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**TABLE OF ABBREVIATIONS OF PARTIES, GROUPS OF
PARTIES AND OTHER TERMS**

Appellants	The LOG Parties.
LOG Parties	The parties referred to in pleadings as Landowner Group or LOG. LOG parties are identified as the “Landowner Group Parties (LOG).” in Exhibit 2 of the Judgment. (Judgment Exhibit, C.T.-2, Vol.2, pg.439)
Wineman Parties	Parties also appealing this case. The Wineman Parties are identified in as the “Wineman, et al.” in Exhibit 2 of the Judgment. (Judgment Exhibit, C.T.-2, Vol.2, pg.436) The Wineman Parties are submitting separate briefing.
Santa Maria	The City of Santa Maria.
Nipomo	Nipomo Community Services District. Sometimes abbreviated in pleadings as NCSD.
Rural Water	Rural Water Company.
Golden State	Golden State Water Company. Golden State, sometimes referred to as GSWC, underwent a name change during the pendency of the proceedings and is identified as Southern California Water Company or SCWC in early trial court pleadings.
Pismo	The City of Pismo Beach.
Arroyo Grande	The City of Arroyo Grande.
Grover Beach	The City of Grover Beach.

Oceano	Oceano Community Services District
Guadalupe	The City of Guadalupe.
CCWA	Central Coast Water Authority.
SB County	Santa Barbara County.
SB Water	Santa Barbara County Water Agency.
SB Flood	Santa Barbara County Water and Flood Control District.
SLO County	San Luis Obispo County.
SLO Flood	San Luis Obispo County Water and Flood Control District.
Los Alamos	Los Alamos Community Services District.
Casmalia	Casmalia Community Services District.
Adverse Parties	The parties adverse to LOG in the litigation.
Purveyor Parties	Santa Maria, Golden State, Rural, Nipomo, Oceano, Arroyo Grande, Pismo and Grover Beach styled themselves at various times collectively as the 'Purveyor Parties', Public Water Producers,' 'Public Water Suppliers.' They are a coalition of parties and did not seek class status. Some sued others in the group. Nevertheless, this group of parties cooperated at trial. This brief uses the term 'Purveyor Parties' to refer to this group.
Northern Cities	Oceano, Arroyo Grande, Pismo and Grover Beach employed common counsel and styled themselves collectively as the 'Northern Cities.'

They are a coalition of parties and did not seek class status. This brief uses the term 'Northern Cities' to refer to this group. The Northern Cities parties are a sub-group of the 'Purveyor Parties.'

Settlement Stipulation

Stipulation June 30, 2005 Version.
(Settlement Stipulation, C.T.-
2, Vol.1, pg.10.)

Settling Parties

Those parties to the litigation which signed the Settlement Stipulation.

TABLE OF ABBREVIATIONS OF FILINGS IN THE APPELLATE COURT

Judgment	Judgment After Trial, January 25 th , 2008 (Judgment, C.T.-2, Vol.1, pg.10.)
Writ Petition	LOG AOB Exhibit "A" of the Request For Judicial Notice Attached To The Appellants' Opening Brief: Petition for Writ of Supersedeas, Prohibition, Appropriate Orders and Other Appropriate Relief to Preserve the Status Quo of the Matter Pending Appeal; Request for Temporary Stay, July 21 st , 2009
Writ Opposition	LOG AOB Exhibit "B" to the Request For Judicial Notice Attached To The Appellants' Opening Brief: Opposition to Petition for Writs of Supersedeas, Prohibition, or Any Other Order to Preserve the Status Quo Herein Pending Appeal, August 7 th , 2009
Wineman AOB	Opening Brief By Appellants The Wineman Parties, March 19 th , 2010
LOG AOB	Appellants Landowner Group Parties' ("LOG") Opening Brief, September 9 th , 2010
JRB	Joint Respondents Brief, May 17 th 2011
Guadalupe Respondent's Brief	Respondent City Of Guadalupe's Brief, May 18 th 2011
Pismo Respondent's Brief	Respondent City Of Pismo Beach's Brief, May 18 th 2011
LOG Reply to JRB	Appellants Landowner Group Parties' ("LOG") Reply to the Joint Respondents Brief

