. City shall provide reasonable assistance to NCS D in conducting this feasibility investigation.

(b) **Due Diligence.** City agrees to cooperate with NCS D's due diligence investigation of City, and to provide NCS D and its representatives with prompt and reasonable access to key employees and to books, records, contracts and other information pertaining to the Supplemental Water and that portion of City's retail distribution system affected by the contemplated transaction (the "Due Diligence Information").

(c) **CEQA Compliance.** NCS D will diligently pursue CEQA compliance for the delivery of the Supplemental Water and the facilities necessary to transport the Supplemental Water from City to NCS D. NCS D agrees to the following time line:

- (i) To develop a project description for the Supplemental Water Agreement contemplated in this MOU no later than one hundred and twenty (120) days from the date upon which NCS D's Board of Directors approves this MOU; and
- (ii) To retain environmental consultants within one hundred and twenty (120) days from the date upon which NCS D's Board of Directors approves this MOU; and
- (iii) To use reasonable efforts to complete all associated CEQA studies and reports.

5.2 Pre-Closing Covenants. The Agreement shall contain customary representations and warranties, including good and marketable title to the Supplemental Water. City shall further provide appropriate documentation to enable NCS D to verify City's ability to provide Supplemental Water as contemplated herein.

5.3 Conditions to Obligation. The Parties are not obligated to consummate the acquisition of the Supplemental Water contemplated hereby unless and until the Parties have reached agreement as to all of the essential terms of the acquisition, which shall be reflected in the Agreement. In addition, the Parties will not be obligated to consummate the acquisition of the Supplemental Water unless NCS D has obtained all certificates, permits and approvals that

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

are required in connection with the construction and operation of the interconnection and the delivery and use of the Supplemental Water, and NCSD satisfactorily completes its due diligence investigation as described in Section 5.1 of this MOU.

ARTICLE 6: BEST EFFORTS

6.1 Best Efforts. The Parties agree to negotiate in good faith, and to use their reasonable best efforts to reach and tentatively approve the Agreement with respect to the acquisition of the Supplemental Water on or before December 31, 2004, and to close the transaction, by formal execution of the Agreement, as soon as it is reasonably practicable. In the event any Party violates the covenants contained in this Article 6 (the "Breaching Party"), the other Party may seek recovery from the Breaching Party of its actual costs and expenses incurred in connection with this MOU in reliance on the good faith of the Breaching Party. The foregoing remedy shall be the sole and exclusive remedy for a breach of this Article 6 and neither Party shall be liable to the other for any claim of lost profits or consequential damages.

ARTICLE 7: CONFIDENTIALITY

7.1 Confidentiality. NCSD shall use the Due Diligence Information solely for the purpose of investigation of the Supplemental Water and the feasibility of constructing and operating the required interconnection; and, unless and until the Parties consummate the acquisition of the Supplemental Water, advisers and agents (the "NCSD Representatives") will keep the Due Diligence Information confidential. NCSD will disclose the Due Diligence Information only to those Representatives of NCSD who need to know such information for the purpose of consummating the acquisition. NCSD agrees to be responsible for any breach of this Section 7.1 by any of the NCSD Representatives. In the event the acquisition is not consummated, NCSD will return to City any materials containing Due Diligence Information, or will certify in writing that all such materials or copies of such materials have been destroyed.

The Parties hereto agree that any information provided them in connection with the transactions contemplated by this MOU will be kept confidential by them and their respective officers, directors, employees, agents, representatives and advisors; provided, however, that disclosure of such information may be made:

(a) To the extent the same shall be or have otherwise become publicly available other than as a result of the Parties hereto, and

(b) If, in the reasonable opinion of counsel to the disclosing Party, such disclosure is required to be disclosed by law or during the course of or in connection with any litigation or proceeding, provided that the Party so disclosing notifies the other Party of its obligations to provide such confidential information and fully cooperates with the other Party to protect the confidentiality of such information.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

ARTICLE 8: REPRESENTATIONS OR WARRANTIES

8.1 Representations or Warranties of City. City makes the following representations, warranties and covenants to NCS D:

(a) Power and Authority to Execute and Perform this MOU. City has the power and authority to enter into this MOU and to perform its obligations, and all necessary approvals and authorizations have been obtained.

(b) Enforceability. This MOU constitutes a legal, valid and binding obligation of City, and is enforceable against City in accordance with its terms.

8.2 Representations or Warranties of NCS D. NCS D makes the following representations, warranties and covenants to City:

(a) Power and Authority to Execute and Perform this MOU. NCS D has the power and authority to enter into this MOU and to perform its obligations, and all necessary approvals and authorizations have been obtained.

(b) Enforceability. This MOU constitutes a legal, valid and binding obligation of NCS D, enforceable against NCS D in accordance with its terms.

ARTICLE 9: MISCELLANEOUS PROVISIONS

9.1 Remedies Not Exclusive. Except as provided in Article 6, remedies provided in this MOU and the Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive the Party using the same from also using any other remedies provided by this MOU or the Agreement or by law.

9.2 No Transfer of Rights. The rights granted to NCS D hereunder constitute the right to take delivery of water only and shall not be interpreted as a sale, transfer, or assignment of City's water rights with respect to its SWP contract, the Santa Maria Basin, or other water sources as may be available from time to time.

9.3 Subject to Applicable Law. NCS D and City acknowledge and agree that this MOU and the rights and obligations of the Parties hereunder shall be subject to the laws governing municipal corporations as they now exists and as they may be hereafter amended or

9.4 Entire Agreement. This MOU contains the entire understanding between City and NCS D with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between City and NCS D. This MOU cannot be amended except in writing signed by both Parties.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT**

9.5 No Waiver. Any failure or delay on the part either Party to exercise any right under this MOU shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this MOU, on any subsequent occasion.

9.6 Notices. All notices or other communications required or desired to be given pursuant to this MOU shall be in writing and shall be hand-delivered, or mailed by certified mail, return receipt requested, or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered, or three (3) days after being mailed in any depository maintained by the United States Postal Service, with prepaid postage, certified, return receipt requested or one (1) day after being deposited for next day delivery with Federal Express or other reputable courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

9.7 Headings; Section References. Captions and headings appearing in this MOU are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

9.8 Severability. If any provision of this MOU is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this MOU. The other provisions of this MOU shall remain in full force and effect so long as the material purposes of the MOU and understandings of the Parties are not impaired.

9.9 Binding Effect Assignment. This MOU shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. Neither Party shall assign this MOU in whole or in part without first receiving the prior written approval of the other Party, which approval shall not be withheld unreasonably, provided that the City shall be deemed to approve NCSD's assignment of its rights and obligations hereunder, in whole or in part, to a public utility, mutual water company, or public entity supplying water to customers located in the NHSA. Any unauthorized attempt to assign this MOU shall be null and void.

9.10 Attorneys Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this MOU, to restrain an alleged violation of this MOU, or to determine the validity of this MOU or any part thereof, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

9.11 Governing Law and Venue. This MOU is a contract governed in accordance with the laws of the State of California.

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF SANTA MARIA AND
NIPOMO COMMUNITY SERVICES DISTRICT


IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

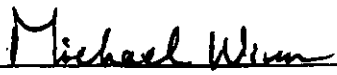
CITY:

NCSD:

City of Santa Maria
a California municipal corporation

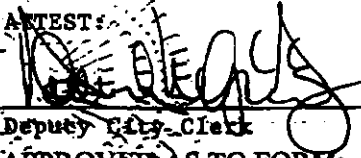
Nipomo Community Services District
a California independent special district

By: 
Name: Tim Ness
Title: City Manager

By: 
Name: MICHAEL WINN
Title: President, NCSD

Address: 110 E. Cook Street
Santa Maria, CA 93454
Fax: (805) 349-0657
Phone: (805) 925-0951

Address: 148 S. Wilson St.
Nipomo, CA 93444
Fax: 929-1932
Phone: 929-1133

ATTEST:

Deputy City Clerk
APPROVED AS TO FORM:

Best Best & Krieger LLP

By: 
Eric Garner, Partner

RESOLUTION NO. 2004-167

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, AUTHORIZING AND DIRECTING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF SANTA MARIA AND NIPOMO COMMUNITY SERVICES DISTRICT (NCSD)

WHEREAS, in 1997 the City of Santa Maria purchased State Water to improve water quality to existing City residents and provide a new water supply for planned growth; and

WHEREAS, the plan was to import sufficient water supplies to eliminate the need for home water softeners and avoid complicated wastewater treatment schemes; and

WHEREAS, the City of Santa Maria has experienced a significant reduction in the number of water softeners used by City residents, which has allowed the City to maintain its current and very cost-effective wastewater treatment practices; and

WHEREAS, the City of Santa Maria has used only a limited amount of groundwater during this seven-year period; and

WHEREAS, the City of Santa Maria has sufficient water resources to meet Nipomo Community Services District's water supply needs, and is willing to sell to Nipomo Community Services District a supplemental water supply of up to three thousand (3,000) acre-feet per year;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Santa Maria, California as follows:

The City Manager, or his designee, is authorized to execute the Memorandum of Understanding by and between the City of Santa Maria and Nipomo Community Services District.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held September 7, 2004.

/S/ L. J. LAVAGNINO

Mayor

ATTEST:

/s/PATRICIA A. PEREZ

Chief Deputy City Clerk

APPROVED AS TO FORM:

BY: *[Signature]*

CITY ATTORNEY

CONTENTS:

[Signature]

BY: DEPARTMENT HEAD

[Signature]

BY: CITY MANAGER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER
CONSERVATION DISTRICT,

Plaintiff,

v.

CITY OF SANTA MARIA, et al.,

Defendants.