LOG Reply to Guadalupe

Appellants Landowner Group Parties'
("LOG") Reply to the Respondent City
Of Guadalupe's Brief

LOG Reply to Pismo

Appellants Landowner Group Parties'
("LOG") Reply to the Respondent City
Of Pismo Beach's Brief

ABBREVIATIONS OF CITATIONS TO THE RECORD

This brief uses the same abbreviations of citations to the record as the Appellants Landowner Group Parties' ("LOG") Opening Brief, September 9th 2010. (LOG AOB pg. xxxi.)

INTRODUCTION

Appellants, the Landowner Group Parties, hereby incorporate by reference the, LOG Reply to JRB and LOG Reply to Pismo filed contemporaneously with this Brief.

PARTICIPATION IN THE CASE BELOW DOES NOT CHANGE THE FACT THAT GUADALUPE DEFAULTED WITH REFERENCE TO THE PHASE 4 AND 5 TRIALS

(A) Guadalupe Has No Legal Basis To File A Respondents Brief Since It Defaulted By Failing To Appear And Present Evidence At Trial

Guadalupe defaulted by failing to appear at the Phase 4 and 5 trials. (Phase 4 day 1, R.T.-1,Vol.36,pg.6968.) (Phase 4 day 2, R.T.-1,Vol.37,pg.7068.) (Phase 4 day 3, R.T.-1,Vol.38,pg.7130.) (Phase 4 day 4, R.T.-1,Vol.39,pg.7352.) (Phase 4 day 5, R.T.-1,Vol.40,pg.7443.) (Phase 4 day 6, R.T.-1,Vol.41,pg.7536.) (Phase 5 day 1, R.T.-1,Vol.42,pg.7729.) (Phase 5 day 2, R.T.-1,Vol.43,pg.7905.) Accordingly, Guadalupe has no basis to make or defend any claims as against Appellants for the first time here on appeal. This Court should disregard the Guadalupe Respondent's Brief and order Judgment to be entered against Guadalupe as requested by Appellants.

(B) Guadalupe Presented No Evidence Of Adverse Claims In Response To Appellants Quiet Title And Declaratory Relif Causes Of Action

Guadalupe was sued by Respondents and was named as a defendant in Appellants' quiet title cause of action. (C.T.-1,Vol.6,pg.1420.) Guadalupe answered LOG's complaint but did not file a cross-complaint. (C.T.-1,Vol.2,pg.496.) Guadalupe was named by other Purveyor and landowner parties. Guadalupe participated in the first three Phases of Trial. Following Phase 3, Guadalupe entered into the Settlement Stipulation with other parties. Guadalupe did not appear at the Fourth and Fifth Phases of

Trial, nor did Guadalupe present any evidence to defend against Appellants' Quiet Title cause of action.

Appellants' quiet title cause against Guadalupe required Guadalupe to assert and prove any adverse claims against Appellants' overlying rights on the parcels identified in Appellants' pleadings. Guadalupe proved no claims. Nothing in the pleadings of either LOG or Guadalupe requested any determination of surface water rights.

(C) **Appellants Are Entitled To A Quiet Title Declaration Against Guadalupe**

Guadalupe failed to appear and prove any adverse claims. For example, Guadalupe presented no evidence that it pumped groundwater during any periods of alleged prescription. Accordingly, quiet title relief should have been granted in favor of Appellants and against Guadalupe.

Notwithstanding the failure of the court to grant quiet title relief, the declaratory relief judgment should have reflected that Guadalupe proved no basis for any adverse claim to Appellants' priority groundwater rights. Guadalupe defaulted by failing to appear and/or present any evidence. Whether or not Guadalupe participated in earlier phases of trial is irrelevant.