AND RELATED CROSS-ACTIONS AND
ACTIONS CONSOLIDATED FOR ALL
PURPOSES

) SANTA MARIA GROUNDWATER
) LITIGATION
) Lead Case No. CV 770214
) (CONSOLIDATED FOR ALL PURPOSES)

) [Consolidated With Case Numbers:
) CV 784900; CV 785509; CV 785522;
) CV 787150; CV 784921; CV 785511;
) CV 785936; CV 787151; CV 784926;
) CV 785515; CV 786791; CV 787152;
) CV 036410]

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

) [Assigned to Judge Jack Komar for All
) Purposes]

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	I. INTRODUCTION -- ALL MANAGEMENT AREAS.....1
4	A. Parties and Jurisdiction.....1
5	B. Further Trial.....2
6	C. Definitions.....2
7	II. EXHIBITS.....6
8	III. DECLARATION OF RIGHTS -- ALL MANAGEMENT AREAS.....6
9	A. Recognition of Priority of Overlying Rights.....7
10	B. Prescriptive Rights.....7
11	C. Appropriative Rights.....7
12	D. Developed Water Rights.....7
13	E. Rights to Storage Space.....7
14	F. Other Surface Water Rights.....7
15	IV. PHYSICAL SOLUTION – ALL MANAGEMENT AREAS.....8
16	A. Authority.....8
17	B. Purposes and Objectives.....8
18	C. Basin Management Areas.....8
19	D. Groundwater Monitoring.....9
20	E. New Developed Water.....10
21	F. Severe Water Shortage Response.....11
22	V. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO SANTA MARIA VALLEY MANAGEMENT AREA.....11
23	A. Water Rights to Sources of Supply.....11
24	B. Monitoring and Management.....14
25	C. Response to Varying Conditions.....15
26	D. Management and Administration of the Twitchell Project.....17
27	E. New Urban Uses – Santa Maria Valley Management Area.....20
28	VI. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NIPOMO MESA MANAGEMENT AREA.....21
	A. Supplemental Water.....21
	B. Rights to Use Groundwater.....23
	C. NMMA Technical Group.....24
	D. Potentially Severe and Severe Water Shortage Conditions.....25
	E. New Urban Uses.....27
	VII. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NORTHERN CITIES MANAGEMENT AREA.....28
	VIII. INJUNCTION – ALL MANAGEMENT AREAS.....29
	A. Use Only Pursuant to Stipulation.....29
	B. Injunction Against Transportation From the Basin.....29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. No Third Party Beneficiaries29

IX. RESERVED JURISDICTION – ALL MANAGEMENT AREAS30

A. Reserved Jurisdiction; Modifications, Cancellations, Amendments30

B. Noticed Motion31

C. *De Novo* Nature of Proceeding31

D. Filing and Notice31

X. MISCELLANEOUS PROVISIONS – ALL MANAGEMENT AREAS.....31

A. Unenforceable Terms.....31

B. Water Quality.....32

C. Duty to Cooperate.....32

D. Stipulating Parties Under Public Utilities Commission Regulation32

E. Designation of Address, for Notice and Service.....33

F. No Loss of Rights33

G. Intervention After Judgment.....33

H. Stipulation and Judgment Binding on Successors, Assigns, etc.....34

I. Costs.....34

J. Non-Stipulating Parties.....34

K. Counterparts.....35

L. Effective Date35

1 **I. INTRODUCTION -- ALL MANAGEMENT AREAS**

2 The Stipulating Parties hereby stipulate and agree to entry of judgment containing the
3 terms and conditions of this Stipulation.

4 **A. Parties and Jurisdiction**

5 1. Plaintiff and Cross-Defendant Santa Maria Valley Water Conservation District
6 (“District”) is a water conservation district organized under California Water Code section 74000,
7 *et seq.* The District does not pump Groundwater from the Basin.

8 2. Defendants, Cross-Complainants and Cross-Defendants the City of Santa Maria
9 (“Santa Maria”), City of Guadalupe (“Guadalupe”), Southern California Water Company
10 (“SCWC”), Nipomo Community Services District (“NCSD”), Rural Water Company (“RWC”),
11 City of Arroyo Grande (“Arroyo Grande”), City of Pismo Beach (“Pismo Beach”), City of Grover
12 Beach (“Grover Beach”) and Oceano Community Services District (“Oceano”) rely, in part, on
13 Groundwater to provide public water service to customers within the Basin.

14 3. Cross-Defendant County of San Luis Obispo (“San Luis Obispo”) is a subdivision
15 of the State of California. Cross-Defendant San Luis Obispo County Flood Control and Water
16 Conservation District (“SLO District”) is a public entity organized pursuant to the laws of the
17 State of California. Neither San Luis Obispo nor SLO District pumps Groundwater from the
18 Basin.

19 4. Cross-Defendant County of Santa Barbara (“Santa Barbara”) is a subdivision of
20 the State of California. Santa Barbara does not pump Groundwater from the Basin.

21 5. Numerous other Cross-Defendants and Cross-Complainants are Overlying
22 Owners. Many of these Overlying Owners pump Groundwater from the Basin, while others do
23 not currently exercise their Overlying Rights. Those Overlying Owners who are Stipulating
24 Parties are identified on Exhibit “A”.

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

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B. Further Trial

The Stipulating Parties recognize that not all Parties have entered into this Stipulation and that a trial will be necessary as to all non-Stipulating Parties. No Stipulating Party shall interfere or oppose the effort of any other Stipulating Party in the preparation and conduct of any such trial. All Stipulating Parties agree to cooperate and coordinate their efforts in any trial or hearing necessary to obtain entry of a judgment containing the terms and conditions of this Stipulation. No Stipulating Party shall have any obligation to contribute financially to any future trial.

C. Definitions

As used in this Stipulation, the following terms shall have the meanings herein set forth:

- 1. or Year – That period beginning January 1 and ending December 31.
- 2. Report – The report prepared and filed with the Court annually for each Management Area.
- 3. Appropriative Rights – The right to use surplus Native Groundwater for reasonable and beneficial use.
- 4. Project Water – The amount of SWP Water an Importer is entitled to receive in a given Year based upon the California Department of Water Resources final Table A allocation.
- 5. Basin - The groundwater basin described in the Phase I and II orders of the Court, as modified, and presented in Exhibit “B”.
- 6. Developed Water – Groundwater derived from human intervention as of the date of this Stipulation, which shall be limited to Twitchell Yield, Lopez Water, Return Flows, and recharge resulting from storm water percolation ponds.
- 7. Groundwater – Twitchell Yield, Lopez Water, Return Flows, storm water percolation, Native Groundwater and all other recharge percolating within the Basin.
- 8. Importer(s) – Any Party who brings Imported Water into the Basin. At the date of this Stipulation, the Importers are Santa Maria, SCWC, Guadalupe, Pismo Beach, and Oceano.

1 9. Imported Water – Water within the Basin, originating outside the Basin
2 that absent human intervention would not recharge or be used in the Basin.

3 10. Lopez Project – Lopez Dam and Reservoir located on Arroyo Grande
4 Creek, together with the associated water treatment plant, delivery pipeline and all associated
5 facilities, pursuant to State Water Resources Control Board permit No. 12814 (A-18375) and
6 pending application No. A-30826.

7 11. Lopez Water – Groundwater within the Basin derived from the operation of
8 the Lopez Project.

9 12. Management Areas – The three areas within the Basin that have sufficient
10 distinguishing characteristics to permit the water resources and facilities of each area to be
11 individually managed. The Management Areas are: the Northern Cities Management Area, the
12 Nipomo Mesa Management Area, and the Santa Maria Valley Management Area, as shown on
13 Exhibit "C".

14 13. Management Area Engineer – The individual(s) or consulting firm(s) that
15 are hired to prepare the Monitoring Plan(s) and Annual Report(s) for one or more of the
16 Management Areas.

17 14. Monitoring Parties – Those Parties responsible for conducting and funding
18 each Monitoring Program.

19 15. Monitoring Program – The data collection and analysis program to be con-
20 ducted within each Management Area sufficient to allow the preparation of the Annual Report.

21 16. Native Groundwater – Groundwater within the Basin, not derived from
22 human intervention, that replenishes the Basin through precipitation, stream channel infiltration,
23 tributary runoff, or other natural processes.

24 17. New Developed Water – Groundwater derived from human intervention
25 through programs or projects implemented after the date of this Stipulation.

26 18. New Urban Uses – Municipal and industrial use which may occur on land
27 that, as of January 1, 2005, was located: 1) within the boundaries of a municipality or its sphere of
28 influence, or within the process of inclusion in its sphere of influence; or 2) within the certificated

1 service area of a publicly regulated utility. The New Urban Use areas are identified in Exhibit
2 "D". New Urban Uses does not include the current DJ Farms development within Guadalupe
3 City limits (including Santa Barbara County APN 113-080-18, 113-080-24).

4 19. Nipomo Mesa Management Area or NMMA – That Management Area
5 shown on Exhibit "C".

6 20. Mesa Management Area Technical Group – The committee
7 formed to administer the relevant provisions of the Stipulation regarding the Nipomo Mesa
8 Management Area.

9 21. Northern Cities Management Area – That Management Area which is part
10 of Zone #3 of the San Luis Obispo County Flood Control and Water Conservation District as
11 shown on Exhibit "C".

12 22. Arroyo Grande, Pismo Beach, Grover Beach and
13 Oceano.

14 23. Northern Parties – The Northern Cities, the Overlying Owners within the
15 Northern Cities Management Area, San Luis Obispo and the SLO District.

16 24. Overlying Right – The appurtenant right of an Overlying Owner to use
17 Native Groundwater for overlying, reasonable and beneficial use.

18 25. Overlying Owner(s) – Owners of land overlying the Basin who hold an
19 Overlying Right.

20 26. Party – Each Person in this consolidated action, whether a Stipulating
21 Party or a non-Stipulating Party.

22 27. Person – Any natural person, firm, association, organization, joint venture,
23 partnership, business, trust, corporation, or public entity.

24 28. Public Hearing – A hearing after notice to all Parties and to any other
25 person legally entitled to notice.

26 29. Return Flows – Groundwater derived from use and recharge within the
27 Basin of water delivered through State Water Project facilities.

28 ///

1 40. *Twitchell Water* – Groundwater derived from operation of the Twitchell
2 Project.

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

5 **II. EXHIBITS**

6 The following Exhibits are attached to this Stipulation and incorporated herein:

7 1. *Exhibit "A"*, list identifying the Stipulating Parties and the parcels of land
8 bound by the terms of this Stipulation.

9 2. *Exhibit "B"*, Phase I and II Orders, as modified, and the
10 depicting the Santa Maria Basin.

11 3. *Exhibit "C"*, map of the Basin and boundaries of the three Management
12 Areas.