(D) **Guadalupe's Claim On Appeal Illustrates The Prejudice To Appellants Caused By Combining The Judgment After Trial with the Settlement Stipulation**

(1) **Guadalupe Claims That Signing A Settlement Stipulation With Some Parties Relieves Guadalupe Of Its Default**

Guadalupe failed to appear at trial and failed to prove any adverse claims against Appellants' properties. Nevertheless, in a feat of tortured logic, Guadalupe now claims that the Settlement Stipulation insulates it from the failure to prove any adverse claims against Appellants. Although combining the Settlement with the Judgment After Trial confuses the rights and duties of the Settling Parties with those of Appellants, it does not

protect Guadalupe from failing to prove its claims. The arguments being made on appeal by Guadalupe also illustrate why the Judgment should be modified to make clear that Appellants are not required to participate in or be bound by the Settlement Stipulation. (See discussion in LOG Reply to JRB pg. 114 et seq.)

(2) Guadalupe Filed No Action Against Appellants And Presented No Evidence To Prove Any Basis For Relief Against Appellants

Guadalupe makes arguments about so called “allocation of the Twitchell Project.” (Guadalupe Respondent’s Brief pg. 2.) Guadalupe claims on appeal that the Settlement Stipulation transferred rights to water from Twitchell Reservoir from Appellants to Guadalupe. Guadalupe did not file any complaint or cross-complaint or pleading requesting rights to water or any other relief against Appellants. Likewise, Guadalupe did not appear at the Phase 4 or Phase 5 trials nor prove in any manner whatsoever any water rights, including any rights to Twitchell water. Guadalupe did not prove at trial that it obtained any preferential right to water from Twitchell Reservoir.

The Settlement Stipulation does not substitute as a Judgment in favor of Guadalupe and against Appellant transferring Twitchell water rights to Guadalupe. Guadalupe clearly did not litigate these rights against Appellants and may not obtain these rights by settling with someone else.

Once again, this illustrates why the Judgment must be clear that the Settlement Stipulation does not apply to nor bind Appellants. Guadalupe’s argument illustrates the legal impropriety of the Settling Parties’ attempt to deprive Appellants of water from Twitchell Reservoir based upon a private contract which Appellants did not sign.

To prevent such legally inappropriate claims, the Judgment must make clear that the Settlement Stipulation does not apply to, nor bind,

Appellants in any way. Additionally, the Judgment must make clear that the Settlement Stipulation does not deprive Appellants of water from the Twitchell Reservoir. (See discussion in LOG Reply to JRB pg. 83 et seq.)

(E) Guadalupe's 'Twitchell Allocation' Claim Has No Merit

(1) Guadalupe's Twitchell Allocation Claim Is Legally Improper For The Same Reasons Discussed In Appellants' Briefs

Guadalupe's Twitchell allocation claim suffers from the same infirmities as other Twitchell claimants. (See LOG AOB pg 74 et seq. and LOG Reply to JRB pg. 83 et seq.)

Even if Guadalupe had appeared at trial and made a claim to water rights that result from the operation of Twitchell, which it clearly did not, Guadalupe's claim would be legally improper for same reasons as the other Respondents who are attempting, by private contract, to transfer to themselves a groundwater right to water from the Twitchell Reservoir which is a public project. Appellants incorporate by reference their discussion of the Twitchell in Appellants Opening and Reply Briefs.

Finally, since Guadalupe claimed no relief at trial and defaulted at trial, Guadalupe cannot assert a claim to Twitchell water here, for the first time on appeal.