13 4. *Exhibit "D"*, map identifying those lands as of January 1, 2005: 1) within
14 the boundaries of a municipality or its sphere of influence, or within the process of inclusion in its
15 sphere of influence; or 2) within the certificated service area of a publicly regulated utility; and a
16 list of selected parcels that are nearby these boundaries which are excluded from within these
17 areas.

18 5. *Exhibit "E"*, 2002 Settlement Agreement between the Northern Cities and
19 Northern Landowners.

20 6. *Exhibit "F"*, the agreement among Santa Maria, SCWC and Guadalupe
21 regarding the Twitchell Project and the TMA.

22 7. *Exhibit "G"*, the Court's Order Concerning Electronic Service of Pleadings
23 and Electronic Posting of Discovery Documents dated June 27, 2000.

24 8. *Exhibit "H"*, the form of memorandum of agreement to be recorded.

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

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

28 ///

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

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

5 **B.**

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

9 **C.**

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

15 **D.**

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

20 **E. Rights to Storage Space**

21 The Court shall reserve jurisdiction over the use of the Storage Space, and any Party may
22 apply to the Court for the approval of a project using Storage Space. The Court must approve any
23 project using Storage Space before any Party can claim a right to stored water from that project.
24 The Stipulating Parties agree that Groundwater derived from Developed Water is exempt from
25 the Court approval requirements of this Paragraph.

26 **F. Other Surface Water Rights**

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

1 **IV. PHYSICAL SOLUTION – ALL MANAGEMENT AREAS**

2 **A. Authority**

3 Pursuant to Article X, section 2 of the California Constitution, the Parties
4 agree that the Court has the authority to enter a judgment and physical solution containing the
5 terms and conditions of this Stipulation. Unless the Court imposes this physical solution, poten-
6 tial changes in water use could affect Basin adequacy and integrity. The Declaration of Rights is
7 a component of this physical solution.

8 **B. Purposes and Objectives**

9 The terms and conditions of this Stipulation are intended to impose a physical solution
10 establishing a legal and practical means for ensuring the Basin's long-term sustainability. This
11 physical solution governs Groundwater, SWP Water and Storage Space, and is intended to ensure
12 that the Basin continues to be capable of supporting all existing and future reasonable and
13 beneficial uses. This physical solution is: 1) a fair and equitable basis for the allocation of water
14 rights in the Basin; 2) in furtherance of the mandates of the State Constitution and the water
15 policy of the State of California; and 3) a remedy that gives due consideration to applicable
16 common law rights and priorities to use Groundwater and Storage Space, substantially
17 impairing any such right.

18 **C. Basin Management Areas**

19 Development and use of Groundwater, SWP Water and Storage Space have historically
20 been financed and managed separately in three Management Areas. For example, only the
21 Northern Parties have paid for, managed, and benefited from the Lopez Project; whereas only
22 Santa Maria Valley parties have paid for, managed, and benefited from the Twitchell Project. In
23 contrast, the Nipomo Mesa parties have not been involved in the funding or management of either
24 the Twitchell or Lopez Projects.

25 The Stipulating Parties agree that Groundwater, SWP Water and Storage Space can be
26 more efficiently allocated and managed in three Management Areas, given the physical, geo-
27 graphical, political, economic, and historic conditions. The three Management Areas, as shown
28 on Exhibit "C," are as follows: Northern Cities Management Area; Nipomo Mesa Management

1 Area; and Santa Maria Valley Management Area. The Stipulating Parties intend that manage-
2 ment through three Management Areas will preserve the Basin's integrity.

3 **D. Groundwater Monitoring**

4 1. Monitoring Program. A Monitoring Program shall be established in each
5 of the three Management Areas to collect and analyze data regarding water supply and demand
6 conditions. Data collection and monitoring shall be sufficient to determine land and water uses in
7 the Basin, sources of supply to meet those uses, groundwater conditions including groundwater
8 levels and quality, the amount and disposition of Developed Water supplies, and the amount and
9 disposition of any other sources of water supply in the Basin. The Northern Cities Management
10 Area shall not be required to include in its Monitoring Program or Annual Reports quantification
11 of groundwater recharge from the Lopez Project or storm water percolation ponds, unless the
12 Court orders inclusion of this information.

13 Within one hundred and eighty days after entry of judgment, representatives of the Moni-
14 toring Parties from each Management Area will present to the Court for its approval their
15 proposed Monitoring Program. The Management Area Engineers shall freely share available well
16 data, groundwater models, and other products and tools utilized in monitoring and analysis of
17 conditions in the three Management Areas, consistent with the confidentiality provisions of this
18 Stipulation.

19 Absent a Court order to the contrary, all Stipulating Parties shall make available relevant
20 information regarding groundwater elevations and water quality data necessary to implement the
21 Monitoring Program approved for their respective Management Area. The Monitoring Parties
22 shall coordinate with the Stipulating Parties to obtain any needed data on reasonable terms and
23 conditions. Metering may only be imposed on Stipulating Parties upon a Court order following a
24 showing that such data is necessary to monitor groundwater conditions in the Basin, and in the
25 case of an Overlying Owner, that Overlying Owner has failed to provide information comparable
26 to that provided by other Overlying Owners. The confidentiality of well data from individual
27 owners and operators will be preserved, absent a Court order or written consent.

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2. Monitoring Parties. The Monitoring Parties are as follows:

- (a) Santa Maria Valley Management Area – The Twitchell Management Authority.
- (b) Northern Cities Management Area – The Northern Cities.
- (c) Nipomo Mesa Management Area – The NMMA Technical Group.

3. Annual Reports. Within one hundred and twenty days after each Year, the Management Area Engineers will file an Annual Report with the Court. The Annual Report will summarize the results of the Monitoring Program, changes in groundwater supplies, and any threats to Groundwater supplies. The Annual Report shall also include a tabulation of Management Area water use, including Imported Water availability and use, Return Flow entitlement and use, other Developed Water availability and use, and Groundwater use. Any Stipulating Party may object to the Monitoring Program, the reported results, or the Annual Report by motion.

4. Management Area Engineer. The Monitoring Parties may hire individuals or consulting firms to assist in the preparation of the Monitoring Programs and the Annual Reports. Except as provided below for the Santa Maria Valley Management Area, the Monitoring Parties, in their sole discretion, shall select, retain and replace the Management Area Engineer.

E. New Developed Water

- 1. Stipulating Parties in each Management Area may prepare and implement supplies.
- 2. The Stipulating Parties that pay, or otherwise provide consideration, for New Developed Water are entitled to use it to the extent the New Developed Water augments the water supplies in that Management Area. If more than one Stipulating Party finances or participates in generating New Developed Water, rights to the supply of New Developed Water shall be proportional to each Stipulating Party’s financial contribution or other consideration, or as otherwise mutually agreed to by the participating Stipulating Parties. This paragraph does not apply to Return Flows.

///

1 3. The Stipulating Parties who desire to claim New Developed Water supplies
2 must bring a motion, and obtain an order from the Court, quantifying and allocating the rights to
3 the New Developed Water, before they have the prior right to the New Developed Water.

4 **F. Severe Water Shortage Response**

5 This physical solution sets forth a Severe Water Shortage Plan for each Management Area
6 which is intended to provide an effective response to Severe Water Shortage Conditions that may
7 develop within each or all of the Management Areas. The specific Severe Water Shortage Plans
8 for each Management Area are incorporated herein and made a part of the physical solution.

9 **V. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO SANTA MARIA VALLEY**
10 **MANAGEMENT AREA**

11 As supplemented by the provisions of this Stipulation that apply to all Management Areas,
12 the following terms govern rights to Groundwater, SWP Water and Storage Space in the Santa
13 Maria Valley Management Area.

14 **A. Water Rights to Sources of Supply**

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

19 2. Appropriative Rights. The Parties listed in Exhibit "A" are the owners of
20 Appropriative Rights exercised in the Santa Maria Valley Management Area. Each Appropriative
21 Right is limited to Native Groundwater that is surplus to reasonable and beneficial uses of the
22 Stipulating Parties that are Overlying Owners in the Santa Maria Valley Management Area. New
23 appropriative uses shall be subordinate to existing Appropriative Rights and shall be prioritized
24 on a first in time, first in right basis.

25 3. Developed Water. The Stipulating Parties owning Developed Water have
26 the right to its reasonable and beneficial use, subject only to the Severe Water Shortage Plan. On
27 an annual basis, the Stipulating Parties shall have the right to the reasonable and beneficial use of
28 Developed Water that is surplus to the reasonable and beneficial uses of the owners of that

1 Developed Water. The right to use Developed Water is a right to use commingled Groundwater
2 and is not limited to the corpus of that water.

3 (a) New Developed Water. The ownership and use of New Developed
4 Water shall be subject to Court order.

5 (b) Twitchell Water.

6 (i) *Amount*. The Twitchell Project annually provides a variable
7 amount of Developed Water that augments the Groundwater in the Santa Maria Valley Manage-
8 ment Area. Twitchell Yield is thirty-two thousand acre-feet per year ("afy").

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

12 a. The Twitchell Yield allocated to Santa Maria,
13 SCWC and Guadalupe is suballocated pursuant to the agreement among Santa Maria, SCWC and
14 Guadalupe, as attached and incorporated herein as Exhibit "F".

15 b. The Twitchell Yield allocated to the Overlying
16 Owners who are Stipulating Parties within the District shall be equally allocated to each acre of
17 land within the District owned by these Stipulating Parties. Concurrently with the execution of
18 this Stipulation, each of these Stipulating Parties shall report their acreage of overlying land
19 within the District on a parcel specific basis. Within one hundred and twenty days of the effec-
20 tive date of this Stipulation, the Management Area Engineer shall create a list of all the Stipu-
21 lating Parties and their respective allocation of the Twitchell Yield.

22 (iii) *Recapture of Twitchell Yield*. The right to use Twitchell
23 Yield is a right to use commingled Groundwater and is not limited to the corpus of that water.

24 (iv) *Transfer of Twitchell Yield*. Twitchell Yield may be trans-
25 ferred, temporarily or permanently, only between Stipulating Parties and the transfer market shall
26 be as open and competitive as practical. A memorandum of agreement summarizing each transfer
27 shall be filed with the Court and provided to the TMA. Any such memorandum of agreement
28 shall state the Parties to the transfer, the amount of Twitchell Yield transferred, the price per acre-

1 foot, and the Party responsible for the financial obligation associated with the Twitchell Yield.