(2) Guadalupe Failed To Prove The Existence Of The Contract On Which It, In Part, Bases Its Claim

Guadalupe makes one distinct argument as a basis for a claimed right to Twitchell water. Guadalupe claims that a contract exists between Guadalupe and the Bureau of Reclamation. (Guadalupe Respondent's Brief pg. 6-7.) Because Guadalupe defaulted and failed to produce any evidence to prove any claims, no alleged contract was introduced into evidence to support a contract claim to such water. Even if Guadalupe could rely on proof allegedly made by other parties at a trial which Guadalupe did not

attend, which it cannot, no other Respondent produced any contract between themselves and the Bureau of Reclamation.

(F) Guadalupe's Physical Solution Arguments Lack Merit

Guadalupe also admits that the so-called physical solution does not apply to Appellants and that Appellants' need only monitor.

“the Judgment does not impose a physical solution affecting the water rights or water supply on them or any other non-stipulating party party. Furthermore, the Wineman Parties admit that the Judgment only imposes the monitoring requirements of the physical solution on them and other non-stipulating parties”

(Guadalupe Respondent's Brief pg. 4.)

Appellants' comments regarding the so-called physical solution are discussed in the Reply to the Joint Respondents' Brief, are incorporated herein by reference. (See discussion in LOG Reply to JRB pg. 114 et seq.)

(G) Guadalupe's Monitoring Arguments Lack Merit

Guadalupe suggests that the monitoring obligations imposed by the Judgment are not unreasonable or burdensome because they are comparable to current law. (Guadalupe Respondent's Brief pg. 5.) This is a curious comment given the fact that nowhere in the Settlement or in the Judgment are any such monitoring obligations defined. Nowhere in the Settlement Stipulation or Judgment are any provisions identifying what Appellants are required to do regarding monitoring, how monitoring will be accomplished, when monitoring will be required and/or any other details.

Guadalupe cites Senate Bill 6 (SBX7 6) which it contends is consistent with so called monitoring in the Settlement Stipulation and/or Judgment. SBX7 6 has nothing to do with mandatory monitoring and relates to assessing interest in “establishing a groundwater management plan, and an integrated regional water management plan or voluntary groundwater monitoring association.” This Senate Bill also was not admitted into evidence or considered by the trial court as evidenced by the

failure of Guadalupe to cite to the Record. Nor is there any proof that this Bill has become operative law.

(H) There Is No Basis For An Award Of Water Rights To Guadalupe Because It Litigated No Claims

Guadalupe asserts that it “has a right to 1,910 acre feet of water per year from two separate enhanced water supplies.” (Guadalupe Respondent’s Brief pg. 6.) It is unclear what amounts are asserted as surface water rights or groundwater rights. In any event, Guadalupe never made any attempt to prove any of these claims in the trial court. Guadalupe lost the opportunity to prove these claims as a challenge to Appellants’ quiet title action, or based upon declaratory relief, by failing to appear at trial to present and prove these claims. Certainly these claims cannot be raised for the first time on appeal.

If this Court agrees with Appellants and directs the trial court to entertain claims of return flow rights at the time of future shortage, Guadalupe would be able to claim rights to return flows in the same way as any other importer. Accordingly, there is no need to discuss these claims here.

Guadalupe makes the legally improper claim that they are entitled to a groundwater right in the amount of the surface water use of imported water in addition to the return flows from the same imported water.

“California law permits municipalities to obtain a priority to the increased water yield resulting from the improvements financed by the municipality”
(Guadalupe Respondent’s Brief pg. 7.)

“It makes no difference whether the developed supply augments the native supply directly (by direct importation into the groundwater basin) or indirectly (by return flow) **or reducing pumping by substituting surface water for groundwater.**”
(Guadalupe Respondent’s Brief pg. 9.) (Emphasis added.)

This is simply not the law. Every case dealing with subject makes clear that when an importer imports water from outside the watershed, the importer is only entitled to a priority to the groundwater that results from the return flows from such water, not a groundwater right equivalent to the gross amount imported plus the return flows from the same water.

It is significant to note that none of the other Respondent parties claimed entitlement to the gross amount of imported water plus the return flows from the very same water as Guadalupe has done. All of the other Respondents who claimed an imported water right requested only the return flows from the imported water. The other Respondents correctly followed the law in only requesting the return flows. Guadalupe's request for both the gross amount of imported water, plus the return flows from the very same water, is simply not supported in law, as recognized by the other Respondents.

Guadalupe's claim that it has a contract with the Bureau of Reclamation to receive water from the Twitchell Project was not asserted by Guadalupe nor proved at trial. (Guadalupe Respondent's Brief pg. 6.) Accordingly, they have defaulted on this claim and judgment should be entered accordingly quieting title to Appellants' overlying priority groundwater right as against any such claims.

Likewise, the alleged sub-contracts were not introduced into evidence nor proved.

“..... the City of Guadalupe subcontracts with the Santa Barbara County Flood Control & Water Conservation District (the "District") to receive approximately 610 acre feet of water per year from the State Water Project.”
(Guadalupe Respondent's Brief pg. 7.)

Guadalupe defaulted on its right to make such proof as against Appellants. Guadalupe's reference to a website in support of this claim is completely inappropriate yet emblematic of the fact that Guadalupe failed

to attend trial or prove anything. Accordingly, Guadalupe presented no evidence and may not cite to a website attempting to prove anything for the first time in this Respondent Brief.

Finally, Guadalupe cites no legal authority to support its propositions of law and has no citations to the record because it submitted no evidence. The failure to properly cite the Record or to cite any legal authority to support its arguments properly requires rejection of Guadalupe's arguments.

(I) **There is No Basis For An Award Of Water Rights To Guadalupe Because It Did Not Plead Nor Litigate Any Claims Against Appellants**

Guadalupe claims,

“Contrary to the arguments posed by the Wineman Parties and LOG, the Judgment correctly interprets California law in confirming the City of Guadalupe’s right to the total 1910 acre feet of imported and conserved water per year.”

(Guadalupe Respondent’s Brief pg. 7.)

This is patently false. First of all, Guadalupe did not appear at trial and presented no evidence to support this claim. Second, the Judgment After Trial does not award Guadalupe a “right to a total of 1,910 acre feet” of “imported and conserved water per year.”

If Guadalupe claimed an imported and/or conserved water right, Guadalupe would have been required, like Santa Maria and/or Golden State Water Company, to prove these claims in court in the Phase 4 and 5 Trials. Guadalupe did not do so. Guadalupe cannot rationally claim that simply because another party claims to have proved a right to imported and/or conserved water that Guadalupe mysteriously proved the same right in the absence of attending trial or presenting any evidence.

Guadalupe cites *Hutchins, Water Rights Laws in the Western Nineteen States*, Vol. II, at 565-66 (1967) treatise for the “general rule that the entity that makes the **investment** necessary to make such water

available is entitled to its use.” (Guadalupe Respondent’s Brief pg. 8.) First of all, Hutchins does not use the term “investment” and Guadalupe misunderstands, or intentionally disregards, the context within which this discussion occurs in the *Hutchins* treatise. In the section where this comment appears, *Hutchins* was discussing the difference between salvaged and developed waters. He contrasted the difference between imported water, which may create a return flow groundwater right, and salvaged water which does not create a groundwater right. This distinction is discussed at length in Appellants’ Briefs. (See discussion in LOG Reply to JRB pg. 78 et seq. and pg. 83 et seq.)

All this discussion really makes no difference because Guadalupe failed to appear at trial and failed to present any evidence to prove any claims it may have had. If it had such claims, it certainly was required to appear at trial and prove them.

Guadalupe next discusses *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68 and *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199. Appellants rebut Guadalupe’s legal contentions in their Reply to the Joint Respondents’ Brief, which is incorporated by reference herein.