2 (v) *Carryover.* Any portion of Twitchell Yield that is not used
3 in a given Year shall not be carried over into the following Year.

4 (c) State Water Project Water.

5 (i) *Import and Use of State Water Project Water.* Santa Maria,
6 SCWC and Guadalupe all have SWP Contracts. Santa Maria will import and use within the Santa
7 Maria Valley Management Area not less than 10,000 acre-feet each Year of Available SWP
8 Water, or the full amount of Available SWP Water if the amount physically available is less than
9 10,000 acre-feet in a given Year under Santa Maria's SWP Contract. Guadalupe will import and
10 use within the Santa Maria Valley Management Area a minimum of 75% of its Available SWP
11 Water. SCWC will import and use within the Basin all its Available SWP Water. Santa Maria,
12 SCWC and Guadalupe will not voluntarily relinquish or terminate their current SWP Contracts,
13 and shall seek renewal of these SWP Contracts.

14 (ii) *Return Flows.*

15 a. *Fixed Amount.* The Return Flows available to each
16 Importer is fixed based on a percentage of the annual amount of SWP Water the Importer uses
17 within the Basin. The fixed percentage for each importer is as follows: (a) Santa Maria 65%; (b)
18 SCWC 45%; and (c) Guadalupe 45%. The percentage provided to SCWC and Guadalupe shall
19 be adjusted through a Court order if: a) either entity increases its use of water imported into the
20 Basin, b) the applicable method of wastewater treatment and discharge to the Basin is altered, or
21 c) good cause is shown.

22 b. *Recapture.* The right to use Return Flows does not
23 attach to the corpus of SWP water deliveries or the treated SWP wastewater discharged into the
24 Basin but is a right to use the commingled Groundwater. The Importer's right to Return Flows is
25 assignable in whole or in part, subject to necessary accounting.

26 c. *Quantification of Return Flows.* Return Flows equal
27 the total amount of SWP Water used by the Importer in the prior five Years, divided by five, and
28 then multiplied by the Importer's percentage as provided in Paragraph V(A)(3)(c)(ii)(a) above.

1 d. Carryover. Any portion of Return Flows that is not
2 used in a given Year shall not be carried over into the following Year.

3 **B. Monitoring and Management**

4 1. Current Groundwater and SWP Water sup-
5 plies are sustaining existing water uses. Changes in land and water use and demographic con-
6 ditions can be expected to occur, possibly resulting in changes in water supply or demand
7 requirements.

8 2. ing. Monitoring and reporting of changes in land and
9 water use and demographic conditions are necessary to ensure that water supplies continue to be
10 sufficient to support water uses.

11 3. Monitoring Program.

12 (a) Annual Report: Content and Processing.

13 The Annual Report shall include an analysis of the relationship between projected water demands
14 and projected water supplies.

15 (i) The Annual Report shall be prepared and signed by the
16 Management Area Engineer, and shall be simultaneously submitted to the Court and the TMA.

17 (ii) Within forty-five days of submission, the TMA shall hold a
18 noticed public hearing to take comments on and consider for adoption the Annual Report. No
19 later than forty-five days from the date of the public hearing, the TMA shall submit to the Court
20 its recommendations regarding the Annual Report.

21 (iii) Within one hundred and twenty days of the date of the
22 submission of the Annual Report to the Court, it shall conduct a noticed hearing on the Annual
23 Report. Any Party may submit comments on the Annual Report. After the hearing, the Court
24 shall accept the Annual Report or direct its modification.

25 (b) Management Area Engineer

26 (i) Absent the unanimous consent of the TMA, the Manage-
27 ment Area Engineer shall not concurrently be employed by any Party holding rights to use
28 Groundwater in the Santa Maria Valley Management Area.

1 (ii) The Management Area Engineer shall initially be the engin-
2 eering firm of Luhdorff & Scalmanini. Luhdorff & Scalmanini shall be the Management Area
3 Engineer for a minimum of the shorter of five years from the date of this Stipulation or the date
4 upon which Mr. Joseph Scalmanini discontinues full time work for that firm.

5 (iii) The TMA shall employ the following process to replace the
6 Management Area Engineer:

7 a. The TMA shall solicit candidates for Management
8 Area Engineer through a public process. All submissions and candidate materials shall be avail-
9 able to any Party upon request. The TMA shall conduct its interview through a public process to
10 the extent practical, and include District and Overlying Owner representatives in the candidate
11 review process.

12 b. Once a short list of candidates (less than five) for
13 Management Area Engineer is obtained, the TMA shall hold a noticed public hearing to take
14 comments on and consider the candidates for Management Area Engineer. The TMA shall make
15 a reasonable effort to select the Management Area Engineer with a unanimous vote. If the TMA
16 unanimously endorses a candidate, that nominee shall be recommended to the Court. Otherwise,
17 the short list of candidates shall be submitted.

18 c. The Court shall appoint the Management Area
19 Engineer following a noticed hearing.

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

24 **C. Response to Varying Conditions**

25 1. Early Response to Avoid Severe Water Shortage Conditions. If the Man-
26 agement Area Engineer determines that projected demands are expected to materially exceed
27 projected water supplies, then the Management Area Engineer may recommend programs and
28 projects to augment the Management Area's water supplies. The Stipulating Parties will collabo-

1 rate on a response based upon current conditions, but absent Severe Water Shortage Conditions,
2 implementation of programs and projects will not be mandated.

3 The Stipulating Parties may voluntarily participate in any recommended program or
4 project, either through financial or other contributions. The Stipulating Parties that contribute to
5 such a program or project shall have a priority to the water supplies generated by that program or
6 project with Court approval. The Stipulating Parties agree to aggressively pursue New
7 Developed Water sources, including necessary funding.

8 2. Severe W and Response.

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

16 (b) Response.

17 (i) If the Management Area Engineer determines that Severe
18 Water Shortage Conditions exist within the Santa Maria Valley Management Area, the Manage-
19 ment Area Engineer shall file and serve, as part of its Annual Report, findings and recommen-
20 dations to alleviate such shortage conditions or the adverse effects caused by such water shortage.

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

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1 (iii) The Court may also order Stipulating Parties to address
2 specific adverse effects caused by the Severe Water Shortage Conditions. The responses may
3 include, but are not limited to: (a) measures recommended in the Annual Report and the related
4 Court proceedings; and (b) other measures intended to address localized problems in the Santa
5 Maria Valley Management Area directly related to the Severe Water Shortage Conditions.

6 (iv) The Court may adjust the Groundwater use limitations
7 imposed on any Stipulating Party(ies) who implement programs or projects providing additional
8 water supplies within the Santa Maria Valley Management Area.

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

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

20 **D. Management and Administration of the Twitchell Project**

21 1. Operational Parameters. All Twitchell Project operations (operation and
22 maintenance and capital projects) will be performed consistent with the following parameters
23 (Operational Parameters):

24 (a) Maximize recharge of the Santa Maria Valley Management Area
25 from Twitchell Water, including without limitation, the avoidance of impacts on recharge
26 resulting from ongoing accumulation of silt to the maximum extent practical.

27 (b) Operate the Twitchell Project in accordance with the requirements
28 of applicable law including, without limitation, the requirements of the Bureau of Reclamation

1 and Army Corps of Engineers.

2 (c) Operate the Twitchell Project in accordance with industry standards
3 and best management practices.

4 2. Twitchell Project Manual.

5 (a) The TMA will hire and pay for a professional engineering con-
6 sulting firm with expertise in dam and reservoir operations and maintenance, acceptable to the
7 District and the TMA, to develop an integrated operation and maintenance procedure manual
8 ("Twitchell Project Manual") and provide recommendations for capital and maintenance projects
9 that are consistent with the Operational Parameters.

10 (b) The District shall hold one or more public hearings to solicit input
11 regarding the content of the Twitchell Project Manual.

12 (c) Within eighteen months of entry of the judgment, the TMA and the
13 District shall adopt a final Twitchell Project Manual.

14 (d) Any disagreement between the District and the TMA regarding the
15 content of the final Twitchell Project Manual shall be presented for Court review and determina-
16 tion pursuant to the judicial review provisions provided in this Stipulation.

17 (e) The District will exercise its discretionary authority to conduct all
18 its operation and maintenance activities for the Twitchell Project in accordance with the Twitchell
19 Project Manual.

20 3. Twitchell Project Funding.

21 (a) District will maintain its current operation and maintenance (O&M)
22 assessments. These funds will be used for District staff salaries, property, equipment, rent,
23 expenses, and other day-to-day operations, and will be expended consistent with the Twitchell
24 Project Manual to the extent it is applicable.

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

1 ment Extraordinary Project Operations.

2 (c) Consistent with the provisions of this Paragraph V(D), the District
3 and the TMA shall be responsible for ensuring the ongoing operational integrity of the Twitchell
4 Project and the maintenance of the Twitchell Yield. The Stipulating Parties expect that this
5 ongoing responsibility may involve significant expenditures. Within 120 days of the effective
6 date of this Stipulation, and annually thereafter, the Twitchell Participants shall establish an
7 operating budget for the TMA to fund its responsibilities set forth in this Stipulation. For the first
8 five years following the PUC approval as provided below, the TMA's annual budget shall be
9 established at an amount between \$500,000 to \$700,000. Following the initial budgeting period,
10 the TMA shall set its budget in three- to five-year increments, as it deems necessary to meet its
11 obligations to preserve the Twitchell Yield. Any unused revenues shall be segregated into a
12 reserve account, for future funding needs of the Twitchell Project. The Stipulating Parties agree
13 to cooperate and coordinate their efforts to enable the TMA to fulfill its responsibilities as pro-
14 vided in this Stipulation.

15 4. Twitchell Management Authority.

16 (a) The TMA shall be comprised of one representative of each of the
17 following parties: Santa Maria, Guadalupe, Southern California Water Company, the District, and
18 Overlying Landowners holding rights to Twitchell Yield.

19 (b) Only those parties holding an allocation of Twitchell Yield shall be
20 voting members of the TMA. Voting shall be based on each party's proportionate allocation of
21 Twitchell Yield.

22 (c) The TMA shall be responsible for all the Extraordinary Project
23 Operations.

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

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1 (e) Upon the development of a proposal for a Capital Improvement
2 Project, the TMA shall, in cooperation with the District, hold one or more public hearings to
3 solicit input.

4 (f) Following the public hearing process, the TMA may vote on
5 whether to implement the Capital Improvement Project.

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

9 (h) The District shall assume operation and maintenance responsibility
10 for any TMA sponsored Capital Improvement Project to the extent practical within the District's
11 day-to-day operations.

12 5. . . . The TMA or the District shall provide advance
13 notice to the Court and all Parties of the initiation of any regulatory proceeding relating to the
14 Twitchell Project.

15 6. Existing Contracts. The Twitchell Reservoir Project will continue to be
16 governed by and subject to the terms and conditions of the December 1955 agreement between
17 the District and the Santa Barbara County Water Agency and nothing in this Stipulation is
18 intended to modify the rights or obligations provided in that agreement. To the extent that the
19 approval of Santa Barbara County Water Agency or the United States Bureau of Reclamation is
20 required in connection with the implementation of this Stipulation, the Stipulating Parties agree to
21 work cooperatively to obtain such approval(s).

22 **E. New Urban Uses – Santa Maria Valley Management Area**

23 1. New Urban Uses shall obtain water service from the local public water
24 supplier. The local public water supplier shall provide water service on a reasonable and non-
25 discriminatory basis.

26 2. New municipal and industrial uses on land adjacent to or within one-
27 quarter mile of the boundary line depicted in Exhibit D shall comply with any applicable Cor-
28 porations Code provisions and negotiate in good faith to obtain water service from the local

1 public water supplier, before forming a mutual water company to provide water service.

2 3. No modification of land use authority. This Stipulation does not modify
3 the authority of the entity holding land use approval authority over the proposed New Urban
4 Uses.

5 4. New Urban Uses shall provide a source of supplemental water to offset the
6 water demand associated with that development. For the purposes of this section, supplemental
7 water shall include all sources of Developed Water, except: i) Twitchell Water, ii) storm water
8 percolation ponds existing as of the date of entry of the judgment, or iii) Overlying Owners' right
9 to use of surplus Developed Water.

10 **VI. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NIPOMO MESA MAN-**
11 **AGEMENT AREA**

12 As supplemented by the provisions of this Stipulation that apply to all Management Areas,
13 the following terms shall apply to the Nipomo Mesa Management Area.

14 **A. Supplemental Water**

15 1. MOU. NCSD has entered into a Memorandum of Understanding
16 ("MOU") with Santa Maria which contemplates the wholesale purchase and transmission from
17 Santa Maria to the NMMA of a certain amount of water each Year (the "Nipomo Supplemental
18 Water"). All water delivered pursuant to the MOU for delivery by NCSD to its ratepayers shall
19 be applied within the NCSD or the NCSD's sphere of influence as it exists at the time of the
20 transmission of that water.

21 2. The NCSD agrees to purchase and transmit to the NMMA a minimum of
22 2,500 acre-feet of Nipomo Supplemental Water each Year. However, the NMMA Technical
23 Group may require NCSD in any given Year to purchase and transmit to the NMMA an amount
24 in excess of 2,500 acre-feet and up to the maximum amount of Nipomo Supplemental Water
25 which the NCSD is entitled to receive under the MOU if the Technical Group concludes that such
26 an amount is necessary to protect or sustain Groundwater supplies in the NMMA. The NMMA
27 Technical Group also may periodically reduce the required amount of Nipomo Supplemental
28 Water used in the NMMA so long as it finds that groundwater supplies in the NMMA are not

1 endangered in any way or to any degree whatsoever by such a reduction.

2 3. The Stipulating Parties agree to support (and, conversely, not to oppose in
3 any way or to encourage or assist any other Person or party in opposing or challenging) the imple-
4 mentation of the MOU, which includes environmental and regulatory permits and approvals, the
5 approval of a wholesale water supply agreement between Santa Maria and NCS D, and the
6 alignment and construction of a pipeline and related infrastructure necessary to deliver the
7 Nipomo Supplemental Water from Santa Maria to the NMMA ("Nipomo Supplemental Water
8 Project"). ConocoPhillips retains the right to object to or provide input on the alignment of any
9 pipelines associated with the Nipomo Supplemental Water Project if they might interfere with the
10 location of existing ConocoPhillips pipelines. The Stipulating Parties retain their rights to be
11 compensated for any interest or property acquired in implementing the Nipomo Supplemental
12 Water Project.

13 4. NCS D and Santa Maria shall employ their best efforts to timely implement
14 the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for
15 administrative actions and in the California Environmental Quality Act.

16 5. The enforcement of the provisions of Paragraph VI(D) below is condi-
17 tioned upon the full implementation of the Nipomo Supplemental Water Project, including the
18 Yearly use of at least 2,500 acre-feet of Nipomo Supplemental Water (subject to the provisions of
19 Paragraph VI(A)(2) above) within the NMMA. In the event that Potentially Severe Water
20 Shortage Conditions or Severe Water Shortage Conditions are triggered as referenced in Para-
21 graph VI(D) before Nipomo Supplemental Water is used in the NMMA, NCS D, SCWC,
22 Woodlands and RWC agree to develop a well management plan that is acceptable to the NMMA
23 Technical Group, and which may include such steps as imposing conservation measures, seeking
24 sources of supplemental water to serve new customers, and declaring or obtaining approval to
25 declare a moratorium on the granting of further intent to serve or will serve letters. In the event
26 that it becomes apparent that the Nipomo Supplemental Water will not be fully capable of being
27 delivered, any Stipulating Party may apply to the Court, pursuant to a noticed motion, for appro-
28 priate modifications to this portion of the Stipulation and the judgment entered based upon the

1 terms and conditions of this Stipulation, including declaring this Paragraph VI to be null and void,
2 and of no legal or binding effect.

3 6. Once the Nipomo Supplemental Water is capable of being delivered, those
4 certain Stipulating Parties listed below shall purchase the following portions of the Nipomo
5 Supplemental Water Yearly:

6 NCS D - 66.68%

7 Woodlands Mutual Water Company - 16.66%

8 SCWC - 8.33%

9 RWC - 8.33%

10 B. - ■

11 1. ConocoPhillips and its successors-in-interest shall have the right to the
12 reasonable and beneficial use of Groundwater on the property it owns as of the date of this Stipu-
13 lation located in the NMMA ("ConocoPhillips Property") without limitation, except in the event
14 the mandatory action trigger point (Severe Water Shortage conditions) described in Paragraph
15 VI(D) (2) below is reached. Further, any public water supplier which provides water service to
16 the ConocoPhillips Property may exercise that right subject to the limitation described in Para-
17 graph VI(D)(2).

18 2. Overlying Owners that are Stipulating Parties that own land located in the
19 NMMA as of the date of this Stipulation shall have the right to the reasonable and beneficial use
20 of Groundwater on their property within the NMMA without limitation, except in the event the
21 mandatory action trigger point (Severe Water Shortage Conditions) described in Paragraph
22 VI(D)(2) below is reached.

23 3. The Woodlands Mutual Water Company shall not be subject to restriction
24 in its reasonable and beneficial use of Groundwater, provided it is concurrently using or has made
25 arrangements for other NMMA parties to NMMA, the Nipomo Supplemental
26 Water allocated to the Woodlands in Paragraph VI(A)(5). Otherwise, the Woodlands Mutual
27 Water Company shall be subject to reductions equivalent to those imposed on NCS D, RWC and
28 SCWC, as provided in Paragraph VI(D)(1-2).

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2 **C. NMMA Technical Group**

3 1. The NMMA Technical Group shall include representatives appointed by
4 NCSD, SCWC, ConocoPhillips, Woodlands Mutual Water Company and an agricultural Over-
5 lying Owner who is also a Stipulating Party.

6 2. The NMMA Technical Group shall develop a Monitoring Program for the
7 NMMA ("NMMA Monitoring Program"), which shall be consistent with the Monitoring
8 Program described in Paragraph IV(D). The NMMA Monitoring Program shall also include the
9 setting of well elevation and water quality criteria that trigger the responses set forth in Paragraph
10 D below. The Stipulating Parties shall provide monitoring and other production data to the
11 NMMA Technical Group at no charge, to the extent that such data has been generated and is
12 readily available. The NMMA Technical Group shall adopt rules and regulations concerning
13 measuring devices and production reports that are, to the extent feasible, consistent with the
14 Monitoring Programs for other Management Areas. If the NMMA Technical Group is unable to
15 agree on any aspect of the NMMA Monitoring Program, the matter may be resolved by the Court
16 pursuant to a noticed motion.

17 3. The NMMA Technical Group meetings shall be open to any Stipulating
18 Party. NMMA Technical Group files and records shall be available to any Stipulating Party upon
19 written request. Notices of the NMMA Technical Group meetings, as well as all its final work
20 product (documents) shall be posted to groups.yahoo.com/group/NipomoCommunity/

21 4. The NMMA Technical Group functions shall be funded by contribution
22 levels to be negotiated by NCSD, SCWC, RWC, ConocoPhillips, and Woodlands Mutual Water
23 Company. In-lieu contributions through engineering services may be provided, subject to agree-
24 ment by those parties. The budget of the NMMA Technical Group shall not exceed \$75,000 per
25 year without prior approval of the Court pursuant to a noticed motion.

26 5. Any final NMMA Technical Group actions shall be subject to *de novo*
27 Court review by motion.

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2 **D. Potentially Severe and Severe Water Shortage Conditions**

3 1. Caution trigger point (Potentially Severe Water Shortage Conditions)

4 (a) Characteristics. The NMMA Technical Group shall develop
5 criteria for declaring the existence of Potentially Severe Water Shortage Conditions. These
6 criteria shall be approved by the Court and entered as a modification to this Stipulation or the
7 judgment to be entered based upon this Stipulation. Such criteria shall be designed to reflect that
8 water levels beneath the NMMA as a whole are at a point at which voluntary conservation
9 measures, augmentation of supply, or other steps may be desirable or necessary to avoid further
10 declines in water levels.

11 (b) Responses. If the NMMA Technical Group determines that Potentially Severe Water Shortage Conditions have been reached, the Stipulating Parties shall coordinate their efforts to implement voluntary conservation measures, adopt programs to increase the supply of Nipomo Supplemental Water if available, use within the NMMA other sources of Developed Water or New Developed Water, or implement other measures to reduce Groundwater use.