Guadalupe contends

“It makes no difference whether the developed supply augments the native supply directly (by direct importation into the groundwater basin) or indirectly (by return flow) or reducing pumping by substituting surface water for groundwater.”

(Guadalupe Respondent’s Brief pg. 9.)

No legal citations follow this statement and the statement is legally incorrect in multiple ways. As noted, Guadalupe fails to acknowledge the difference between imported water, developed water and salvaged water and fails to understand that the return flow right is measured by the net

augmentation to the basin created by importation of water from outside the basin during a time of overdraft.

Guadalupe's Brief ends with the statement

"The Parties responsible for adding the water to the local supply are entitled to the fruit of their expenditures."
(Guadalupe Respondent's Brief pg. 9.)

This overly simplistic statement is not consistent with California groundwater law and apparently disregards completely the fact that Guadalupe failed to appear and failed to present any evidence.


(J) CONCLUSION

Guadalupe failed to appear at trial and failed to present any evidence to support any of its claims, including any rights to surface water. Accordingly, Guadalupe defaulted and has no legal basis to make or defend claims against Appellants. Guadalupe includes virtually no citations to the record since it did not present any evidence at trial and cites no case law supporting the argument that it need not appear at trial to prove its claims.

The Judgment After Trial should reflect that Guadalupe failed to appear and prove any claims and declare that Guadalupe proved no claims adverse to Appellants' priority groundwater rights.

Dated: October 4, 2011

Respectfully submitted,
CLIFFORD & BROWN

By: 
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(LOG)

CERTIFICATE OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of approximately 2753 words as counted by Microsoft Office Word 2003 Program used to generate this brief.

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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)

Santa Maria Valley Water Conservation District v. City of Santa Maria

Lead Case No. **1-97-CV770214** [Consolidated With Case Numbers: CV784900, CV784921, CV784926, CV785509, CV785511, CV785515, CV785522, CV785936, CV786971, CV787150, CV787151, CV787152, CV790597, CV790599, CV790803, CV 790741, San Luis Obispo County Superior Court CV790597, CV790599, CV790803]

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On October 6, 2011, I served the foregoing document(s) entitled:

APPELLANTS LANDOWNER GROUP PARTIES' ("LOG") REPLY TO RESPONDENT CITY OF GUADALUPE'S BRIEF

XX by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

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OFFICE OF THE CLERK (Original, 4 Duplicate Originals & 4 Copies)
CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

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

—

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)

Santa Maria Valley Water Conservation District v. City of Santa Maria

Lead Case No. **1-97-CV770214** [Consolidated With Case Numbers: CV784900, CV784921, CV784926, CV785509, CV785511, CV785515, CV785522, CV785936, CV786971, CV787150, CV787151, CV787152, CV790597, CV790599, CV790803, CV 790741, San Luis Obispo County Superior Court CV790597, CV790599, CV790803]

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

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APPELLANTS LANDOWNER GROUP PARTIES' ("LOG") REPLY TO RESPONDENT CITY OF GUADALUPE'S BRIEF

XX by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

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12 **OF THE ADAM FAMILY TRUST; MARK S. ADAM; CHRISTINE M. CRUDEN; B.**
13 **PEZZONI ESTATE COMPANY; RICHARD L. AND JANET A. CLARK, AS TRUSTEES**
14 **OF THE RICK AND JANET CLARK FAMILY TRUST DATED SEPTEMBER 24, 1986;**
15 **EDWARD S. WINEMAN; CAROL BROOKS; FRED W. AND NANCY W. HANSON, AS**
16 **CO-TRUSTEES OF THE HANSON REVOCABLE TRUST; AND HELEN J. FREEMAN**

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11 SANTA CLARA COUNTY SUPERIOR COURT (1 Copy)
12 Appellate Division
13 19 North First Street
14 San Jose, CA 95113

15 CALIFORNIA SUPREME COURT (4 Copies)
16 350 McAllister Street
17 San Francisco, CA 94102

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