17 2. Mandatory action trigger point (Severe Water Shortage Conditions)

18 (a) Characteristics. The NMMA Technical Group shall develop the
19 criteria for declaring that the lowest historic water levels beneath the NMMA as a whole have
20 been reached or that conditions constituting seawater intrusion have been reached. These criteria
21 shall be approved by the Court and entered as a modification to this Stipulation or the judgment to
22 be entered based upon this Stipulation.

23 (b) Responses. As a first response, subparagraphs (i) through (iii) shall
24 be imposed concurrently upon order of the Court. The Court may also order the Stipulating
25 Parties to implement all or some portion of the additional responses provided in subparagraph (iv)
26 below.

27 (i) For Overlying Owners other than Woodlands Mutual Water
28 Company and ConocoPhillips, a reduction in the use of Groundwater to no more than 110% of

1 the highest pooled amount previously collectively used by those Stipulating Parties in a Year,
2 prorated for any partial Year in which implementation shall occur, unless one or more of those
3 Stipulating Parties agrees to forego production for consideration received. Such forbearance shall
4 cause an equivalent reduction in the pooled allowance. The base Year from which the calculation
5 of any reduction is to be made may include any prior single Year up to the Year in which the
6 Nipomo Supplemental Water is transmitted. The method of reducing pooled production to 110%
7 is to be prescribed by the NMMA Technical Group and approved by the Court. The quantifica-
8 tion of the pooled amount pursuant to this subsection shall be determined at the time the manda-
9 tory action trigger point (Severe Water Shortage Conditions) described in Paragraph VI(D)(2) is
10 reached. The NMMA Technical Group shall determine a technically responsible and consistent
11 method to determine the pooled amount and any individual's contribution to the pooled amount.
12 If the NMMA Technical Group cannot agree upon a technically responsible and consistent
13 method to determine the pooled amount, the matter may be determined by the Court pursuant to a
14 noticed motion.

15 (ii) ConocoPhillips shall reduce its Yearly Groundwater use to
16 no more than 110% of the highest amount it previously used in a single Year, unless it agrees in
17 writing to use less Groundwater for consideration received. The base Year from which the calcu-
18 lation of any reduction is to be made may include any prior single Year up to the Year in which
19 the Nipomo Supplemental Water is transmitted. ConocoPhillips shall have discretion in deter-
20 mining how reduction of its Groundwater use is achieved.

21 (iii) NCSD, RWC, SCWC, and Woodlands (if applicable as
22 provided in Paragraph VI(B)(3) above) shall implement those mandatory conservation measures
23 prescribed by the NMMA Technical Group and approved by the Court.

24 (iv) If the Court finds that Management Area conditions have
25 deteriorated since it first found Severe Water Shortage Conditions, the Court may impose further
26 mandatory limitations on Groundwater use by NCSD, SCWC, RWC and the Woodlands. Manda-
27 tory measures designed to reduce water consumption, such as water reductions, water restrictions,
28 and rate increases for the purveyors, shall be considered.

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2 (v) During Severe Water Shortage Conditions, the Stipulating
3 Parties may make agreements for temporary transfer of rights to pump Native Groundwater,
4 voluntary fallowing, or the implementation of extraordinary conservation measures. Transfer of
5 Native Groundwater must benefit the Management Area and be approved by the Court.

6 **E. New Urban Uses**

7 1. Within the sphere of influence or service area. New Urban Uses shall
8 obtain water service from the local public water supplier. The local public water supplier shall
9 provide water service on a reasonable and non-discriminatory basis.

10 2. Outside the sphere of influence or service area. New municipal and indus-
11 trial uses on land adjacent to or within one quarter mile of the boundary line depicted in Exhibit D
12 shall comply with any applicable Corporations Code provisions, including good faith negotiations
13 with the local water purveyor(s), prior to forming a mutual water company to provide water
14 service.

15 3. The ConocoPhillips property, owned as of the date of this Stipulation and
16 located within the NMMA, is not in the sphere of influence or service area, nor is it in the process
17 of being included in the sphere of influence, of a municipality or within the certificated service
18 area of a publicly regulated utility as of the date of this Stipulation, nor is it adjacent to or in close
19 proximity to the sphere of influence of a municipality or the certificated service area of a publicly
20 regulated utility as of the date of this Stipulation, as those terms are used in Paragraphs VI(E)(1
21 and 2).

22 4. No modification of land use authority. This Stipulation does not modify the
23 authority of the entity holding land use approval authority over the proposed New Urban Uses.

24 5. New Urban Uses as provided in Paragraph VI(E)(1) above and new muni-
25 cipal and industrial uses as provided in Paragraph VI(E)(2) above shall provide a source of
26 supplemental water, or a water resource development fee, to offset the water demand associated
27 with that development. For the purposes of this Paragraph, supplemental water shall include all
28 sources of Developed Water or New Developed Water.

1 **VII. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NORTHERN CITIES**
2 **MANAGEMENT AREA**

3 These terms, supplemented by the provisions of this Stipulation that apply to all
4 Management Areas, govern water rights and resources in the Northern Cities Management Area.

5 1. Groundwater Monitoring. Groundwater monitoring in the Northern Cities
6 Management Area will be conducted by the Northern Cities in the manner described above.

7 2. Lopez Project. The Lopez Project will continue to be managed by the SLO
8 District. The Northern Cities and Landowners will continue to bear costs of the Lopez Reservoir
9 and no costs of the Twitchell Reservoir.

10 3. Independent Management Per Settlement Agreement.

11 (a) Existing Groundwater, SWP Water and Storage Space in the
12 Northern Cities Management Area will continue to be allocated and independently managed by
13 the Northern Parties in accordance with the Northern Cities and Northern Landowners' 2002
14 Settlement Agreement (Exhibit "E") for the purpose of preserving the long-term integrity of water
15 supplies in the Northern Cities Management Area. That Settlement Agreement initially allocates
16 57% of the safe yield of groundwater in Zone 3 to the farmers and 43% to the cities; and it
17 provides *inter alia* that any increase or decrease in the safe yield will be shared by the cities and
18 landowners on a pro rata basis. That Settlement Agreement is reaffirmed as part of this Stipula-
19 tion and its terms are incorporated into this Stipulation, except that the provisions regarding con-
20 tinuing jurisdiction (§ 4), groundwater monitoring, reporting, and the Technical Oversight
21 Committee (§§ 7-20) are canceled and superseded by the provisions of this Stipulation dealing
22 with those issues.

23 (b) Without the written agreement of each of the Northern Cities, no
24 party other than Northern Parties shall have any right to:

25 (i) pump, store, or use Groundwater or surface water within the
26 Northern Cities Management Area; or

27 (ii) limit or interfere with the pumping, storage, management or
28 usage of Groundwater or surface water by the Northern Parties within the Northern Cities

1 Management Area.

2 (c) For drought protection, conservation, or other management pur-
3 poses, the Northern Parties may engage in contractual transfers, leases, licenses, or sales of any of
4 their water rights, including voluntary fallowing programs. However, no Groundwater produced
5 within the Northern Cities Management Area may be transported outside of the Northern Cities
6 Management Area without the written agreement of each of the Northern Cities.

7 4. Current and future deliveries of water within the spheres of influence of the
8 Northern Cities as they exist on January 1, 2005 shall be considered existing uses and within the
9 Northern Cities Management Area.

10 **VIII. INJUNCTION - ALL MANAGEMENT AREAS**

11 **A. Use Only Pursuant to Stipulation**

12 Each and every Stipulating Party, their officers, agents, employees, successors and
13 assigns, are enjoined and restrained from exercising the rights and obligations provided through
14 this Stipulation in a manner inconsistent with the express provisions of this Stipulation.

15 **B. Injunction Against Transportation From the Basin**

16 Except upon further order of the Court, each and every Stipulating Party and its officers,
17 agents, employees, successors and assigns, is enjoined and restrained from transporting Ground-
18 water to areas outside the Basin, except for those uses in existence as of the date of this Stipula-
19 tion; provided, however, that Groundwater may be delivered for use outside the Basin as long as
20 the wastewater generated by that use of water is discharged within the Basin, or agricultural
21 return flows resulting from that use return to the Basin.

22 **C. No Third Party Beneficiaries**

23 This Stipulation is intended to benefit the Stipulating Parties and no other Parties. Only a
24 Stipulating Party may enforce the terms of this Stipulation or assert a right to any benefits of, or
25 enforce any obligations contained in this Stipulation.

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B. Noticed Motion

Any party that seeks the Court's exercise of reserved jurisdiction shall file a noticed motion with the Court. Any noticed motion shall be made pursuant to the Court's Order Concerning Electronic Service of Pleadings and Electronic Posting of Discovery Documents dated June 27, 2000, attached and incorporated as Exhibit "G". Any request for judicial review shall be filed within sixty days of the act or omission giving rise to the claim. Upon a showing of good cause, the Court may extend the sixty-day time limitation.

C. De Novo Nature of Proceeding

The Court shall exercise *de novo* review in all proceedings. The actions or decisions of any Party, the Monitoring Parties, the TMA, or the Management Area Engineer shall have no heightened evidentiary weight in any proceedings before the Court.

D. Filing and Notice

As long as the Court's electronic filing system remains available, all Court filings shall be made pursuant to Exhibit "G". If the Court's electronic filing system is eliminated and not replaced, the Stipulating Parties shall promptly establish a substitute electronic filing system and abide by the same rules as contained in the Court's Order.

X. MISCELLANEOUS PROVISIONS – ALL MANAGEMENT AREAS

A. Unenforceable Terms

The Stipulating Parties agree that if any provision of this or the judgment entered based on this Stipulation is held to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect; provided, however, any order which invalidates, voids, deems unenforceable, or materially alters those Paragraphs enumerated in Paragraph IX(A) or any of them, shall render the entirety of the Stipulation and the judgment entered based on this Stipulation voidable and unenforceable, as to any Stipulating Party who files and serves a motion to be released from the Stipulation and the judgment based upon the Stipulation within sixty days of entry of that order, and whose motion is granted upon a showing of good cause.

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1 **B. Water Quality**

2 Nothing in the Stipulation shall be interpreted as relieving any Stipulating Party of its
3 responsibilities to comply with state or federal laws for the protection of water quality or the
4 provisions of any permits, standards, requirements, or orders promulgated thereunder.

5 **C. Duty to Cooperate**

6 The Stipulating Parties agree not to oppose, or in any way encourage or assist any other
7 party in opposing or challenging, any action, approval, or proceeding necessary to obtain
8 approval of or make effective this Stipulation or the judgment to be entered on terms consistent
9 with this Stipulation.

10 **D. Stipulating Parties Under Public Utilities Commission Regulation**

11 1. To the extent allowed by law, SCWC and RWC shall comply with this
12 Stipulation, prior to obtaining California Public Utilities Commission ("PUC") approval. If the
13 PUC fails to approve SCWC's and RWC's participation or fails to provide approval of the neces-
14 sary rate adjustments so that SCWC and RWC may meet their respective financial obligations,
15 including the participation in Developed Water projects, Monitoring Programs, TMA and as
16 otherwise provided in this Stipulation, shall render the entirety of the Stipulation and those terms
17 of any judgment based on this Stipulation invalid, void and unenforceable, as to any Stipulating
18 Party who files and serves a notice of rescission within sixty days of notice by SCWC or RWC of
19 a final PUC Order.

20 2. Any Party, or its successors or assigns, agreeing to become a new customer
21 of SCWC or RWC, or an existing customer proposing to increase its water use through a change
22 in land use requiring a discretionary land use permit or other form of land use entitlement, that
23 has not executed reservation contracts for supplemental water as specified in Exhibit F will
24 provide the following, once approved by the PUC:

25 (a) If in the Santa Maria Valley Management Area, a water resource
26 development fee as specified in Exhibit F or a source of supplemental water sufficient to offset
27 the consumptive demand associated with the new use as provided in Paragraph V(E); or

28 ///

1 (b) If in the NMMA, a water resource development fee, or a source of
2 supplemental water sufficient to offset the consumptive demand associated with the new use.

3 3. Any Person who is not engaged in a New Urban Use and who agrees to
4 become a customer of SCWC or RWC shall retain its right to contest the applicable water
5 resource development fee, should that fee ever become applicable to that Person.

6 E.

7 Each Stipulating Party shall designate the name, address and e-mail address, if any, to be
8 used for purposes of all subsequent notices and service, either by its endorsement on the Stipula-
9 tion for entry of judgment or by a separate designation to be filed within thirty days after execu-
10 tion of this Stipulation. This designation may be changed from time to time by filing a written
11 notice with the Court. Any Stipulating Party desiring to be relieved of receiving notices may file
12 a waiver of notice on a form approved by the Court. The Court shall maintain at all times a
13 current list of Parties to whom notices are to be sent and their addresses for purposes of service.
14 The Court shall also maintain a full current list of names, addresses, and e-mail addresses of all
15 Parties or their successors, as filed herein. Copies of such lists shall be available to any Person.
16 If no designation is made, a Stipulating Party's designee shall be deemed to be, in order of
17 priority: i) the Party's attorney of record; ii) if the Party does not have an attorney of record, the
18 Party itself at the address specified.

19 F. **No Loss of Rights**

20 Nothing in this Stipulation shall be interpreted to require or encourage any Stipulating
21 Party to use more water in any Year than is actually required. As between the Stipulating Parties,
22 failure to use all of the water to which a Stipulating Party is entitled hereunder shall not, no matter
23 how long continued, be deemed or constitute an abandonment or forfeiture of such Stipulating
24 Party's rights, in whole or in part.

25 G. **Intervention After Judgment**

26 Any Person who is not a Party or successor to a Party, who proposes to use Groundwater
27 or Storage Space, may seek to become a Party to the judgment through a petition for intervention.
28 The Court will consider an order confirming intervention following thirty days notice to the

1 Parties. Thereafter, if approved by the Court, such intervenor shall then be a Party bound by the
2 judgment as provided by the Court.

3 **H. Stipulation and Judgment Binding on Successors, Assigns, etc.**

4 The Stipulating Parties agree that all property owned by them within the Basin is subject
5 to this Stipulation and the judgment to be entered based upon the terms and conditions of this
6 Stipulation. This Stipulation and the judgment will be binding upon and inure to the benefit of
7 each Stipulating Party and their respective heirs, executors, administrators, trustees, successors,
8 assigns, and agents. This Stipulation and the judgment to be entered based the terms and condi-
9 tions of this Stipulation shall not bind the Stipulating Parties that cease to own property within the
10 Basin, or cease to use Groundwater. As soon as practical after the effective date of this Stipula-
11 tion, a memorandum of agreement referencing this Stipulation shall be recorded in Santa Barbara
12 and San Luis Obispo Counties by Santa Maria, in cooperation with the Northern Cities and
13 SCWC. The document to be recorded shall be in the format provided in Exhibit "H".

14 **I. Costs**

15 No Stipulating Party shall recover any costs or attorneys fees from another
16 Party incurred prior to the entry of a judgment based on this Stipulation.

17 **J. Non-Stipulating Parties**

18 It is anticipated that the Court will enter a single judgment governing the rights of all
19 Parties in this matter. The Stipulating Parties enter into this Stipulation with the expectation that
20 the Court will enter, as a part of the judgment, the terms and conditions of this Stipulation. This
21 Stipulation shall not compromise, in any way, the Court's legal and equitable powers to enter a
22 single judgment that includes provisions applicable to the non-Stipulating Parties that may
23 impose differing rights and obligations than those applicable to the Stipulating Parties. As against
24 non-Stipulating Parties, each Stipulating Party expressly reserves and does not waive its right to
25 appeal any prior or subsequent ruling or order of the Court, and assert any and all claims and
26 defenses, including prescriptive claims. The Stipulating Parties agree they will not voluntarily
27 enter into a further settlement or stipulation with non-Stipulating Parties that provides those non-
28 Stipulating Parties with terms and conditions more beneficial than those provided to similarly

1 situated Stipulating Parties.

2 **K. Counterparts**

3 This Stipulation may be signed in any number of counterparts, including counterparts by
4 facsimile signature, each of which shall be deemed an original, but all of which shall together
5 constitute one and the same instrument. The original signature pages shall be filed with Court.

6 **L. Effective Date**

7 This Stipulation shall be effective when signed by the Stipulating Parties listed on Exhibit
8 "A" and accepted by the Court.

9

Party	Signature, title, and date	Parcels Subject to Stipulation
Attorney of Record	Approved as to form: By: _____ Date: _____	

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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is HATCH & PARENT, 21 E. Carrillo Street, Santa
4 Barbara, California 93101.

5 Pursuant to the Court's Order dated June 28, 2000, I, Gina Lane, did the following:

- 6 • Posted the following document at approximately 4:30 p.m. on June 30, 2005.

7 **STIPULATION (JUNE 30, 2005 VERSION)**

- 8 • Mailed a Notice of Availability to all parties (designating or defaulting to mail
9 service) on the current website's service list.

10 I am readily familiar with the firm's practice of collection and processing correspondence for
11 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day
12 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion
13 of the party served, service is presumed invalid if postal cancellation date or postage meter date is
14 more than one day after date of deposit for mailing in affidavit.

15 I declare under penalty of perjury under the laws of the State of California that the above
16 is true and correct.

17 Executed on June 30, 2005, at Santa Barbara, California.

18 _____
19 GINA M. LANE
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FILED

JAN 25 2008

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY  DEPUTY
ROWENA A. 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 785936; 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**

JUDGMENT AFTER TRIAL

This matter came on for trial in five separate phases. Following the third phase of trial, a large number of parties entered into a written stipulation dated June 30, 2005 to resolve their differences and requested that the court approve the settlement and make its terms binding on them as a part of any final judgment entered in this case. Subsequent to the execution of the stipulation by the original settling parties, a number of additional parties have agreed to be bound by the stipulation – their signatures are included in the attachments to this judgment.

1 The June 30, 2005 Stipulation is attached as Exhibit "1," and all exhibits to the
2 Stipulation are separately attached as Exhibits "1A" through "1H". The Stipulating Parties are
3 identified on Exhibit "1A." The court approves the Stipulation, orders the Stipulating Parties
4 only to comply with each and every term thereof, and incorporates the same herein as though
5 set forth in full. No non-stipulating party is bound in any way by the stipulation except as the
6 court may otherwise independently adopt as its independent judgment a term or terms that are
7 the same or similar to such term or provision of the stipulation.

8 As to all remaining parties, including those who failed to answer or otherwise appear,
9 the court heard the testimony of witnesses, considered the evidence found to be admissible by
10 the court, and heard the arguments of counsel. Good cause appearing, the court finds and
11 orders judgment as follows.

12 As used in this Judgment, the following terms shall have the meanings herein set forth:

13 Basin -- The groundwater basin described in the Phase I and II orders of the court, as
14 modified, with attachments and presented in Exhibit "1B".

15 Defaulting Parties -- All persons or entities listed on Exhibit "3".

16 Imported Water -- Water within the Basin received from the State Water Project,
17 originating outside the Basin, that absent human intervention would not recharge or be used in
18 the Basin.

19 LOG Parties -- All persons or entities listed on Exhibit "2," listed under the subheading
20 "LOG Parties".

21 Non-Stipulating Parties -- All Parties who did not sign the Stipulation, including the
22 Defaulting Parties and the LOG and Wineman Parties.

23 Parties -- All parties to the above-referenced action, including Stipulating Parties, Non-
24 Stipulating Parties, and Defaulting Parties.

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

1 Return Flows – All water which recharges the Basin after initial use, through the use of
2 percolation ponds and others means, derived from the use and recharge of imported water
3 delivered through State Water Project facilities.

4 Stipulating Parties – All Parties who are signatories to the Stipulation.

5 Stipulation – The Stipulation dated June 30, 2005 and incorporated herein as Exhibit
6 “1,” with each of its Exhibits separately identified and incorporated herein as Exhibits “1A”
7 through “1H”.

8 Storage Space – The portion of the Basin capable of holding water for subsequent
9 reasonable and beneficial uses.

10 Wineman Parties – All persons or entities listed on Exhibit “2,” under the subheading
11 “Wineman Parties”.

12 The following Exhibits are attached to this Judgment:

13 1. Exhibit “1,” June 30, 2005 Stipulation and the following exhibits thereto:

14 a. Exhibit “1A,” list identifying the Stipulating Parties and the parcels of
15 land bound by the Stipulation.

16 b. Exhibit “1B,” Phase I and II Orders, as modified, with attachments.

17 c. Exhibit “1C,” map of the Basin and boundaries of the three
18 Management Areas.

19 d. Exhibit “1D,” map identifying those lands as of January 1, 2005: 1)
20 within the boundaries of a municipality or its sphere of influence, or within the process of
21 inclusion in its sphere of influence; or 2) within the certificated service area of a publicly
22 regulated utility; and a list of selected parcels that are nearby these boundaries which are
23 excluded from within these areas.

24 e. Exhibit “1E,” 2002 Settlement Agreement between the Northern Cities
25 and Northern Landowners.

26 f. Exhibit “1F,” the agreement among Santa Maria, Golden State and
27 Guadalupe regarding Twitchell Project and the Twitchell Management Authority.

28 g. Exhibit “1G,” the court's Order Concerning Electronic Service of

1 Pleadings and Electronic Posting of Discovery Documents dated June 27, 2000.

2 h. *Exhibit "1H,"* the form of memorandum of agreement to be recorded.

3 2. *Exhibit "2,"* List of Non-Stipulating LOG and Wineman Parties and recorded
4 deed numbers of property they owned at the time of trial.

5 3. *Exhibit "3,"* List of Defaulting parties.

6 **A declaratory judgment and physical solution are hereby adjudged and decreed**
7 **as follows:**

8 1. As of the time of trial, LOG and Wineman Parties owned the real property,
9 listed by assessor's parcel numbers, as presented in Exhibit 2.

10 2. The City of Santa Maria and Golden State Water Company are awarded
11 prescriptive rights to ground water against the non-stipulating parties, which rights shall be
12 measured and enforced as described below.

13 3. The City of Santa Maria and Golden State Water Company have a right to use
14 the Basin for temporary storage and subsequent recapture of the Return Flows generated from
15 their importation of State Water Project water, to the extent that such water adds to the supply
16 of water in the aquifer and if there is storage space in the aquifer for such return flows,
17 including all other native sources of water in the aquifer. The City of Santa Maria's Return
18 Flows represent 65 percent of the amount of imported water used by the City. Golden State
19 Water Company's Return Flows represent 45 percent of the amount of imported water used by
20 Golden State in the basin.

21 4. (a) The Northern Cities have a prior and paramount right to produce 7,300 acre-
22 feet of water per year from the Northern Cities Area of the Basin; and (b) the Non-Stipulating
23 Parties have no overlying, appropriative, or other right to produce any water supplies in the
24 Northern Cities Area of the Basin.

25 5. The Groundwater Monitoring Provisions and Management Area Monitoring
26 Programs contained in the Stipulation, including Sections IV(D) (All Management Areas);
27 V(B) (Santa Maria Management Area), VI(C) (Nipomo Mesa Management Area), and VII (1)
28 (Northern Cities Management Area), inclusive, are independently adopted by the court as

1 necessary to manage water production in the basin and are incorporated herein and made terms
2 of this Judgment. The Non-Stipulating Parties shall participate in, and be bound by, the
3 applicable Management Area Monitoring Program. Each Non-Stipulating Party also shall
4 monitor their water production, maintain records thereof, and make the data available to the
5 court or its designee as may be required by subsequent order of the court.

6 6. No Party established a pre-Stipulation priority right to any portion of that
7 increment of augmented groundwater supply within the Basin that derives from the Twitchell
8 Project's operation.

9 7. The court determines that there is a reasonable likelihood that drought and
10 overdraft conditions will occur in the Basin in the foreseeable future that will require the
11 exercise of the court's equity powers. The court therefore retains jurisdiction to make orders
12 enforcing the rights of the parties hereto in accordance with the terms of this judgment.

13 a. Groundwater

14 i. The overlying rights of the LOG and Wineman Parties shall be
15 adjusted by amounts lost to the City of Santa Maria and Golden State Water Company by
16 prescription. The prescriptive rights of the City of Santa Maria and Golden State Water
17 Company must be measured against the rights of all overlying water producers pumping in the
18 aquifer as a whole and not just against the LOG and Wineman Parties because adverse
19 pumping by the said water producers was from the aquifer as a whole and not just against the
20 non-stipulating parties. The City of Santa Maria established total adverse appropriation of
21 5100 acre feet per year and Golden State Water Company established adverse appropriation of
22 1900 acre feet a year, measured against all usufructuary rights within the Santa Maria Basin.
23 The City of Santa Maria and Golden State Water Company having waived the right to seek
24 prescription against the other stipulating parties, may only assert such rights against the non
25 stipulating parties in a proportionate quantity. To demonstrate the limited right acquired by
26 the City of Santa Maria and Golden State Water Company, by way of example, if the
27 cumulative usufructuary rights of the LOG and Wineman Parties were 1,000 acre-feet and the
28 cumulative usufructuary rights of all other overlying groundwater right holders within the

1 Basin were 100,000 acre-feet, the City of Santa Maria and Golden State Water Company
2 would each be entitled to enforce 1% of their total prescriptive right against the LOG and
3 Wineman Parties. That is, Golden State Water Company could assert a prescriptive right of
4 19 annual acre-feet, and the City of Santa Maria 51 annual acre-feet, cumulatively against the
5 LOG and Wineman Parties, each on a proportionate basis as to each LOG and Wineman
6 Party's individual use.

7 ii. The Defaulting Parties failed to appear at trial and prove any
8 usufructuary water rights. The rights of the Defaulting Parties, if any, are subject to the
9 prescriptive rights of the City of Santa Maria and Golden State Water Company, as well as the
10 other rights of said parties as established herein.

11 b. Imported Water

12 The City of Santa Maria and Golden State Water Company shall have rights to Return
13 Flows in the amount provided above.

14 c. Northern Cities

15 The rights of all Parties in the Northern Cities Management Area shall be governed as
16 described above on page 4, lines 21 to 24.

17 8. The LOG and Wineman Parties have failed to sustain the burden of proof in
18 their action to quiet title to the quantity of their ground water rights as overlying owners. All
19 other LOG and Wineman party causes of action having been dismissed, judgment is hereby
20 entered in favor of the Public Water Producers as to the quiet title causes of action brought by
21 the LOG and the Wineman Parties. Legal title to said real property is vested in the Log and
22 Wineman Parties and was not in dispute in this action.

23 9. Each and every Party, their officers, agents, employees, successors and assigns,
24 are enjoined and restrained from exercising the rights and obligations provided through this
25 Judgment in a manner inconsistent with the express provisions of this Judgment.

26 10. Except upon further order of the court, each and every Party and its officers,
27 agents, employees, successors and assigns, is enjoined and restrained from transporting
28 groundwater to areas outside the Basin, except for those uses in existence as of the date of this

1 Judgment; provided, however, that groundwater may be delivered for use outside the Basin as
2 long as the wastewater generated by that use of water is discharged within the Basin, or
3 agricultural return flows resulting from that use return to the Basin.

4 11. Jurisdiction, power and authority over the Stipulating Parties as between one
5 another are governed exclusively by the Stipulation. The court retains and reserves
6 jurisdiction as set forth in this Paragraph over all parties hereto. The court shall make such
7 further or supplemental orders as may be necessary or appropriate regarding interpretation and
8 enforcement of all aspects of this Judgment, as well as clarifications or amendments to the
9 Judgment consistent with the law.

10 12. Any party that seeks the court's exercise of reserved jurisdiction shall file a
11 noticed motion with the court. Any noticed motion shall be made pursuant to the court's
12 Order Concerning Electronic Service of Pleadings and Electronic Posting of Discovery
13 Documents dated June 27, 2000.

14 13. The court shall exercise *de novo* review in all proceedings. The actions or
15 decisions of any Party, the Monitoring Parties, the TMA, or the Management Area Engineer
16 shall have no heightened evidentiary weight in any proceedings before the court.

17 14. As long as the court's electronic filing system remains available, all court
18 filings shall be made pursuant to court's Order Concerning Electronic Service of Pleadings
19 and Electronic Posting of Discovery Documents dated June 27, 2000, or any subsequent
20 superseding order. If the court's electronic filing system is eliminated and not replaced, the
21 Parties shall promptly establish a substitute electronic filing system and abide by the same
22 rules as contained in the court's Order.

23 15. Nothing in this Judgment shall be interpreted as relieving any Party of its
24 responsibilities to comply with state or federal laws for the protection of water quality or the
25 provisions of any permits, standards, requirements, or order promulgated thereunder.

26 16. Each Party shall designate the name, address and e-mail address, if any, to be
27 used for purposes of all subsequent notices and service by a designation to be filed within
28 thirty days after entry of this Judgment. This designation may be changed from time to time

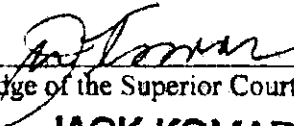
1 by filing a written notice with the court. Any Party desiring to be relieved of receiving notices
2 may file a waiver of notice on a form approved by the court. The court shall maintain at all
3 times a current list of Parties to whom notices are to be sent and their addresses for purposes
4 of service. The court shall also maintain a full current list of names, addresses, and e-mail
5 addresses of all Parties or their successors, as filed herein. Copies of such lists shall be
6 available to any Person. If no designation is made, a Party's designee shall be deemed to be, in
7 order of priority: i) the Party's attorney of record; ii) if the Party does not have an attorney of
8 record, the Party itself at the address specified.

9 17. All real property owned by the Parties within the Basin is subject to this
10 Judgment. The Judgment will be binding upon and inure to the benefit of each Party and their
11 respective heirs, executors, administrators, trustees, successors, assigns, and agents. Any
12 party, or executor of a deceased party, who transfers property that is subject to this judgment
13 shall notify any transferee thereof of this judgment and shall ensure that the judgment is
14 recorded in the line of title of said property. This Judgment shall not bind the Parties that
15 cease to own property within the Basin, and cease to use groundwater. Within sixty days
16 following entry of this Judgment, the City of Santa Maria, in cooperation with the San Luis
17 Obispo entities and Golden State, shall record in the Office of the County Reporter in Santa
18 Barbara and San Luis Obispo Counties, a notice of entry of Judgment.

19 The Clerk shall enter this Judgment.

20
21 SO ORDERED, ADJUDGED, AND DECREED.

22
23 Dated: January 25, 2008



Judge of the Superior Court
JACK KOMAR